

(2008) 06 KAR CK 0071

In the Karnataka High Court

Case No : Regular Second Appeal No. 247 of 2005

Smt. H.S. Lakshmamma

APPELLANT

Vs

Sri K.K. Ahammed Kutty and Others

RESPONDENT

Date of Decision : 09-06-2008

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 7

Citation : (2008) ILR (Kar) 3528 : (2008) 5 KarLJ 93 : (2008) 3 KCCR 2114

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Ponnanna, for A.K. Subbaiah, for the Appellant; G.R. Venkatesh Murthy, for Poovayya and Co. for R1, M. Ram Bhat, for R2 and R.K. Hatti, HCGP for R3, for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan, J.—Whether purchase of land belonging to a member of Schedule Caste or Schedule Tribe from the Co-operative Agricultural and Rural Development Bank in an auction sale is hit the provision of Section 4 of Karnataka Schedule Castes and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ("PTCL" for short) is the question involved in this appeal.

2. The facts, which are not in dispute, have to be stated first in order to appreciate the points put forward by the learned Counsel for the parties. The said admitted facts are as under:

3. One Sri KK Ahammed Kutty (plaintiff) filed the suit in question seeking declaration to the effect that he is the owner of the suit schedule property measuring 3 acres in Sy. No. 320/IA situated in Betoli village of Virajpet Taluk, Kodagu District. The said suit property was granted to the 2nd defendant, Smt Lakshmamma, as a saguvali chit was issued on 10.2.1981 by the Tahsildar, Virajpet in her name. The 2nd defendant belongs to schedule caste and she

mortgaged the schedule property in favour of the 1st defendant, i.e. Secretary, Virajpet Primary Co-operative Agricultural and Rural Development Bank Ltd. and availed loan. She did not repay the loan amount and thus the 1st defendant-Co-operative Bank obtained a decree against her by order No. 72/91-92 dated 11.10.1991. Even after the decree was so obtained, the 2nd defendant failed to pay the loan amount and there after wards the 1st defendant - Co-operative Bank filed E.P. No. 50/92-93 before the Deputy Registrar of Co-operative Societies, Madikeri for recovery of Rs. 24,000/- from the 2nd defendant and in default to bring the property under sale by public auction. The auction was held and the plaintiff was successful bidder and accordingly the sale was confirmed in his favour on 27.12.1993. Following the amount being paid by the plaintiff, the property was registered in his favour before the Sub-Registrar, Virajpet on 1.2.1994. All the above facts have not been disputed by the parties before the trial court.

4. The plaintiff though he is auction purchaser of the property registered in his name in the office of the Sub-Registrar, has sought for possession of the suit property. Therefore, he made an effort to approach the 1st defendant - Co-operative Bank to enable him to take possession of the suit schedule property. No such delivery of possession took place and therefore the plaintiff approached the trial court for relief of declaration and possession of suit schedule property.

5. The defendants contested the suit of the plaintiff and the 1st. defendant - Co-operative Bank did not dispute the basic facts. However, the 2nd defendant took up the stand that she is in possession of the suit land following the saguvali chit being issued to her and the plaintiff in collusion with the 1st defendant - Co-operative Bank somehow get the suit schedule property sold to him in the auction sale below the market value and the suit itself was not maintainable in lieu of specific bar u/s 4 of the PTCL Act.

6. Based on the aforesaid pleadings of the parties, the trial court framed the issues and answered that the suit is not maintainable and also held that the plaintiff is neither owner of the suit property nor is he entitled to recover possession of the same. The trial court has dismissed the suit with the said finding. Aggrieved by the dismissal of the said suit, the plaintiff preferred an appeal before the lower Appellate Court which accepted the contention put forward by him and set aside the judgment and decree of the trial court by allowing the appeal and held that the plaintiff is entitled to recover possession of the suit schedule property as he has become absolute owner of the property. Aggrieved by the reversal of the judgment by the lower Appellate court, the 2nd defendant has preferred this second appeal.

7. This court, while admitting this appeal had raised the following the following substantial question of law for consideration:

Whether the lower appellate court was justified in reversing the judgment and decree of the trial court having recourse to Section 7 of the Karnataka Scheduled

Castes & Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978?

8. Heard the learned Counsel for the parties. Shri Ponnanna, Learned Counsel for the appellant, contended that having regard to the provisions of the PTCL Act and in particular to Section 4 of the said Act, the trial court had rightly dismissed the suit of the plaintiff as there is a specific bar u/s 4 for transfer of granted lands. Therefore, the lower appellate court was in error in reversing the findings of the trial court and further, the learned judge of the lower appellate court could not have pressed into service Section 7 of the PTCL Act.

