

(1999) 03 KAR CK 0007

In the Karnataka High Court

Case No : Civil Revision Petition No. 3282 of 1996

Narayana Swamy

APPELLANT

Vs

Smt. Muniyamma (Dead) by L.Rs and Others

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Karnataka Land Reforms Act, 1961 — Section 44 (1), 44 (2)
Transfer of Property Act, 1882 — Section 111 G, 43

Citation : (1999) ILR (Kar) 1608 : (1999) 6 KarLJ 261

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri B.V. Acharya, for Sri K. Krishnaswamy, for the Appellant; Sri G.V. Thirumale, for the Respondent

Judgement

1. The petitioner is a judgment-debtor. Respondents 1 and 2 are the decree-holders.

2. The respondents 1 and 2 and their mother Muniyamma had filed a suit in O.S. No. 47 of 1960 in the Court of the II Munsiff, Bangalore Rural District, Bangalore, for specific performance of the agreement of reconveyance against the petitioner and the respondent 3 herein. The said suit was dismissed on 3-1-1967. Aggrieved by that respondents 1 and 2 filed R.A. No. 81 of 1967 and the said appeal was allowed. Thereafter, respondent 3 filed R.S.A. Nos. 993 of 1969 and 961 of 1969 which came to be dismissed on 23-1-1973. In the meanwhile, the respondents 1 and 2 had already filed execution case in Ex. C. No. 699 of 1970 seeking execution of the decree passed in RA No. 81 of 1967. After the Bangalore City Court Act came into force, the said execution petition came to be transferred and numbered as Execution No. 1528 of 1987.

3. The decree-holders sought to execute the decree. The petitioner-judgment-debtor resisted the execution of the decree by filing an application u/s 47 of the CPC with a prayer to dismiss the execution petition holding that the decree

became a nullity and unexecutable. This application in Execution Petition No. 1528 of 1987 was dismissed by the Court on 4th of October, 1996.

4. The petitioner-judgment-debtor being aggrieved by the dismissal of his application has preferred this revision petition.

5. Mr. Acharya, learned Senior Counsel for the petitioner submitted that the petitioner being the tenant much prior to the transaction between the respondents 1 and 2 and himself in respect of the subject-matter of execution petition, the petitioner had filed Form No. 7 as per the Karnataka Land Reforms Act (hereinafter referred to as the "Act") as amended by the Act No. 1 of 1974. After holding an enquiry the Land Tribunal, Bangalore South Taluk had conferred occupancy rights in favour of the petitioner herein against the respondents 1 and 2 in LRF No. 2202 of 1974-75, dated 18-8-1977 in respect of land measuring 33 guntas in Sy. No. 27/2 of Belurnagasandra Village. Against the said order the respondents 1 and 2 herein had preferred Writ Petition No. 7473 of 1978. This Court by an order dated 10-9-1996 dismissed the said writ petition by confirming the orders of the Tribunal. Thus, the subject-matter of the execution petition came to be vested in the State Government as per Section 44(1) and (2) of the Act. Section 44(2) of the Act reads as follows.-

"(2) Notwithstanding anything in any decree or order of or certificate issued by any Court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect, on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely,-

(a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances;

(b) all amounts in respect of such lands which became due on or after the date of vesting shall be payable to the State Government and not to the land owner, landlord or any other person and any payment made in contravention of this clause shall not be valid;

(c) all arrears of land revenue, cesses, water rate or other dues remaining lawfully due on the date of vesting in respect of such lands shall after such date continue to be recoverable from the landowner, landlord or other person by whom they were payable and may, without prejudice to any other mode of recovery, be realised by the deduction of the amount of such arrears from the amount payable to any person under this Chapter;

(d) no such lands shall be liable to attachment in execution of any decree or other process of any Court and any attachment existing on the date of vesting and any order for attachment passed before such date in respect of such lands shall cease to be in force;

(e) the State Government may, after removing any obstruction which may be

offered, forthwith take possession of such lands:

Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed, that he is prima facie entitled to be registered as an occupant under this Chapter;

(f) the landowner, landlord and every person interested in the land whose rights have vested in the State Government under clause (a), shall be entitled only to receive the amount from the State Government as provided in this Chapter;

(g) permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government, be entitled only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act; and any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person shall cease and determine shall not be enforceable against the State Government".

