

(1994) 06 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 2473 of 1991

C.N. Byrappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 14-06-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 227
High Court of Karnataka Writ Proceedings Rules, 1977 — Rule 39

Citation : (1994) ILR (Kar) 1906 : (1994) 4 KarLJ 485

Hon'ble Judges : S.B. Majmudar, C.J.; Tirath S. Thakur, J

Bench : Division Bench

Advocate : S. Vijay Shankar and Y. Lakshmikanth, for the Appellant; A.M. Farooq, Government Advocate for R1 to R3 and D.S. Ramachandra, for R4, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majmudar, C.J.—This is a Petition for Review of an Order passed by an earlier Division Bench consisting of MOHAN C.J. and SHIVARAJ PAUL, J. on 27th September 1991, dismissing the Writ Appeal No. 2473 of 1991 filed by the present petitioners, who are the heirs of the original Writ-petitioner viz., C.N. Byrappa.

2. A few facts which are leading to the present Review proceedings deserve to be noted at the out-set. The original Writ-petitioner, who filed Writ Petition No. 5206 of 1987 under Article 226 of the Constitution, had called in question the correctness and legality of the orders of the Assistant Commissioner (3rd respondent herein) at Annexure-A to the petition as well as the Deputy Commissioner (2nd respondent herein) at Annexure-B to the petition, respectively. The dispute centered round 3A-09G out of 09A-28G of land in Sy.No.90 of Chandalapura village, Chickaballapur Taluk, Kolar District. These lands were granted in favour of Kempanna father of Chowdappa, 4th respondent

herein, by an order made by the competent authority on 29th December 1930 applying the Karnataka Land Grant Rules subject to certain conditions. One such condition was that the grantee shall not alienate the granted land at any time. It is the case of the petitioners that the granted land came to be sold by the 4th respondent after the death of his father by a registered Sale Deed dated 9.12.1940 in favour of one Munivenkatappa son of Thoti Thimma, who in turn, sold 3A-09G out of the granted land, in favour of Doddanagappa son of Hanumanthappa, by a registered sale deed dated 4.8.1952. On the death of the said Doddanagappa, the Khata of the land came to be transferred in favour of his son C.N. Byrappa - the original Writ petitioner.

3. The Karnataka State Legislature enacted the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 [for short, the "Act"] which came into force on 1.1.1979. Under this Act, the original grantee or his legal heir is entitled to apply to the authority concerned for restoration of the granted land after resumption from the alienee or their successor-in-interest, on the ground that the transfer of such land was in contravention of the terms of the grant, as per Section 4 of the Act. Accordingly, the 4th respondent applied u/s 4 of the Act. The Assistant Commissioner, Chickaballapur Sub-Division (respondent-3) having heard the parties, came to the conclusion that the transaction in favour of the original Writ-petitioner had become null and void in view of the provisions of the Act, and therefore, pursuant to Section 5 of the Act, he granted restoration of the land to the original grantee or his son claiming under him. The original Writ petitioner carried the matter before the Deputy Commissioner, Kolar, District in appeal. That appeal was dismissed. Aggrieved by the said order, the original Writ petitioner approached this Court through the Writ Petition as aforesaid.

4. Two contentions appeared to have been urged before the learned Single Judge by the original Writ-petitioner in support of the Writ Petition. They are: (1) as on the date when the land in question came to be granted in favour of Kempanna - father of the 4th respondent, there was no prohibition imposed in the grant prohibiting alienation of the granted land; therefore, to that extent the Assistant Commissioner and the Deputy Commissioner were in error in applying the provisions of Sections 4 and 5 of the Act; and (2) the Writ-petitioner had been enjoying that portion of the land that came to be sold in favour of his father Doddanagappa, from the date of sale viz., 4.8.1952, and that if the date of first sale of granted land i.e., on 9.12.1940 in favour of Munivenkatappa s/o Thoti Thimma and also the continuous undisturbed enjoyment by the original Writ petitioner and earlier by his father from the date of sale of land in favour of his father, are taken into account, he must be held to have perfected this title by way of adverse possession for more than 30 years prior to the coming into operation of the Act; and therefore, the provisions of the Act did not hit his continuous possession of the land.

5. The learned Single Judge rejected both the aforesaid contentions. The present

petitioners, thereafter carried the matter in Writ Appeal before the Division Bench, which by its order dated 27th September 1991 dismissed the Writ Appeal No. 2473/91. The only point urged on behalf of the appellants was that their rights could be protected on the basis of adverse possession by reason of which they have perfected their title. The Division Bench held that admittedly the appellants purchased the land in question in the year 1952 and there is nothing to show that they asserted their hostile title as against the true owner from the date of purchase; and therefore, it was not possible to accede to their contention. The Appeal was dismissed. It is this order that is sought to be got reviewed in the present proceedings.

