

(2001) 09 AP CK 0024
In the Andhra Pradesh High Court
Case No : SA No. 240 of 1989

K. Venkateswarlu and others	Vs	APPELLANT
Pedda Venkaiah (died) Per LRs.		RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 3(1)
Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 — Section 10, 4, 4(2), 5
Constitution of India, 1950 — Article 371
Transfer of Property Act, 1882 — Section 10, 53

Citation : (2001) 5 ALD 845 : (2001) 5 ALT 473

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J;C.Y. Somayajulu, J

Bench : Full Bench

Advocate : Mr. Singam Venkatasubba Rao for Mr. E.V. Bhagiratha Rao, for the Appellant; Mr. G. Pedda Babu, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, CJ

1. Whether the prohibition contained in Section 4 of the A.P. Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 (hereinafter referred to as the "said Act" for the sake of brevity) would apply to an agreement for sale is the question involved in this reference.

FACTS:

2. The defendant is the appellant. The plaintiff-respondent filed a suit for specific performance of contract in respect of an agreement for sale dated 9-7-1973. A defence was taken by the appellant herein to the effect that the said agreement is void as the same being hit by Section 4 of the said Act.

3. Admittedly the land in question is a vacant land. It measures about 30 cents

(equivalent to 1497 sq. mt).

4. The said Act was enacted pending enactment of Urban Land (Ceiling and Regulation) Act, 1976, which came into force on 5-6-1972. By reason of G.O. Ms. No. 369, Revenue (G), dated 26th March, 1976, the said Act was, however, repealed by Act No. 13 of 1976. Admittedly, the Urban Land (Ceiling and Regulation) Act, 1976 has no application in relation to any land situate in the District of Prakasam or in the town of Ongole.

5. A similar question came up for consideration before a Division Bench of this Court in C. Ramaiah Vs. Mohammadunnisa Begum, , wherein the Division Bench (Coram: Chennakesav Reddy and Ramachandra Raju, JJ) observed:

"Where a suit was brought for specific performance relating to an agreement of sale in respect of vacant land entered into prior to the coming into force of the Act, the suit could not be decreed in view of Sections 4,5 and 10 of the Act. Any registration made after coming into operation of the Act although in pursuance of the agreement of sale entered into prior to the Act shall be null and void. Under sub-section (2) of Section 4 even a registration made in pursuance of a decree or order of a Civil Court after the coming into operation of the Act shall be null and void. Therefore, there cannot be any specific performance of an agreement of sale or even execution of a decree for specific performance of such an agreement after the coming into force of the Act in respect of vacant land covered by the Act. Further, Section 10 of the Act gives an overriding effect to the provisions of the Act over any other law inconsistent therewith or any custom, usage or agreement, or decree or order of a Court, Tribunal or other authority. Thus by virtue of the provisions of the Act, the performance of the contract had become impossible and there was a frustration of the agreement of sale.

The protection under the section can only be invoked in respect of agreements which are invalid for want of registration. The section cannot be invoked to validate other agreement. An agreement which is invalid under any other law falls outside the scope of the protection and neither the section nor the doctrine of equity on which the section is founded can validate an agreement the law says is invalid.

6. However, in C.V. Narayan Reddy Vs. Katanguru Raghava Reddy and Another, , a Division Bench of this Court, while dealing with the question as regard non-disclosure of the alienated lands in the declarations under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, ("the Ceiling Act" for brevity) by the petitioners therein on the ground that they are not "holding" the lands within the meaning of Section 3 (1) of the Ceiling Act and in any case there was part performance of contract, consequent-whereunto Section 53-A of the Transfer of Property Act will come into play and as a result thereof the said lands would be excluded from computation of excess area, held:

Subsequent to deletion of Section 47 of the Tenancy Act, it is needless to establish for the purpose of availing Section 53-A of the T.P Act, that the

contracts of sale entered into during the period when Section 47 was in vogue were with permission. Since it stood deleted, it is no more imperative to show that any such permission was obtained nor the absence would invalidate either the transaction or the possession of the land in the hands of alienee or transferee. Subsequent to deletion of Section 47, no sanction at all is necessary for finalisation even with regard to agreements of sale entered into prior to the deletion of Section 47, by way of registration of sale deeds or otherwise. A fortiori, the possession of the lands given in pursuance of agreement of sale is quite valid and lawful and therefore the parties concerned are entitled to avail the provisions of Section 53-A T.P. Act.