Thus it is submitted that the land in question came to be vested in the State Government in view of the grant of occupancy rights in favour of the petitioner and as such by operation of law and also in the changed circumstances the decree became a nullity.

6. The admitted facts are as follows.--For the sake of convenience the petitioner before this Court is referred as judgment-debtor and the respondents as decree-holders. On 17-11-1958 the judgment-debtor agreed to sell the suit lands Sy. Nos. 27/2 and 11/12 to the decree-holders' mother late Muniamma. The said Muniamma filed a suit in O.S. No. 47 of 1960 for specific performance or alternatively for redemption of mortgage. The Trial Court dismissed the suit. On appeal filed by the said Muniamma in R.A. No. 81 of 1967 a decree for specific performance was passed. The decree was confirmed by this Court in R.S.A. Nos. 981 and 993 of 1969. The decree-holders filed Execution No. 1528 of 1987 seeking to execute the decree for specific performance. When the decree-holders sought to execute the decree for specific performance the real problems for the decree-holders started emerging one after the other. The judgment-debtor raised objections. The Executing Court overruled the objections on 10-3-1975.

7. Aggrieved by this, the judgment-debtor filed Execution Appeal No. 11 of 1975. During the pendency of the appeal in Ex. A. No. 11 of 1975, the judgment-debtor entered into a compromise on 31-8-1976. In the compromise the judgment-debtor agreed to execute the sale deed. It is common ground that this compromise was not set aside and was binding on the parties. For a moment the decree-holders thought that all their problems were over after the compromise decree in Ex. A. No. 11 of 1975. But alas this was not to be.

8. In the meantime the judgment-debtor approached the Land Tribunal and got a grant of occupancy rights of Sy. No. 27/2. The Court is now concerned only with Sy. No. 27/2 since the other piece of land was acquired by the State under the provisions of the Land Acquisition Act and a compensation of Rs. 1,500/- was

paid to the decree-holders. The order of the Land Tribunal in favour of the judgment-debtor became final when the decree-holders unsuccessfully questioned the order of the Land Tribunal in the writ petition and writ appeal. Consequently, the resultant position was that the judgment-debtor who was the owner of the suit land and who had suffered a decree for specific performance became the owner of the land once again by virtue of the order of the Land Tribunal. In other words the judgment-debtor became the grantee of the land under the provisions of the Karnataka Land Reforms Act. It is no doubt true that the judgment-debtor could not sell or transfer the said land for a period of 15 years from the date of grant. The date of grant was on 18-8-1977. The period expired on 18-8-1992.

9. Taking advantage of the grant, the judgment-debtor once again raised objections. His objection was that the decree became unexecutable since there is an emergence of new species of property which was not the subject-matter of the decree. The judgment-debtor once again raised objections stating that the decree is unexecutable before the Executing Court. The Executing Court overruled the objections on 3-2-1995. Aggrieved by this the judgment-debtor preferred a revision petition unsuccessfully to the High Court in CRP No. 676 of 1995. The CRP was dismissed on 24-2-1995. Another CRP in CRP No. 3344 of 1996 was also dismissed by the High Court. The problem of the decree-holders endured.

10. The judgment-debtor once again questioned the compromise decree in Execution Appeal No. 11 of 1975 in O.S. No. 221 of 1988. The compromise decree was confirmed. Aggrieved by this the judgment-debtor filed CRP No. 3345 of 1996. This Court realising that enough is enough dismissed the CRP on merits on 14-7-1996 with costs.

11. Once again the judgment-debtor raised objections on the ground that the decree is not executable and a new species of property came into existence after the order of the Land Tribunal. Yet again the objections were overruled on 4-10-1996. Subsequently, the sale deed in favour of the decree-holders was executed and registered through Court on 26-10-1996. It would have been open to the decree-holders to submit that this CRP had become infructuous since the sale deed has been registered in favour of the decree-holders by the Court on 26-10-1996. But notwithstanding this the judgment-debtor sought to challenge the impugned order dated 4-10-1996.

12. Therefore, this Court will have to give a finding whether the compromise decree obtained in Execution Appeal No. 11 of 1975 is executable or not. This is indeed the only question before the Court.

13. Before I deal with this vexed question it would be necessary to determine whether subsequent to the grant in favour of the judgment-debtor whether there is emergence of new species of property which is not the subject-matter of the decree and whether the old property became extinct under the provisions of the

Karnataka Land Reforms Act.