9. As far as Section 7 of the PTCL Act is concerned, the submission made by the learned Counsel for the appellant is that the said section is applicable only in respect of transfer of granted lands in favour of the Government, Central Government, Local Authority or Bank and the use of the expression "in favour of" will have to be read as to mean that the exemption is available only in respect of transfer of granted lands in favour of the Government, but the said exemption cannot be extended so as to cover the case of the Government or local authority or Bank in turn transferring the said granted land to any other person. It was further argued that as far as the plaintiff is concerned, he could not have purchased the suit land because of the bar contained in Sub-section (2) of Section 4 of the PTCL Act.

10. By referring to Sub-section (3) of Section 4, it was further contended by the learned Counsel for the appellant that the said provision makes it clear that the provisions of Sub-sections (1) and (2) are applicable even in respect of sale of any land in execution of a decree or order of a civil court or of any award or order of any other authority and, therefore, in the case on hand also, the plaintiff purchasing the suit lands in an auction is covered by Sub-section (3) of Section 4 and, as such, the plaintiff could not have purchased the suit property when there is prohibition under the PTCL Act in the face of the aforesaid provisions of Section 4. Therefore, it is contended that the lower appellate court was not justified in Banking upon Section 7 of the PTCL Act and thus, its decision in reversing the judgment of the trial court cannot be sustained in law.

11. On the other hand, Shri Venkatesh Murthy, Learned Counsel for the plaintiff R-1, contended that the judgment of the lower appellate court is perfectly in accordance with the provisions of the PTCL Act and the learned judge of the lower appellate court has rightly invoked Section 7 of the PTCL Act and as there is exemption in respect of transfer of land in favour of the Government, Central Government, local authority or Bank, and as R-1 before the trial court happens to be a Co-operative Bank, the findings of the lower appellate court cannot be termed as illegal and the lower appellate court has rightly observed in the course of its judgment that the trial court has lost sight of Section 7 of the PTCL Act. Further, it is argued that the expression "transfer" also has been defined in Section 3(1)(e) as to include a sale, gift, exchange and, therefore, in respect of the transfer of the granted land in favour of the authorities mentioned in Section 7, the other provisions of the PTCL Act are not applicable and, as such, the lower

appellate court has rightly reversed the judgment of the trial court.

12. In support of his submissions, the learned Counsel for the respondent placed reliance on the decisions rendered by this Court in the cases of B. Shivappa Vs. State of Karnataka, , Honnali Taluk Co-operative Agricultural & Rural Development Bank Ltd. v. The Deputy Commissioner, Davanagere ILR 2002 Kar 3780 and A.K. Thippanna Vs. Deputy Commissioner, Shimoga District, Shimoga and Others, and also Shri Yellappa v. Yellawa Kom Subray Gowda 1987 (1) Kar.L.J.11

13. In the light of the aforesaid contentions urged by the learned Counsel for the parties, I answer the substantial question of law hereunder:

Having regard to the undisputed facts narrated in the beginning of this judgment, the only point for consideration is whether the lower appellate court was justified in invoking Section 7 of the PTCL Act as against Section 4 of the said Act. Before I proceed further, it is necessary to reproduce the provisions of the aforesaid Sections of the Act.

14. Section 4 of the Act reads as under:

4. Prohibition of transfer of granted lands: (1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or Sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of Sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority.

Section 7 of the Act reads thus:

7. Exemption: Nothing in this Act shall apply to the transfer of granted lands in favour of the Government, the Central Government, a local authority or a Bank either before or after the commencement of this Act.

15. The above Sections will have to be read keeping in view the object behind the Act itself. In the statement of objects and reasons, it has been stated that the very purpose of enacting this legislation is to prevent the grantees under the Act being exploited by the persons belonging to the affluent and the powerful sections. The said aspect of the matter also came up for consideration before this Court in Manchegowda and Others Vs. State of Karnataka and Others, , it has been held that what emerges from the observations made by this Court as well as the Supreme Court is that the alienations referred to in Section 4 can only be construed as alienations made by the grantees in favour of individual person/s

only and have no application to transfer of granted lands in favour of the Government, Central Government, local authority or a Bank which are excluded from the purview of the Act.

