

(1989) 08 KAR CK 0017
In the Karnataka High Court
Case No : W.P. No. 1254/1989

N. Sampangiramaiah and Others

APPELLANT

Vs

Assistant Commissioner, Bangalore and Others

RESPONDENT

Date of Decision : 28-08-1989

Acts Referred:

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

Citation : (1989) 3 KarLJ 379

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The petitioners have questioned the order of the Special Deputy Commissioner, Bangalore District, under Annexure-C as well as the order passed by the Assistant Commissioner, Bangalore Sub-Division, Bangalore, under Annexure-B ordering restoration of 3 acres 39 guntas of land in Sy.No. 74 of Honnakalasapura village, Anekal Taluk, in favour of respondent-3.

2. The point for consideration is whether the petitioners are justified in asserting that the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short "the Act") are not applicable in view of the fact that the petitioners have perfected their title in the granted land by prescription of long and continuous enjoyment before the commencement of the Act for over a period of 30 years.

3. The undisputed facts are that the land was granted on 19-11-1926 to the original grantee who belonged to the depressed classes and the land came to be alienated under a registered sale deed dated 14-10-1939. The Act came into force with effect from 1-1-1979. In these circumstances, the conclusion can only be that the period of 30 years for the purpose of perfection of title has elapsed calculating from the date on which the prohibition on alienation came to an end to the date of the commencement of the Act. The Land was granted on 19-11-1926 subject to the restriction that it should not be alienated for a period of 15 years. Calculating from the date of expiry of the period of restriction, there

is no difficulty in holding that more than 30 years have elapsed from the date of expiry of the period of alienation.

4. However, it was submitted by the learned Counsel appearing for respondent-3 and also by the learned Government Pleader appearing on behalf of respondents-1 and 2 that though the principle of adverse title is invoked in the instant case, the condition precedent of continuous possession and enjoyment for over a period of 30 years should be established and by a mere mathematical calculation of the " period elapsed from the date on which the alienation restriction ended to the date on which the Act commenced could not be sufficient and rational basis for giving the benefit of adverse possession to the petitioners. In this regard, it is contended by the learned Counsel that no finding is forthcoming either from the Deputy Commissioner or from the Assistant Commissioner and they ought to have given a finding of fact on this question. In the absence of such a finding, it was argued that this is a fit case for being remitted back to the Assistant Commissioner for a fresh enquiry and for a specific finding on the aforesaid question.

5. In the writ petition, it is stated that the grand mother of the petitioners Smt. Marakka purchased the land in question and that she was in continuous and exclusive possession and enjoyment of the land and that after her death, the father of the petitioners was in possession of the land till his death and subsequently the petitioners continued to be in the exclusive possession of the land duly paying the land revenue. It was, therefore, submitted that the petitioners have perfected their title to the land in question and applying the principle of adverse possession, the provisions of the Act are inapplicable.

6. This is a peculiar situation in which if the contention raised by the learned Counsel appearing for the respondents is accepted, a jurisdiction to give a finding on possessory title which is not vested either in. the Assistant Commissioner or the Deputy Commissioner would come into play.

7. In order to decide whether the petitioners have perfected their title, it may not be necessary to remit the case either to the Deputy Commissioner or to the Assistant Commissioner. Admittedly, the original grantee executed a deed of absolute sale duly registered for valuable consideration in favour of the purchaser from whom the present petitioners have inherited the property. What respondent-3 is claiming today is that notwithstanding the execution of a registered sale deed for valuable consideration, possession was never parted with, that the sale deed was only nominal and that the vendor continued to be in possession of the land in question. It is nothing but an act of hairsplitting resorted to by respondent-3. It is an effort to complicate a sale transaction "simpliciter" duly registered in regard to incorporeal property by denying the ordinary and natural weight that it deserves. It is difficult to imagine that the purchaser having paid the consideration would allow the seller in the absence of a conditional sale to continue in possession and enjoyment of the land and usufructs. The contention is farfetched and opposed to reasonable probabilities.

In a circumstance like this, it would be safe to adopt the rules of evidence and to draw statutory presumption. Ex facie the sale transaction strongly indicates that it was acted upon and was meant to be acted upon in the absence of any sale condition to the contrary. Possession following title after the execution of an absolute sale deed is a matter of reasonable presumption. Even if respondent-3 insists that respondent-3 has been in possession of the land and not the petitioners or their predecessors in title, it is not open to respondent-3 to plead the right of possessory title before this Court in the facts and circumstances of this case. The limited scope for consideration of this Court is whether the provisions of the Act could be made applicable when there is an efflux of time of over 30 years supporting adverse possession. On an application of the principle enunciated by the Supreme Court in *Sunkara Rajyalakshmi v State of Karnataka*, ILR 1987 Karnataka 2076 as well as the decision of a Division Bench of this Court in *Manchegowda v State*, 1984(2) Kar.LJ. Page 1, I am of the opinion that the impugned orders of both the Deputy Commissioner and the Assistant Commissioner are misconceived and the writ petition deserves to be allowed. I hold that the provisions of the Act are not applicable to the facts of this case.

8. In the result, for the foregoing reasons, the writ petition is allowed and the impugned orders of both the Deputy Commissioner and the Assistant Commissioner are quashed. In the circumstances of the case, there shall be no order as to costs.

Writ petition allowed.