14. It was submitted by the learned Senior Counsel for the judgment-debtor Mr. Acharya that as per the Karnataka Act No. 1 of 1974 all tenanted lands came to be vested in the State Government as per Section 44 of the Karnataka Land Reforms Act. It was further submitted that when the Land Tribunal granted occupancy rights by the order of the Tribunal on 18-8-1977 a new right came in favour of the judgment-debtor. It was submitted that the new right pursuant to the order of the Land Tribunal created the emergence of new species of property and therefore the decree became incapable of execution. In other words the decree-holders lost the property as known earlier to law. The old property became extinct and therefore the decree is a nullity or at any rate is inexecutable. He further submitted that the decree-holders cannot enforce the decree for specific performance subsequent to the grant by the Land Tribunal.

15. Mr. Acharya, the learned Senior Counsel for the judgment-debtor relied heavily on the judgment of the Supreme Court in the case of Sri Vidya Sagar Vs. Smt. Sudesh Kumari and Others, . He submitted that the judgment of the Supreme Court in Vidya Sagar's case, supra, clinches the matter in favour of the judgment-debtor. The Supreme Court held that a decree obtained prior to the enforcement of U.P. Zamindari Abolition and Land Reforms Act is incapable of execution after the enforcement of the said Act (hereinafter referred to as "U.P. Act No. 1 of 1951").

16. The Supreme Court after going through the various provisions of U.P. Act No. 1 of 1951 held that the old property became extinct and the decree-holders had nothing left with them after the vesting of the land in the State. The rights of the judgment-debtor were abolished and it was no longer possible to execute the decree after the coming into force of U.P. Act No. 1 of 1951.

17. The learned Counsel for the decree-holders Mr. Thirumali submitted that U.P. Act No. 1 of 1951 was entirely different from the Karnataka Land Reforms Act and therefore submitted that the Supreme Court in the facts and circumstances of that case held that the decree was not executable.

18. I have carefully perused the provisions of the U.P. Act No. 1 of 1951. The preamble to that Act says that it is to provide for abolition of Zamindari System and to acquire their rights and to regulate the land tenure reforms. Section 4 therein speaks of vesting on and from the date of notification of a certain area. The entire area vests in State. All the rights in the lands cease and be vested in State. u/s 8 of that Act any contract entered into after 8-8-1946 becomes void from the date of vesting. u/s 21 non-occupancy tenants, sub-tenants etc., become only Asamis. Chapter III dealt with assessment and payment of compensation for acquisition of estates. Chapter VIII deals with class of tenures. They include Bhumidhar, Sirdar or Asami. A tenant may be conferred any one of these status. Therefore, there appears to be different rights or species of rights under the Act for the tenants or occupants of the land. u/s 133-A all persons to

whom the land has been let out are Government lessees and not of the owners. Hence, there are no proprietary rights or ownership rights as is found in the Karnataka Act. u/s 134 the Assistant Collector gives the occupancy rights of the class of tenure as per Section 129. A certificate to that effect is granted to him u/s 137 of the Act. Sections 152 to 168-A (except some sections) deal with transfer of the rights of Bhumidars etc., on certain conditions. Asami and Sirdar cannot transfer. They can surrender under Sections 183 and 184 of that Act. Section 336 of the Act abolishes the right of pre-emption and the suits concerning them shall be dismissed. In the case of Vidya Sagar, *supra*, the right of pre-emption was sought to be enforced in execution. As the statute abolishes that right it was held that the decree is unexecutable.

19. The Karnataka Land Reforms Act is quite different. We shall now deal with the relevant provisions of the Karnataka Land Reforms Act. The preamble of the Act states that ownership is to be given to the tenants unlike the U.P. Act No. 1 of 1951. Section 44 of the Act deals with vesting of land in possession of tenant. Section 55 of the Act deals with grant of certificate of ownership to tenant. Section 25 states that no transfer of inter vivos could be made within 15 years from the date of certificate. There is no permanent bar on transfers after 15 years. In other words Section 61 gives an absolute right to the grantee to sell his land after 15 years of the grant. There are no species of different rights such as Bhumidhar, Sirdar or Asamis. There are no restrictions in the Karnataka Act as was found in the U.P. Act.

