
(1974) 03 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 1822 of 1972

Ramachandra Manjanath Kamath

APPELLANT

Vs

Jagannath Laxman Prabhu and Others

RESPONDENT

Date of Decision : 20-03-1974

Acts Referred:

Citation : AIR 1974 Kar 156

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : N.A. Mandagi, for the Appellant; K.S. Bhatta, for the Respondent

Judgement

K. Jagannatha Shetty, J.—This petition under Article 227 of the Constitution, is directed against the order of the Karnataka Revenue Appellate Tribunal dated 12-7-1972 made in Revision No. 155/71 (MPFCH). The facts which are not now in dispute are these: An extent of 22 guntas in Sv. No. 64/2 of Bilelkhand village, Bhatkal Taluka, was considered as a fragment under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (shortly called "the Bombay Act"). The said portion was sold by respondent 3, in favour of Respondents 1 and 2. On 24-12-1967, the Assistant Commissioner declared the sale to be invalid, as it was contrary to the provisions of the Bombay Act. He also directed the purchasers to pay a fine of Rs. 200/-.

2. Aggrieved by the said order, respondents 1 and 2 appealed to the Deputy Commissioner. The Deputy Commissioner dismissed their appeal. They further preferred a revision petition before the Karnataka Revenue Appellate Tribunal. The Tribunal allowed the revision petition setting aside the order of the Assistant Commissioner with a direction to him to dispose of the matter afresh and in accordance with law.

3. Interrupting the narration, I have to state one other fact. On 11-2-1967, Manjunath the father of the petitioner, purchased the said land from respondents. On 1-5-1969, the Bombay Act was repealed by the coming into

force of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 (hereinafter referred to as "the Karnataka Act").

4. When the Assistant Commissioner took up the matter for consideration, pursuant to the order of remand the Karnataka Act was in force. Before him, Respondents 1 and 2 contended that they are entitled to the benefit of the provisions of Section 40 of the Karnataka Act. The Assistant Commissioner upheld that plea and declared that the sale in favour of Respondents 1 and 2 shall not be deemed void despite the provisions to the contrary under the Bombay Act. The petitioner unsuccessfully challenged that decision in a revision petition before the Tribunal. He has now approached this Court under Article 227 of the Constitution.

5. The decision in this case, turns on the meaning and scope of Section 40 of the Karnataka Act.

40. VALIDATION OF CERTAIN TRANSFERS. PARTITIONS AND SUBDIVISIONS MADE BEFORE THE COMMENCEMENT OF THIS ACT:--

The transfers or partitions or subdivisions of any land in contravention of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. (Bombay Act 62 of 1947) made before the date of commencement of this Act shall, notwithstanding the provisions of Section 9 or of Section 31 of the said Bombay Act, not be deemed void merely on the ground of the contravention of any of the provisions of the said Bombay Act if the person in possession of the land at the aforesaid date by virtue of any transfers or partitions or sub-divisions or purported transfers or partitions or sub-divisions, pays to the State Government within the prescribed period a penalty equal to one per cent of the consideration of the land transferred, partitioned or sub-divided, or one hundred rupees, whichever is less:

Provided that, if such transfer is made in favour of a tenant in actual possession of the land transferred or of a person in actual possession of a contiguous holding the penalty payable in respect thereof shall be one rupee.

It is clear from the above provisions, that if a sale or sub-division of any land was made, before the commencement of the Karnataka Act, and that sale or division though contrary to the provisions of the Bombay Act, shall not be deemed to be void, merely on the ground of such contravention if the person is in possession of that land and pays to the State Government within the prescribed time, a penalty equal to one per cent of the consideration of the land transferred or sub-divided. There is no dispute in this case about the possession of the land by respondents 1 and 2, and their payment of prescribed fine to the Government. The sale in their favour is, therefore, clearly protected by Section 40 of the Karnataka Act.

6. Mr. Mandagi, learned Counsel for the petitioner urged that Section 40 of the Karnataka Act cannot be attracted to the present case, as the proceedings for invalidating the said sale was pending before a competent authority before the

Bombay Act was repealed. But, I can see no distinction in the position of law and the applicability of Section 40 to a case in respect of which there were pending proceedings under the Bombay Act. Section 40 is a declaration made by the legislature. It declares that transfers or sub-divisions made in contravention of Section 9 or Section 31 of the Bombay Act, shall not be deemed void merely on that ground. The protection of Section 40, therefore, would be available to all cases of contravention of Section 9 or of Sec. 31 of the Bombay Act, no matter whether there were concerned proceedings pending or not when the Karnataka Act came into force. But that protection cannot be extended to a case in which there was already a declaration invalidating the sale under the Bombay Act.

7. The decision of the Supreme Court in *Bai Achhuba Amar Singh Vs. Sri Kalidas Harnath Ojha and Others*, on which reliance was placed by Mr. Mandagi, is of no assistance to him. On the contrary, it supports my above view. The Supreme Court in that case was considering the scope and effect of Section 84-A(1) of the Bombay Tenancy and Agricultural Lands Act, 1948. The said section affords a close parallel with the provisions of Section 40 of the Karnataka Act. In that case, there was already a declaration that a transfer was invalid being contrary to the provisions of Sections 63 and 64 of the Bombay Tenancy and Agricultural Lands Act. The Supreme Court held that the operation of Section 84-A(1) is only prospective in the sense that it bars making of any declaration or a finding that a transfer is invalid after the Section 84-A(1) came into force. It was also observed that the said Section does not affect the adjudication in which a transfer had already been held to be invalid.

8. Mr. Mandagi next contended that by Section 6 of the Mysore General Clauses Act, 1899, the proceedings relating to the impugned sale pending before the Assistant Commissioner under the Bombay Act, should be deemed to have been continued despite the repeal of the Bombay Act and the petitioner being a purchaser on 11-12-1967, (?) has got a right to continue that proceeding, without reference to Section 40 of the Karnataka Act. Suffice it to state that the Asst, Commr. was not concerned with the validity of the sale in favour of the petitioner. He was only concerned with the validity of the sale made by respondent-3 in favour of respondents 1 and 2, Section 6 of the Mysore General Clauses Act, therefore has no application to the facts of this case. In the result, the petition fails and is dismissed. No costs.