Therefore, viewed from any angle, it is quite manifest that the alienee or transferee who has been in possession under an agreement of sale entered into at a time when Section 47 of the Tenancy Act was in force will be entitled to sue for specific performance and is not deprived of his right u/s 53-A of the T.P Act to protect his possession, on payment of balance of consideration, without the necessity of obtaining any permission since Section 47 stood deleted either or from 24-1-1971 or even any time posterior to the deletion of Section 47, retention of Section 50-B notwithstanding. The contention that the alienation or transfer of land and consequential possession thereof in favour of alienee or transferee under agreement of sale entered into during the subsistence of Section 47 is not legal and valid either because of want of permission u/s 47 or because of want of subsequent validation u/s 50-B and therefore the alienee or transferee is not entitled to invoke Section 53-A of the T.P Act and to sue for specific performance and consequently such land must be included in the holding of both the transferor and transferee, has no substance.

7. A learned single Judge of this Court, while referring this second appeal to the Full Bench, observed:

It is apposite to mention that in the case of C. Ramaiah (supra) the learned Judges did not consider the effect of repealing of Act 12 of 1972 before the suit was filed as also on the date the judgment was delivered by the trial Court.

The question in this appeal is whether the decree for specific performance of the contract cannot be granted on the strength of agreement of sale, Ex.A1, which was null and void at the time of its execution by virtue of Section 4 of the Act 12 of 1972, though it has been repealed at the time of institution of suit.

On the strength of law laid-down in C. V. Narayana Reddys case (supra), it appears that the supervening event, that is, the repealment of the Act 12 of 1972 has removed the impediment and the agreement of sale, Ex.A1 has become valid. But in view of law laid-down in C. Ramaiah's case (supra) it appears that the agreement of sale, Ex.A1 was executed at the time when it was forbidden by law to enter into such contract of sale and, therefore, inspite of repealing of the Act 12 of 1972, the agreement of sale, Ex.A1 does not become valid. It appears that C. V. Narayana Reddy's case (supra) was not brought to

the notice of their Lordships" in C. Ramaiah's case (supra) and as such the effect of repealment was not considered in this case.

FINDINGS:

8. The Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 (Act No. 12 of 1972) was enacted by the Government of Andhra Pradesh with a view to prohibit alienation of certain vacant lands in urban areas of the State of Andhra Pradesh. Section 4 of the said Act deals with prohibition of alienation etc., which reads thus:

"4. Prohibition of alienation, etc :--

(1) No person who owns any vacant land shall, on or after the commencement of this Act, alienate such land by way of sale, lease for a period exceeding six years, gift, exchange, usufructuary mortgage or otherwise, or effect a partition or create a trust of such land; and any alienation made, or partition effected, or trust created in contravention of this section shall be null and void :

Provided that nothing in this sub-section shall apply to the alienation by any person of any one plot of any vacant land owned by him not exceeding one thousand metres in extent and not forming part of a compact block.

(2) The provisions of sub-section (1) shall apply to any transaction of the nature referred to therein, in execution of a decree or order of a civil Court or of any award or order of any other authority."

9. A perusal of the aforementioned provision would clearly go to show that thereby a transfer of interest in a vacant land was sought to be prohibited. Agreement for sale does not create any title in the immovable property. As by reason of an agreement for sale no interest in an immovable property is created, the question of transfer of any interest thereby would not arise. In Babu Lal Vs. Hazari Lal Kishori Lal and Others, , the Apex Court held:

If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or by the Court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right-had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract.

