

(2010) 01 KAR CK 0069
In the Karnataka High Court
Case No : Writ Appeal No. 154 of 2010

Sri Munireddy and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 11, 4, 4 (1), 5

Citation : (2010) ILR (Kar) 1703 : (2010) 6 KarLJ 666 : (2010) 2 KCCR 1059

Hon'ble Judges : Manjula Chellur, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : T. Seshagiri Rao, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—In this writ appeal, the writ petitioners have contended that the alienation of the disputed land in favour of the vendors of their father by the original grantee, who was a member of Scheduled Caste, cannot be voided under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, the Act). The transactions were declared as null and void by the jurisdictional authority and the land was ordered to be restored to the legal representative of the original grantee. Appellants challenged the action of jurisdictional authority unsuccessfully in appeal and also in writ petition.

2. Material facts which have led to this appeal could be stated as under:

Sollapura Bhovi and Ramana Bhovi were granted 2 acres of land each by the Government on 22.09.1939 in Sy. No. 39 Block Nos. 6 and 7 of Manchanahalli Village of Anekal Taluk. The grantees transferred the properties to one Venkatappa under registered gift deeds dated 04.02.1946. He in turn sold the property to one Ramaswamy Bhovi under a sale deed dated 22.02.1952. Ramaswamy Bhovi sold the said property under a sale deed dated 21.04.1952 to

Gaviappa, who sold 2 acres of land to Mr. Royal Nanjappa, under a sale deed dated 14.10.1952. The appellants are the lineal descendents of Mr. Royal Nanjappa.

4th respondent, the legal representative of Sollapura Bhovi, initiated action before the 3rd respondent - Assistant Commissioner for restoration of the land. He submitted before the said authority that the transactions by the grantees in favour of Venkatappa and all the subsequent sale transactions have become null and void as per Section 4(1) of the Act. Notice was issued to the appellants, who though entered appearance through an Advocate, did not contest the proceeding. The Assistant Commissioner by exercising power u/s 5 of the Act, passed an order declaring the transaction effected by the original grantees resulting in the ultimate sale of the property in favour of the father of the appellants as null and void. The said order was put in challenge in an appeal before the 2nd respondent, which was unsuccessful. Both the said orders were put in challenge in the writ petition.

3. Sri T. Seshagiri Rao, learned Counsel appearing for the appellants, firstly, contended that, the original grant being on 22.09.1939, there was no rule framed by the Government regulating conditions of grant and in the absence of any rule, imposition of restriction based on the Government order is bad and illegal, as held in the case of Mariyappa Vs. Dr. N. Thimmarayappa and Others, and hence, the 3rd respondent was not justified in holding that the alienations effected in the year 1946 and 1952 to be in contravention of the provisions of the Act. Secondly, a specific contention was urged before the learned Single Judge that, the Government has granted the land on 22.09.1939 and the alienation was on 04.02.1946 and the PTCL Act came into force on 01.01.1979 and by then, the appellants' father and his vendor had been in continuous possession of the property for more than 30 years, thereby, they have perfected their title to the property by adverse possession, is not correctly appreciated and hence, interference is called for.

4. We have perused the record of the writ appeal.

5. Two questions arise for consideration viz,

(i) Whether it is open to an alienee to take any exception to the condition of permanent nonalienation imposed on the grantee of the land by the Government?

(ii) Whether appellants have perfected their title to the property by prescription of their right?

Re. Point No. (i):

6. Indisputably, Sollapura Bovi and Ramana Bovi were members of Scheduled Caste community. They were granted 2 acres of land each in Sy. No. 39, Block Nos. 6 and 7 of Manchanahalli village in Anekal Taluk by the Government on 22.9.1939. It was a free grant. The Act has come into force on 1.1.1979. Section 5 of the Act empowers the Assistant Commissioner to pass appropriate orders for

resumption and restoration of the land to the grantee in case any transfer was effected contrary to Section 4. Section 5 provides that, an Assistant Commissioner, on application by interested person or on information given in writing by any person, or suo motu, after holding an enquiry, is satisfied that the transfer of any granted land is null and void as provided under Sub-section (1) of Section 4, may by order, take possession of such land after giving a reasonable opportunity of being heard to the person to be evicted and restore the land to the original grantee. Section 11 makes it clear that, the provisions of the Act has overriding effect over other laws.