6. Mr. S. Vijayashankar, learned Senior Advocate appearing for the petitioners, vehemently contended that the Judgment under Review proceeded on a patent error of law inasmuch as the adverse possession was sought to be considered from the year 1952, and as the Act had come into force on 1.1.1979 presumably 30 years adverse possession had been taken into consideration by the Division Bench; the said approach of the Division Bench is patently wrong in view of the later Decision of the Supreme Court dated 18.3.1994 passed in Civil Appeal No. 2099/94 - K.T. Huchegowda Vs. Deputy Commissioner and Others,

7. It was next contended by Mr. Vijaya Shankar that even assuming that 30 years period is considered as a period of adverse possession, as the first alienation was of the year 1940 as noted by the learned Single Judge, which order was in appeal before a Division Bench, as on 1.1.1979 - the date on which the Act came into force -the possession of the predecessors-in-title viz., Munivenkatappa from 1940 to 4.8.1952 the date on which the petitioners grand father purchased 03A-09G from Munivenkatappa, would work out to more than 30 years of continuous adverse possession.

8. Before we consider the aforesaid two contentions, we must note that these are the Review proceedings and we cannot sit in Appeal against the order of the Division Bench. It is well settled that the High Court is not a Court of Appeal while dealing with a Review Petition. These Review proceedings against orders under Article 226 of the Constitution get circumscribed under Order 47 Rule 1 C.P.C. Writ Proceedings Rules 1977 framed by this High Court governing the Writ Proceedings contain Rule 39, which reads as follows:

"39. Application of the High Court of Karnataka Rules, etc. -The provisions of the High Court of Karnataka Rules, 1959, the rules made by the High Court of Karnataka under the Karnataka Court Fees and Suits Valuation Act, 1958, and the provisions of the Code of Civil Procedure, 1908, shall apply, as far as may be, to proceedings under Article 226 and/or Article 227 and writ appeals in respect of matters for which no specific provision is made in these rules."

It becomes therefore obvious that the provisions of CPC will apply not only to original Writ Petition under Article 226 of the Constitution, but also to Writ Appeals arising therefrom provided no specific provision is made in these Rules in

connection with any such matter. No specific provision is made about reviewing of the Orders passed in Writ Appeals. Therefore, the provisions of the CPC will apply as far as may be, to such proceedings and that will naturally attract Order 47 Rule 1 C.P.C. Even otherwise, as laid down by the Supreme Court in Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, the proceedings under Article 226 of the Constitution, if sought to be reviewed, would attract the fetters of Order 47 Rule 1 C.P.C, It is laid down in the aforesaid Decision that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of Justice or to correct grave and palpable errors committed by it. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the Decision was erroneous on merits. That would be the province of Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court. In the aforesaid Decision, the earlier Decision of the Supreme Court in Shivdeo Singh and Others Vs. State of Punjab and Others, was distinguished.

9. When we turn to Order 47 Rule 1 C.P.C,, we find an Explanation engrafted thereunder, viz., which states that the fact that the decision on a question of law on which the Judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Even otherwise it is well settled that a subsequent decision of a Higher Court which has a binding effect would not be a ground for review of an earlier judgment, which was based on an earlier, view then prevailing. The decision of the Supreme Court in K.T. Huchegowda's case (supra), was not available before the Division Bench when the said Writ Appeal was decided on 27th September 1991. Therefore, only because the Supreme Court has subsequently held that in an appropriate case, the period, of limitation of 12 years may be applicable, it cannot be legitimately pressed in service by the petitioners for supporting this Review Petition. This subsequent Judgment has not rendered the earlier Decision in any way patently erroneous in law. Therefore, the first contention based on later Judgment of the Supreme Court, cannot be of any assistance to the petitioners.

10. So far as the second contention of the petitioners for supporting the Review Petition is concerned, it has to be observed that the Division Bench has clearly mentioned that the only point urged was that the appellants-petitioners had perfected their title on the basis of the adverse possession over the land as they purchased the land in the year 1952 but there was nothing to show that they asserted their hostile title. Nowhere it seems to have been contended before the

Division Bench that the hostile title had to be traced from the year 1940 - the date on which the first sale of land by grantee's son to certain Munivenkatappa took place. It is no doubt true that that contention was canvassed before the learned Single Judge but he rejected the same and that part of the Judgment was not assailed before the Division Bench, in Writ Appeal. Consequently, it cannot be said that the Division Bench had committed a patent error in not considering that contention, which was never canvassed before it. It appears that the only argument placed before the Division Bench was that the counting of adverse possession starts from 1952 as the petitioners' predecessor-in-title namely, their grand-father, purchased the land in question on 4.8.1952 and obviously, 30 years period was not over as on 1.1.1979 - the date on which the Act came into force. The transferee might have perfected his title by adverse possession of 30 years on the basis of the then prevailing position as laid down by the Supreme Court in *SUNKARA RAJYALAKSHMI v. STATE OF KARNATAKA*. ILR 1985 KAR : 1985 (1) SCALE 445 even if that was so, as no argument seems to have been canvassed before the Division Bench that 30 years period may be counted from 1940 and not from 1952, such a new ground cannot be urged in a Review Petition for consideration. It is to be kept in view that these are not proceedings for further appeal but they are for review. We therefore cannot examine the question whether the finding recorded by the Division Bench about adverse possession from 1952, was in any way erroneous or not. Consequently, even the second ground urged by the petitioners fails to support these Review proceedings. These were the only contentions raised in support of the Review Petition and as they fail, the Review Petition must also fail. The Review Petition, therefore, is dismissed. No order as to costs, in the circumstances of the case.