20. As soon as the order of grant is made and a certificate of registration is given u/s 55 of the Act the land ceases to vest in the Government. This position is entirely different under the U.P. Act No. 1 of 1951 whereunder the grantee is only a Government lessee.

21. If on the date of transfer the transferor has no title or power to transfer the land and later after 15 years he acquires title to the same, the doctrine of feeding the grant by estoppel arises.

22. There is no change in the character of the right over the disputed land held by the judgment-debtor. It is clear that he was the owner of the land when he entered into the agreement of sale. After 15 years from the grant that is after 18-8-1992 he becomes the absolute owner of the land. The tenancy rights emerge into an absolute right of ownership u/s 111-G of the Transfer of Property Act.

23. In this case the judgment-debtor has voluntarily undertaken in Execution Appeal No. 11 of 1975 while entering into a compromise to execute the sale deed. He cannot be permitted to resile from the same on one pretext or the other. The judgment-debtor cannot be permitted to raise every objection under the sun from 1975 to resist a compromise decree. On 18-8-1992 the judgment-debtor, who was previously the owner of the land in 1958 became the absolute owner of the land under the provisions of the Karnataka Land Reforms Act. If he

has become the absolute owner of the land with a right to alienate the land, the doctrine of feeding the land by estoppel has come into play and the judgment-debtor cannot be permitted to resile from the compromise decree.

24. The Trial Court's order in rejecting the objection of the judgment-debtor does not in my opinion call for any interference while exercising powers u/s 115 of the CPC.

25. The conduct of the judgment-debtor in raising one objection after other in resisting the decree at the stage of execution appears to me to be reprehensible.

26. The learned Counsel for the judgment-debtor relied on the judgment of the Supreme Court reported in Vidya Sagar's case, supra. No other judgment was brought to my notice to show that the decree was inexecutable. However, as stated earlier the scope and objects of the Karnataka Land Reforms Act was different from the U.P. Act No. 1 of 1951.

27. In Baikunthi Devi and Others Vs. Mahendra Nath and Another, , the Supreme Court had to deal with a similar situation. The facts are stated at paragraph 3. Paragraph 3 reads as follows.-

"3. In the present case, the facts are brief and the law is clear. One Jeewa Ram, who had a half share in a tract of land Ac. 6-00 in extent with a small house thereon, had entered into an agreement to sell his share for a consideration of Rs. 3,000/- to respondent 1. This agreement dated 16-6-1960 was sought to be enforced by a suit for specific performance although by that time Jeewa Ram had passed away and his daughter, the present appellant 1 became his legal representative. The demand for specific performance was made by the plaintiff-1st respondent who, incidentally, happens to be the nephew of the late Jeewa Ram. The suit itself was filed after the consolidation proceedings had come to a close. It so happened that as a result of the consolidation proceedings precisely the same land which was the subject-matter of the agreement to sell, less a tiny bit of Ac. 0-06, was included in the chak allotted to Jeewa Ram and the 1st respondent".

28. The Supreme Court held that there was no loss of identity of the land after the consolidation proceedings were closed and held that there was no bar to decree being granted. The Supreme Court at paragraphs 4 and 5 pronounced as follows.-

"4. The High Court took the view that since substantially the same land as was the subject-matter of the agreement to sell (plus some other plot with which we are not concerned) has been allotted in the consolidation proceedings to Jeewa Ram there was no difficulty at all in enforcing specifically the agreement which was the basis of the suit. Nor do we see any valid objection to the view on the law and the facts taken by the High Court.

5. The only contention urged before us by Shri B.R.L. Iyengar, appearing for the appellant, is that on account of the consolidation proceedings even though the

same lands may have been allotted in the new chak there was nevertheless a loss of identity, the emergence of a new character, the incarnation of a new entity as it were. On account of this consequence, he urged that specific performance could not be granted as a discretionary relief. We are unable to perceive any force in this submission. Actually, a tiny bit of Ac. 0-06 of land was also due to the first respondent which he gave up. Section 12(2) of the Specific Relief Act covers such a situation. The result is that the first respondent is entitled to enforce specifically the contract in his favour. The consolidation proceedings having concluded there is no bar to a decree being granted in his favour. In this view, there is no merit in this appeal".

(emphasis supplied)

Section 61 of the Karnataka Land Reforms Act reads as follows:

"Section 61.--Restriction on transfer of land of which tenant has become occupant.--(1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall, within fifteen years from the date the certificate u/s 55 is issued be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family subject to condition that no fragment shall be created by any such partition.