7. Sollapura Bovi and Ramana Bovi, transferred their granted properties under the registered gift deeds to Venkatappa. No permission was obtained by them from the Government for effecting the transfer. Subsequent alienations in respect of the said property has taken place, the last one being the sale of 2 acres of land on 14.10.1952 in favour of appellants' father.

8. In the case of Mariyappa (supra), the finding is that, in the absence of any rules as on the date of grant authorising the officer to impose conditions restraining alienation, the transaction is not hit by Section 4 of the Act.

9. The schemes relating to the grant of land by the Government to the landless persons would show that, the Government can impose restrictions. The title of the land primarily remains with the Government. The Government while granting title to the lessees, can impose any condition which is permissible under law. The land is being given to the lessees either free of cost or at a price, which is less than the full market price. State has all along given lands to landless persons belonging to Scheduled Castes and Scheduled Tribes subject to the restrictions on alienation of such lands. The Government being the paramount title holder is entitled to impose any conditions which are not against any law and such conditions are binding on the grantees. Hence, the decision in the case of Mariyappa (supra), has no application to the case.

10. Language employed in Section 4 of the Act is very clear. In terms of the said provision, any transfer of granted land made either before or after the commencement of the Act, "in contravention of the terms of grant of such land" shall be null and void. The violation of the terms of the grant itself gives rise to the action u/s 4 read with Section 5 of the Act. So long as the terms of grant prohibiting transfer are not opposed to any specific provision of law, the conditions cannot be violated and the transferee gets no right by virtue of such invalid transfer. That is the effect of Section 4 of the Act.

11. The prohibition regarding alienation is a restrictive covenant imposed by the grantor on the grantee, which is binding on the grantee. The grantees have not challenged the condition of permanent non-alienation in the grant certificates/saguvali chits. It is the appellants, who are third parties, whose father had purchased the land from the alienee of the original grantee, have now raised objection to the condition of non-alienation.

12. In the case of Guntaiah and Others Vs. Hambamma and Others, the Apex Court has held as follows:

The third party is not entitled to say that the conditions imposed by the grantor to the grantee were void. As far as the contract of sale is concerned, it was entered into between the Government and the grantee and at that time the third-party purchaser had no interest in such transaction. Of course, he would be entitled to challenge the violation of any statutory provisions but if the grant by itself specifically says that there shall not be any alienation by the grantee for a period of 15 years, that is binding on the grantee so long as he does not challenge that clause, moreso when he purchased the land, inspite of being aware of the condition.

13. It is also relevant to notice that, when the constitutional validity of the Act was challenged in the case of Manchegowda and Others Vs. State of Karnataka and Others, , the Apex Court has held as follows:

17. Granted lands were intended for the benefit and enjoyment of the original grantees who happen to belong to the Scheduled Castes and Scheduled Tribes. At the time of the grant, a condition had been imposed for protecting the interests of the original grantees in the granted lands by restricting the transfer of the same. The condition regarding the prohibition on transfer of such granted lands for a specified period, was imposed by virtue of the specific term in the grant itself or by reason of any laws, rule or regulation governing such grant. It was undoubtedly open to the grantor at the time of granting lands to the original grantees to stipulate such a condition the condition being a term of the grant itself and the condition was imposed in the interests of the grantee. Except on the basis of such a condition the grantor might not have made any such grant at all. The condition imposed against the transfer for a particular period of such granted lands which were granted essentially for the benefit of the grantees cannot be said to constitute any unreasonable restriction. The granted lands were not in the nature of properties acquired and held by the grantees in the sense of acquisition, or holding of property within the meaning of Article 19(1)(f) of the Constitution. It was a case of a grant by the owner of the land to the grantee for the possession and enjoyment of the granted lands by the grantees and the prohibition on transfer of such granted lands for the specified period was an essential term or condition on the basis of which the grant was made. It has to be pointed out that the prohibition on transfer was not for an indefinite period or perpetual. It was only for a particular period, the object being that the grantees should enjoy the granted lands themselves at least for the period during which the prohibition was to remain operative. Experience had shown that persons belonging to Scheduled Castes and Scheduled Tribes to whom the lands were granted were, because of their poverty, lack of education and general backwardness, exploited by various persons who could and would take advantage of the sad plight of these poor persons for depriving them of their lands. The imposition of the condition of prohibition on transfer for a particular

period could not, therefore, be considered to constitute any unreasonable restriction on the right of the grantees to dispose of the granted lands. The imposition of such a condition on prohibition in the very nature of the grant was perfectly valid and legal.

