

(2011) 11 KAR CK 0254

In the Karnataka High Court

Case No : Writ Appeal No. 15430 of 2011 (SC/ST)

Sri N. Ashwathnarayana and Others

APPELLANT

Vs

Sri Narasimhaiah

RESPONDENT

Date of Decision : 19-11-2011

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5 (3)

Citation : (2011) 11 KAR CK 0254

Hon'ble Judges : Vikramajit Sen, Acting C.J.; A.S. Bopanna, J

Bench : Division Bench

Advocate : P. Narayanappa, for the Appellant; V.R. Balaraj and Sri K. Abhinav Anand, for R-2 and Sri B Veerappa, AGA for R-3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, Ag. CJ.

1. The matter has been heard in great detail and therefore we proceed to pronounce judgment in the Appeal.

2. The facts are that a Saguvali Chit had been issued by the Tahsildar in favour of late Muniyappa. The said Muniyappa executed a document, purporting to be a sale deed in favour of Mariswamappa on 19.03.1975 for a sale consideration of Rs. 200/-. Thereafter on 17.04.1975, yet another sale deed was executed by Chikkamuniyappa in favour of Mariswamappa. This was also for a consideration of Rs. 200/-. The sale deeds declared that the possession was handed over by the said Vendor/Grantee to the Vendee. However, this is strongly disputed by the legal heirs of Muniyappa, who state that all throughout possession remained with them till the date of acquisition of the property by the KIADB. Reliance has been placed by the Respondents on the revenue records, which prima facie bear witness to this possession. It is also significant that the original sale deeds dated 19.03.1975 and 17.04.1975 are presently in the possession of the Respondents. Their contention is that these sale deeds were never intended to be sale deeds,

but were only collateral security for the total loan of Rs. 400/- taken by Muniyappa and Chikkamuniyappa; that the deeds were returned, upon receipt of the complete payment against the loans. Subsequently, there is another sale deed executed by Mariswamappa in favour of Mallamma, which is dated 28.07.1975.

3. The quarrel commences with regard to receipt of compensation in respect of the acquisition of these lands. The Respondents approached the Assistant Commissioner citing the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. The Assistant Commissioner observed that the covenant in the Saguvali Chit prohibited a transfer or any kind of alienation for a period of 15 years and since the sale deeds mentioned above came into existence after that period, no violation of the Act took place. The Special Deputy Commissioner, on being approached, reversed the decision. It was in those circumstances that a Writ Petition came to be Piled before the learned Single Judge, who held that Section 5(3) of the Act was attracted and therefore the order of the Special Deputy Commissioner was correct.

4. Meanwhile, the Respondents filed O.S. No. 847/2011 in the Court of the Senior Civil Judge Devanahalli which is pending. The prayers contained therein read as follows:

WHEREFORE, the plaintiffs respectfully pray that this Hon"ble Court may be pleased to pass Judgment and Decree:

(a) Declaring that the alleged sale deed dated 28.07.1975 registered as Document No. 1111 / 1975-76 of Book-1 Volume- 1180 at pages 129 to 131 in the office of the Sub-Registrar. Devanahalli, produced at Document-D is null and void.

(b) Declaring that the Plaintiffs are the lawful owners in possession and enjoyment of the suit schedule property having perfected their right and title by way of adverse possession due to long and continuous enjoyment over the same.

(c) Pass an order of perpetual injunction restraining the Defendants 2 to 11, their agents henchman, supporters or anybody acting or claiming on their behalf from interfering with the peaceful possession and enjoyment of the suit schedule property by the Plaintiffs.

(d) Pass such other order or orders as deemed fit to pass under the facts and circumstances of the case together with Court costs, in the interest of justice and equity.

5. It appears to us that since the sale deeds were executed after the period of 15 years and also prior to 01.01.1979, PTCL Act is not attracted at all. The Respondents were, it is evident, ill-advised in seeking to invoke the said Act. Be that as it may, there is prima facie substance in their contention that the deeds were only collateral/security for the repayment of loans. These loans were duly repaid as is evidenced by the possession of the said title deeds by the

Respondents. The Appellants assert before us That these deeds were lost/ misplaced. We are certain that the Civil Court will go into these issues and will give an answer on the probability of the appellants" claim that the documents were lost and yet, by a rather coincidence, came to be in the possession of the Respondents.

6. O.S. No 347/201 I is still pending. The rival claims will be considered threadbare in the civil proceedings, after reception of evidence. Therefore, all the parties before us will have to await a final decision in respect of O.S. No. 347/2011. The outcome or verdict rendered in the said suit will depend whether the Appellants or the contesting Respondents are entitled to receive the compensation. In these circumstances, the Appeal is allowed inasmuch as, the learned Single Judge has upheld the decision of the Special Deputy Commissioner, In any event, neither the decision of the Assistant Commissioner or the Special Deputy Commissioner are relevant inasmuch as, the PTCL Act is not applicable and the claim of the contesting Respondents that those two sale deeds were only collateral and predecessor of the Appellants had not derived title will have to be adjudicated.