

(2011) 12 KAR CK 0367
In the Karnataka High Court
Case No : Writ Petition No. 21293 of 2010 (LR)

Sri. H.T. Eshwarappa

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44 (2) (a)
Transfer of Property Act, 1882 — Section 52

Citation : (2011) 12 KAR CK 0367

Hon'ble Judges : Ajit J Gunjal, J

Bench : Single Bench

Advocate : Yadav K., for Sri. A. Nagarajappa and Assts, for the Appellant; M.C. Jayakirthi, for R6, R7 and R12, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J Gunjal

1. The land in question is Sy.No.27 measuring 4 acres 9 guntas of Thammadikoppa Village, Hosanagara Taluk, Shimoga District. The said land originally belonged to one Siddappagowda, the father of respondents 3 and 4. During his lifetime, Siddappagowda was in possession and enjoyment of the said land. There was a partition in the family on 24.4.1972 and the petitioner's property was divided amongst the legal representatives of the Siddappagowda. Three out of four brothers got 24 guntas each. But however one of the brothers got 1 acre 18 guntas. The petitioner purchased the entire extent of Sy.No.27 pursuant to four-registered sale deeds dated 26.4.1983. One Ganapa. Naik was the original applicant and he makes an application for grant of occupancy rights.

2. Suffice it to note that the said application was rejected as against which Ganapa Naik filed a writ petition before this Court in W.P.No.2092/81. The said writ petition was allowed on 11.6.1984 and the matter was remitted to the Land Tribunal for fresh disposal in accordance with law. On remand after holding fresh enquiry, the Tribunal has granted occupancy rights. The said order was

questioned by respondent No.3 before this Court. This Court dismissed the writ petition for non-compliance, as against which an application was also moved for recalling the said order. But however, the said application was also rejected, as against which respondent No.3 was before a Division Bench by way of a writ appeal. The said appeal was dismissed on the ground that having regard to the sale of the year 1983 the respondent No.3 has no subsisting interest. Hence, declined to entertain the appeal. This order was passed on 9.9.2008 and after a lapse of 2 years the purchaser has filed this writ petition.

3. I have heard the learned counsel appearing for the petitioner as well as the respondents.

4. Apparently in the first instance the petitioner has purchased the property when the matter was pending adjudication before the Land Tribunal.

5. It is no doubt true that the application filed by the original applicant was rejected. But however, that was questioned before this Court by way of a writ petition. The sale has taken place when the matter was pending before this Court. Hence, I am of the view that Section 52 of Transfer of Property Act, 1882 would come into play. Even otherwise Section 44(2)(a) of the Karnataka Land Reforms Act would speak about 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.

6. I am of the view that once a finding is recorded that the original applicant was the tenant the question of the petitioner deriving any title would not arise.

7. it is also to be noticed that it is not a case where the petitioner was not aware of the proceedings. He was added as one of the respondents in the earlier writ petition filed by respondent No.3, which was in the year 1997. Nevertheless, the petitioner did not choose to question the said order at the earliest point of time. It is only after the writ appeal of respondent No.3 was dismissed holding that he has no subsisting interest the present writ: petition is filed. Even on merits I find that the impugned order passed by the Land Tribunal does not warrant interference inasmuch as after taking into consideration the material on record a finding is recorded that the original applicant was the tenant of the land. Having regard to what is stated, I am of the view that the question of interference in the circumstances does not arise. Petition stands rejected.

Mr. Shashidhar S Karmadi. learned High Court Government Pleader appearing for respondents 1 & 2 is permitted to file memo of appearance within four weeks.