

(1977) 03 KAR CK 0013
In the Karnataka High Court

Kanvihalili Chinnappa

APPELLANT

Vs

Tigari Shivappa and Others

RESPONDENT

Date of Decision : 11-03-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90
Karnataka Land Reforms Act, 1961 — Section 79 a, 80

Citation : AIR 1977 Kar 162 : (1977) ILR (Kar) 676 : (1977) 1 KarLJ 300

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : T. Venkanna, for the Appellant; W.K. Joshi, for the Respondent

Judgement

1. The question raised in this petition is whether the executing court before confirming the sale, is competent to examine its validity with reference to the provisions of the Karnataka Land Reforms Act, 1961 (shortly called "the Act").

2. The facts are these:

In O. S. No. 746 of 1962, respondent 1 obtained a decree in execution of which certain agricultural lands were brought to sale on 17th Aug. 1972 Respondent 2 purchased the same. Challenging the validity of the sale, the petitioner filed an application under O. XXI R. 90 of the Civil P. C. to set aside the sale on the ground that it was vitiated by irregularities. That application was dismissed. Before the sale was confirmed, he filed another objection stating that the sale was void inasmuch as it was in contravention of Ss. 79-A and 80 of the Act. The learned Munsiff without going into the merits of that contention held that the Court should confirm, the sale after the application under O. XXI, R. 90 was dismissed. Aggrieved by the said order, this revision petition has been preferred under S. 115 of the civil P. C.

3. Mr. Vankanna, learned counsel for the petitioner submitted that the executing court must examine the validity of the sale with reference to Ss. 79-A and 80 of the Act and the dismissal of the application under O. XXI, R. 90 is no bar for such

investigation,

4. Section, 79-A in substance, provides that no person or a joint family which has, an assured annual income of Rupees 12,000/- from sources other than agricultural lands, shall, be entitled to acquire any land, whether as landowner, landlord or tenant, or mortgagee. Section 80 states that the sale in favour of a person who is not an agriculturist is invalid. It also provides that a sale in favour of an agriculturist who holds as, an owner or a tenant or partly as, owner and partly as tenant, lands which exceed the ceiling, limits, shall be invalid.

After closely perusing the provisions of those sections, I do not think that I can accede to the contention. In *Chayappa Santammappa v. Mahammad Hasan* 1964 (1) Mys LJ 166 similar question relating to the validity of a sale with reference to S. 63 of the Bombay Tenancy and Agricultural Lands Act, came for consideration. The said S. 63 is analogous to Section 80(1) of the Act. While dealing with the said question, Somnath Iyer, J., speaking for the Bench observed:

" What it declares is that a sale to one who is not an agriculturist is invalid. The Question therefore whether a sale is or is not invalid under S. 63 can arise it there is a completed sale and that question could not have therefore arisen in an application under R. 90 of O. XXI of the Civil P. C."

The above principles have been reiterated in *Mutteppa v. Bhimappa Giriappa Desai* 1966 (1) Mys LJ 679 and extended even to a matter falling under the Karnataka Land Reforms Act, 1961 in *H.N. Vinayaka and Others Vs. The Firm of H. Venkatasasthy and Sons and Others*, : *H.N. Vinayaka and Others Vs. The Firm of H. Venkatasasthy and Sons and Others*, In view of these cases, it must be stated that the executing Court cannot examine the question whether the sale is in contravention of Ss. 79-A and 80 of the Act, since the sale is not completed before it is confirmed. It is only a completed sale which could be challenged as being in contravention of the provisions of the Act and not the sale which has not yet been confirmed.

5. Incidentally, I may mention that the -petitioner is not without any remedy for the redressal of his grievances. He may have recourse to the remedy provided under Ss. 82 and 83 of the Act.

6. In the result, this petition fails and is dismissed, but no costs.

7. Revision dismissed.