10. In this connection, suffice it to notice some of the provisions incorporated in the Transfer of Property Act. Section 5 of the Transfer of Property Act, 1882, defines "Transfer of Property" to mean an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons.

11. The words "present" or "future" qualify the word "conveys" and not the word "property" in the section. It is axiomatic that the expression "Transfer of

Property" would give out passing of rights of property from one person to another, be it passing of the entire bundle of rights or any or more of the rights therein.

12. Section 10 of the Transfer of Property Act dealing with "condition restraining alienation" reads:

"10. Condition restraining alienation :--Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those - claiming under him. Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Mohammedan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein."

However, in relation to the agreement for sale, even Section 10 would not apply.

13. Section 54 of the Transfer of Property Act defines the word "sale", and explains about "sale how made" and the "contract of sale", which reads:

54. "Sale defined :--"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made :--Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a revision or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract of sale:- A contract for sale of immovable property is a contract that a sale of such property shall take place in terms settled between the parties."

Section 54, therefore, implies that by reason of an agreement for sale no interest in the land is created.

14. Interpretation of Section 4 of Act 12 of 1972 must be construed, having regard to the aforementioned provisions in mind.

15. An owner of a property has a right to transfer the same unless there exists a statutory interdict. Such statutory prohibitions are required to be construed strictly. An agreement of sale being not a transfer, a fortiori, the prohibition created u/s 4 would not apply to such a transaction.

16. The question is as to whether the expression otherwise contained therein shall apply to an agreement for sale or not. Even the expression otherwise as

contained in Section 4 would not cover or bring within its purview an agreement for sale. The said expression must be read ejusdem generis. A statute creating a bar on transfer must be clear and unambiguous. No inference in relation thereto should be drawn. Expression "or otherwise" came up for consideration before the Apex Court in *S. Prakasha Rao and another Vs. Commissioner of Commercial Taxes and others*, , and it was held therein:

9.The word "otherwise" in the context only means whatever may be the origin of the receipt of maintenance. The ratio thereunder cannot be extended in the contextual circumstances obtainable on the facts in this case. Similarly, in *Lilavati Bai Vs. The State of Bombay*, , *Sinha J.*,: as he then was, speaking for the Constitution Bench interpreting Explanation (a) to Section 6 of Bombay Land Requisition Act, 1948, as amended in 1950 and repelling the application of ejusdem generis doctrine laid the law thus:

"The Legislature has been cautious and thorough going enough to bar all avenues of escape by using the words "or otherwise". These words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking a tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words "or otherwise", apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example a case where the tenant's occupation has ceased as a result of trespass by a third party. The legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever."

Thus, contextual interpretation to the words "or otherwise" was given by this Court. Therefore, the phrase constituted otherwise" is to be understood in that context and purpose which Article 371-D and the Presidential Order seek to achieve. If the interpretation given by the appellants is given acceptance it amounts to giving blanket power to the State Government to create local cadres at its will tending to defeat the object of Article 371-D and the Presidential Order. Accordingly, we have no hesitation to reject the interpretation of wider connotation. The ratio in these decisions does not render any assistance to the appellants.

Reference, in this connection, may be made _ to a decision rendered by Alladi Kuppaswamy, J., (as his Lordship then was) in *Somiseti Ramanaiah Vs. The District Supply Officer, Chittoor*, .

17. In the aforementioned situation, we are of the opinion that the Division Bench decision of this Court in *Ramaiah (supra)* cannot be said to be a good law and is over-ruled accordingly.

18. The decision in *Nayayan Reddy, (supra)* is based on the correct principles of law. In a suit for specific performance of contract, the relevant date would be the date of execution of the Deed of Sale. As regards the applicability of the said Act,

the relevant date would be the date of execution of the conveyance and not the date of agreement for sale. The question is answered accordingly.

19. The second appeal, having been admitted only on the said question, being devoid of any merit, is therefore dismissed. No order as to costs.