

(2015) 09 SC CK 0048

In the Supreme Court Of India

Case No : Civil Appeal No. 7872 of 2015 (Arising out of Special Leave Petition (Civil) No. 6697 of 2008) and Civil Appeal No. 7873 of 2015 (Arising out of Special Leave Petition (Civil) No. 4352 of 2008)

M. Yashwanth Shenoy

APPELLANT

Vs

Muniyappa and Others

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 4(2), 5, 5(1)

Citation : (2015) 10 SCALE 133 : (2016) 1 SCC 657

Hon'ble Judges : M. Yusuf Eqbal, J;C. Nagappan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C. Nagappan, J—Leave granted.

2. These appeals are preferred against the judgment dated 8.6.2007 rendered by the High Court of Karnataka at Bangalore in Writ Appeal No. 3901 of 2005, whereby the Division Bench in a common judgment affirmed the decision of the learned single Judge by dismissing the writ appeals. The Appellants herein are prior and subsequent purchasers of the subject property.

3. The facts in brief are summarized as follows: One Venugopala Swamy son of Muniyappa filed an application Under Sections 4 and 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, before the Assistant Commissioner, Bangalore North, stating that his father Muniyappa belonged to scheduled caste and he was granted 1 Acre 13 Guntas of land in Survey No. 69 and 27 Guntas of land in Survey No. 70 of Tubarahalli Village, Varthur Hobli, Bangalore during 1961 in Darkasth and Muniyappa sold the granted lands to Ramaiah Reddy by sale deed dated 9.10.1967 and he repurchased the same under sale deed dated 13.7.1972 and again he has sold the same in favour of Appellant Yashwanth Shenoy and the

alienation being in violation of the conditions of grant, it has to be declared as void.

4. The Assistant Commissioner held an inquiry and after hearing the parties by order dated 26.3.1999 held that the transfer of the granted lands at the first instance by sale deed dated 9.10.1967, is in violation of the terms of grant and the sale deed as well as the subsequent sale deeds are illegal and void and declared that the lands be resumed to the State and restored to the original grantee Muniyappa Under Section 5(1) of the Act. The Appellant Yashwanth Shenoy preferred appeal before the Special Deputy Commissioner, Bangalore and the appellate authority dismissed the appeal by order dated 27.2.2004. The Appellant Yashwanth Shenoy challenged the said order in Writ Petition No. 17842 of 2004 on the file of the High Court of Karnataka. Meanwhile the legal heirs of the grantee Muniyappa filed suit for partition in O.S. No. 4981 of 1999 and the suit is still pending. They also got impleaded as Respondents in the writ petition. The learned single Judge after hearing the parties dismissed the writ petition by order dated 30.11.2005. Aggrieved by the same, Appellant Yashwanth Shenoy preferred appeal in writ appeal No. 3901 of 2005 and obtained interim order of stay dated 23.1.2006 subject to the condition that the Appellant shall not make any construction in the land. He executed Deed of Relinquishment dated 20.1.2007, relinquishing his right and interest in the granted lands in favour of the original grantee Muniyappa. On the same day Muniyappa sold the said lands to the other Appellant herein Subramanya and he was also impleaded as Respondent in the writ appeal.

5. The Division Bench heard Writ Appeal No. 3901 of 2005 along with another appeal in Writ Appeal No. 151 of 2006 preferred by the legal representatives of the original grantee pertaining to the order passed in mutation proceedings of which we are not concerned in the present appeals. By common judgment dated 8.6.2007 Division Bench dismissed both the writ appeals. Challenging the order of dismissal in Writ appeal No. 3901 of 2005 the present appeals have been preferred.

6. Mr. Shekhar Naphade, Senior Counsel appearing for the Appellant Yashwanth Shenoy contended that the Appellant by filing memo sought for withdrawal of the writ appeal but the High Court erroneously declined permission. It is his further submission that the said Appellant has relinquished his right and interest in the property in favour of the original grantee Muniyappa and he has nothing to pursue in the matter and the refusal of permission is bad in law. The learned Counsel appearing for legal heirs of the deceased Appellant Subramanya contended that the grantee Muniyappa obtained prior permission of the Government as stipulated under the Act and executed the sale deed for valid sale consideration and he is a bonafide purchaser of the granted land and he cannot be non-suited on the ground that the sale deed was executed during the pendency of the writ appeal and the impugned judgment is liable to be set aside.

7. Per contra the learned Senior Counsel appearing for the Respondents

contended that the sale of the granted land at the first instance was in violation of the terms and conditions of the grant and the authorities have rightly declared all the sale deeds as void and the High Court has confirmed the finding and the impugned judgment does not call for any interference.

8. The lands in question are granted lands in favour of the original grantee Muniyappa is not in dispute. The said grant is attached with the terms and conditions including non-alienation condition for a period of 15 years from the grant. The date of grant is 1.10.1961 and the grantee Muniyappa sold the granted land by sale deed 9.10.1967 to Ramaiah Reddy. The first alienation had taken place in utter violation of the terms of grant. It is a fact that Rama Reddy in turn sold the granted land in favour of grantee Muniyappa on 13.7.1972 and thereafter Muniyappa had sold the granted lands in favour of Appellant Yashwanth Shenoy by sale deeds dated 23.3.1988 and 30.10.1991 without obtaining permission from the State Government. The original authority under S.C. and S.T. (PTCL) Act and the appellate authority declared the above sale deeds as null and void Under Section 5(1) of the Act and the said factual finding was upheld by the learned single Judge as well as the Division Bench of the High Court.

9. Appellant Yashwanth Shenoy challenged the order of the Assistant Commissioner by filing an appeal and also obtained stay of the order of resumption and restoration and when the appellate authority dismissed the appeal, he further challenged the said order by preferring a writ petition. The legal heirs of grantee Muniyappa impleaded themselves as Respondents in the writ petition and brought to the notice of the court the pendency of partition suit filed by them against Muniyappa. After the dismissal of the writ petition on merits, Appellant Yashwanth Shenoy preferred writ appeal and the Division Bench granted order of stay of resumption and restoration on 23.1.2006 on condition that the Appellant shall not make any construction in the granted land. During pendency of the writ appeal, while the stay order was in force, the said Appellant executed deed of relinquishment dated 20.1.2007 abandoning his right and interest in the granted lands in favour of grantee Muniyappa, who was a party to the writ appeal. On the same day, viz. on 20.1.2007 grantee Muniyappa sold the granted land in favour of the present Appellant Subramanya. The Division Bench after highlighting the above factors have held that there was collusion between the Appellants and grantee Muniyappa and on that ground refused permission to Appellant Yashwanth Shenoy for withdrawal of the writ appeal. The High Court has dismissed the memo for withdrawal by assigning the valid reasons and we are unable to persuade ourselves to accept the contention made by the learned Senior Counsel appearing for the said Appellant.

10. Muniyappa, a Respondent in the writ appeal executed sale deed on 20.1.2007 in respect of granted lands in favour of present Appellant Subramanya, while stay of resumption and restoration order of granted land was in force and at that time he did not possess any right upon the said land either to

make an application before the State Government Under Section 4(2) of the Act seeking its permission to alienate the same or to transfer the lands. It is pertinent to mention that the authorities were also Respondents in the writ appeal. In such circumstances as rightly held by the Division Bench, the grant of permission to transfer is also bad in law. Moreover, no valid reasons were assigned in the said order. We are in complete agreement with the views expressed in the impugned judgment.

11. The civil appeals are devoid of merit and they are dismissed. No costs.