(2) Notwithstanding anything contained in sub-section (1) it shall be lawful for the occupant registered as such or his successor in title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government, a financial institution, a Co-operative Land Development Bank, a co-operative society or a company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty-one percent of the paid up share capital is held by the State Government or a Corporation owned or controlled by the Central Government or the State Government or both for development of land or improvement of agricultural practices; and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan.

(3) Any transfer or partition of land in contravention of sub-section (1) shall be invalid, and such land shall vest in the State Government free from all encumbrances and shall be disposed in accordance with the rules relating to grant of Government lands".

29. A perusal of Section 61(1) clearly indicates that no land of an occupant who has been given a grant under the provisions of the Act can be transferred by sale for a period of 15 years. But the land may be partitioned among the members of the holder's joint family. Section 61(2), however, gives the occupant the right to mortgage the property. Section 61(3) clearly says that any contravention of sub-section (1) is invalid and the land shall vest in the State Government.

30. In other words Section 61 gives the right to occupant to be the absolute owner of the land after a period of 15 years from the date of certificate u/s 55.

31. A plain reading of Section 61 makes it abundantly clear that the occupant shall become the absolute owner after the period of 15 years.

32. In *Shah Mathuradas Maganlal and Co. Vs. Nagappa Shankarappa Malage and Others*, , the Supreme Court held that the lease determines and merges in the reversion. If the lessor purchases the lessee's interest, the lease is extinguished as the same cannot be at the same time both landlord and tenant.

33. In *Babi D'Souza Vs. Syndicate Bank*, , the Court held, once occupancy rights are conferred on the tenant as a result of an enquiry u/s 48-A of the Karnataka Land Reforms Act and once a certificate u/s 55 is issued, the land ceases to be vested in the State Government and the tenant becomes full owner thereof.

34. In *Lakshmana Gowda v State of Karnataka and Others*, the Court held, the doctrine of feeding the grant by estoppel embodied in Section 43 of T.P. Act would apply and the title he subsequently acquired on such grant of the land, would enure to the benefit of his alienee who would get a good title to such land after such regrant to his alienor.

35. In *Fernando v Gunatilake*, the Court held, where a vendor sells without title, a title subsequently acquired by him accrues to the purchaser and prevails over that of a decree under a transfer made by the vendor after the sale. The rules apply not only if there has been delivery of possession to the purchaser but also if a duly executed deed has been delivered to him and registered.

36. In *Rajapalse v Fernando*, the Court held, where a grantor has purported to grant an interest in land which he did not then possess but afterwards acquires, the benefit of his subsequent acquisition goes automatically to his grantee.

37. In *Shobhrajmal and Others Vs. Smt. Kamla Devi*, , the Court held, a lease of Immovable property determines in case the interests of the lessee and the lessor become vested at the same time in one person in the same right.

38. In *R.P.A. Valliammal Vs. R. Palanichami Nadar and others*, , the Court held, Execution of Decree-the opportunity to object to executability of the decree could be taken only once and repeated applications appear to be unwarranted.

39. In *Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay*, , the Court held, the principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise of representation which is intended to create legal relationship to arise in future knowing or intending that it would be acted upon by other property to who the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation (herein the compromise petition agreeing to execute the sale deed) would be binding on the party making it and he would not be entitled to go back upon it.

40. All these judgments cited above in my opinion clearly advances the proposition that there must be a fusion of justice and equity. In this case there can be no doubt that the judgment-debtor was the absolute owner of the land when he entered into a compromise on 31-8-1976. The compromise decree was final and binding on the parties. The judgment-debtor subsequently became the absolute owner under the provisions of the Karnataka Land Reforms Act, 1961 on 18-8-1992 after the embargo period of 15 years and continues to be the owner of land at the time of the present execution proceedings.

41. In these circumstances there is no merit in this Civil Revision Petition. This Civil Revision Petition is accordingly dismissed with costs.

42. Before I part with this judgment it would not be out of place to mention that a decree that was passed in the year 1967 followed by a compromise decree in the year 1976 has been the subject-matter of one litigation after the other by the judgment-debtor. The onslaught by the judgment-debtor has been persistent bordering on a situation which can be termed as an abuse of process of Court.

43. Let us hope that at least now there is some light at the end of this long tunnel of litigation.