16. In the very same decision viz., Shivappa's case, this Court also considered the meaning to be assigned to the word "person" used in Section 3(1)(e) of the Act. The view expressed is that the word "person" used in a public statute includes both a natural person (a human being) and an artificial person (a Corporation etc.) and it is plain that in common speech, "person" would mean a natural person and in technical language, it may mean the other, but which meaning it has in a particular Act must depend on the context and the subject matter. Having expressed thus, the court went on to hold that in the light of the said principle of interpretation and in the context of the provisions of the SC & ST Act prohibiting alienation of granted lands and having regard to Section 7 in particular, the person alienee "should be" understood only as a natural person and none else. It is, therefore, clear from the above proposition of law laid down by the Apex Court in Manche Gowda's case and by this Court in Shivappa's case that the provisions of Sub-section (2) of Section 4 are applicable only in respect of natural persons and not to others.

17. As far as Sub-section (3) of Section 4 is concerned, though it is stated therein that the provisions of Sub-sections (1) and (2) shall apply to sale of any land in execution of a decree or order of a civil court or of any award or order of any other authority, the said provision contained in Sub-section (3) also will have to be read keeping in view the interpretation given to the word "person". In other words, it a person who obtains a decree in his favour or an award or order from any authority against the grantee, the said decree-holder cannot, in execution of the decree obtained against the grantee in his private. individual capacity, acquire the granted land. In other words, if the action to sell the granted land is taken by the Government itself or Central Government or local authority or a Bank, to such case, Sub-section (3) of Section 4 has no application. This view of mine is also supported by the view taken by this Court in the case of Yellappa v. Yellawa, supra. Speaking for the court, Rama Jois, J, (as he then was), observed that a careful reading of Section 4(3) would show that it will speak of sales in execution of a decree or award or an order secured by any private individual or person in respect of the amount due to him.

18. Further, His Lordship in the aforementioned case also held that the said Section does not apply to cases in which the action to sell the granted land is taken by the grantor-Government or any authority to recover the amount due to the Government. On facts, in the said case, it was held that as the sale was held at the instance of the Government-grantor itself, acting through the Assistant Commissioner for recovery of the amount due to the Government, respondent No. 1 who purchased the land pursuant to the sale held by the Government itself, acquired a right to the land and such a right is not affected by any of the provisions of the Act. It was held further in the case that as far as the sale

brought about otherwise than execution of a decree or order having the force of a decree secured by any private individual or person at the instance of such decree-holder i.e., by the Government itself for recovery of its own dues, it is not covered by Section 4(3) of the Act.

19. In another decision in the case of Honnali Taluk Co-operative Agricultural & Rural Development Bank Ltd. v. The Deputy Commissioner, Davanagere (supra), relying on the view taken in Shivappa's case, a learned single judge of this Court has held that where the petitioner Bank, after conducting public auction, sought for permission from the respondents to get the sale deed registered in favour of the auction purchaser, the competent authorities could not have refused to grant the permission and held that Section 7 of the PTCL Act clearly exempts the application of the said Act in respect of transfer of granted lands in favour of a Bank and the petitioner being a co-operative Bank, therefore, are entitled to exemption as per Section 7 of the PTCL Act.

Thus, a combined effect of the views taken by this Court in Shivappa's case, Yellappa's case and also Honnali Taluk Co-operative Agricultural & Rural Development Bank Limited's case is that the provisions of Section 4 i.e., 4 (1) to 4(3), are not applicable in respect of the cases covered by Section 7 of the Act. Since the expression "person" in Sub-section (2) of Section 4 will have to be read as to mean "natural person", the question of the said Sub-section (2) of Section 4 being applicable to cases falling under Sub-section (7) will not arise. Likewise, the provision of Sub-section (3) of Section 4 will be applicable only in respect of the decree or order of a civil court or of any award obtained by the purchaser in his private individual capacity against the grantee. But, the said Sub-section (3) has no application in respect of the purchase of the land by an auction purchaser to purchase the said land consequent to the co-operative Bank bringing about the execution proceedings for putting up the granted land for sale.

20. As far as the contention put forward by the learned Counsel for the appellant that Section 7 of the PTCL Act is applicable only in respect of the transfer of granted lands made in favour of the Government, the Central Government, local authority or Bank and the said Section has no application in respect of the transfer of granted lands by the Government or Central Government, local authority or bank is concerned, once it is held that nothing in the PTCL Act is made applicable in respect of the transferred granted lands made in favour of the Government and the other authorities mentioned therein, the question of Sub-section (2) or Sub-section (3) of Section 4 of the Act being made applicable to such transfers which are covered by Section 7, therefore, does not arise.

21. For the foregoing reasons, I am of the view that the lower appellate court has not committed any error in invoking Section 7 of the PTCL Act and in reversing the judgment and decree of the trial court. The substantial question of law raised is accordingly answered and hence, I proceed to pass the following order:

22. The appeal is dismissed.

Shri R.K. Hatti, learned Government Pleader, is permitted to file memo of appearance for R-3 within two weeks.