14. Granted lands were intended for the benefit and enjoyment of the grantees belonging to Scheduled Castes and Scheduled Tribes. Condition imposed in the grant orders/saguvali chits is for protecting the interest of the grantees in the granted lands by restricting the transfer of the land being in their interest, cannot be objected to or questioned by an alienee/third party, on the ground that, the condition imposed is without authority of law. The conditions of grants, opposed to any specific provisions of law, can be questioned by the grantee alone and not the subsequent alienee, who despite knowing the conditions of grant under which grantor had obtained the property, having purchased the property, is not entitled to contend that, the conditions imposed by the Government on his vendor are void.

Re-point No. (ii)

15. Sri Seshagiri Rao, urged that the provisions of the Act does not apply, inasmuch as, the appellants through their father have perfected their title to the land by way of adverse possession. Reliance was placed on the decision and the case of Muniswamy Vs. Deputy Commissioner, wherein, it was held that, only those transfer of lands by Scheduled Castes and Scheduled Tribes persons which have taken place on or before 1.1.1949 i.e., when the transferees have completed adverse possession prior to 1.1.1979, would be saved from the sweep of the Act.

16. In the case of K.T. Huchegowda Vs. Deputy Commissioner and Others, , the Apex Court has held that, a plea of adverse possession could be raised in the same manner as is prescribed under the provisions of the Limitation Act. It has been further held that for the purpose of determining the period of limitation as to whether 12 years or 30 years is applicable, it has to be examined on its own merits and on the materials placed in support of the said claim, especially, the deed of grant in favour of the original grantee, for the purpose of recording finding as to whether the grant was in the nature of absolute transfer of the title of the State Government in favour of the grantee or it was a mere allotment for enjoyment of the lands in question. Such claim shall be examined taking into account whether the appellant has raised this plea at the earliest opportunity, i.e., before the Assistant Commissioner and what material has been produced by the appellant before the Assistant Commissioner in support of such claim.

17. Claim by adverse possession, has two elements; (i) the possession of the appellants should become adverse to the 4th respondent and/or the State and (ii) the appellants and their father must have continued to remain in possession for a period of 30 years thereafter. Animus possidendi as is well-known, is a requisite ingredient of adverse possession. It is well-settled principle of law by

catena of decisions of the Apex Court that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. The person in possession must continue in the said capacity for the prescribed period under the Limitation Act. Mere long possession, it is trite, for a period more than 12/30 years, without anything more do not ripen into a title.

18. Appellants did not raise the plea of adverse possession before the Assistant Commissioner. They did not file objections making a claim to the property on the basis of adverse possession. Adverse possession is required to be pleaded and proved. No material has been produced to decide the plea relating to adverse possession. Appellants and their late father claim title only through their predecessors in title who claimed title through the original grantee. The appellants' predecessors accepted the title of the original grantee/State. The claim is inconsistent. Having come into possession of the property under a sale deed, the appellants and their predecessors must disclaim their right thereunder and plead and prove assertion of their independent hostile adverse possession to the knowledge of the transferor/original grantee and/or the State/grantor and that, the latter had acquiesced to the illegal possession during the prescribed period under the Limitation Act i.e., up to completing the period of possessory title by prescription nec vi, nec clam and nec precario, since the appellants' claim is founded on delivery of possession by the original grantee to the subsequent transferee from whom the appellants' father purchased the property on 14.10.1952. It goes without saying that, the appellants admit by implication that they came into possession of the land lawfully under the sale deed and continue to remain in possession till date, thereby, the plea of adverse possession is not available to the appellants.

19. Learned Single Judge has examined the matter in the correct perspective. The finding recorded and the conclusion arrived at in the impugned judgment is flawless.

For the views we have taken, the appeal lacks merit and shall stand dismissed. Ordered accordingly.