

(2009) 01 KAR CK 0027

In the Karnataka High Court

Case No : Regular Second Appeal No. 929 of 2002

Sri S. Venkata Reddy

APPELLANT

Vs

Sri Mulabagalappa and Others

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 3 (e), 4, 4 (2)

Citation : (2009) ILR (Kar) 1442 : (2009) 3 KarLJ 294 : (2009) 2 KCCR 1195

Hon'ble Judges : Arali Nagaraj, J

Bench : Single Bench

Advocate : R. Badrinath, for the Appellant; T.S. Venkatesh, P. Narayanappa and N.S. Seshadri, for the Respondent

Final Decision : Dismissed

Judgement

Arali Nagaraj, J.—The appellant herein viz., S. Venkata Reddy, who is plaintiff in O.S. No. 124/1993 and defendant in O.S. No. 127/1993 both on the file of the learned Munsiff at Srinivasapur District Kolar (hereinafter referred to as the "Trial Court" for short) has challenged the correctness of the common judgment and decree dated 3.8.2002 passed in R.A. No. 176 and 178/1997 on the file of the Principal Civil Judge (Sr. Dn.), Kolar (hereinafter referred to as the "Appellate Court" for short) insofar as it relates to the dismissal of O.S. No. 124/1993 that was filed by the appellant herein.

2. Stated in brief the facts leading to this appeal are as under:

(a) The appellant Venkata Reddy filed his O.S. No. 124/1993 against the respondent Nos. 1 to 5 herein seeking the relief of permanent injunction against them restraining them from interfering with taking of the yield of fruits from mango trees grown in the land bearing Sy. No. 9/1, measuring 4 acres situate at Gollagunta Village of Ronur Hobli, Srinivasapur Taluk of Kolar District. The 1st defendant in the said suit viz., Mulabagalappa filed his O.S. No. 127/1993 before the same Trial Court against the present appellant seeking declaration that the

registered sale deed dated 18.2.1987 as "null and void" on the ground that it was obtained by the defendant therein viz., Venkata Reddy in violation of the provisions of Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the "PTCL Act" for short).

(b) The learned Munsiff, by his common judgment dated 23.8.1997 passed in the said suits decreed O.S. No. 124/1993 that was filed by the appellant Venkata Reddy and granted the relief of permanent injunction against the defendants therein and dismissed O.S. No. 127/1993 that was filed by Mulabagalappa the 1st defendant in O.S. No. 124/1993 and thereby declined to declare that the said Sale Deed was "null and void".

(c) Aggrieved by the said common judgment in the said suits passed by the Trial Court, the said Mulabagalappa (defendant in O.S. No. 124/1993 and plaintiff in the other suit) filed R.A. Nos. 176 and 178/1997. In R.A. No. 176/1997 he challenged the common judgment insofar as it related to the dismissal of his O.S. No. 127/1993. In R.A. No. 178/1997 he challenged the said judgment insofar as it related to decreeing of O.S. No. 124/1993.

(d) The Appellate Court, by passing the impugned common judgment in the said appeals, allowed R.A. No. 178/1997 and thereby reversed the judgment and decree of the Trial Court and consequently dismissed O.S. No. 124/1993 that was filed by the appellant herein. Further, the Appellate Court dismissed the other appeal viz., R.A. No. 176/1997 and thereby confirmed the judgment and decree passed by the Trial Court dismissing the suit of Mulabagalappa (1st respondent herein).

(e) Aggrieved by the judgment and decree passed by the Appellate Court in the said appeals insofar as it relates to dismissal of O.S. No. 124/1993, the plaintiff therein has preferred the present RSA. However, the 1st respondent has not chosen to file his appeal against the impugned judgment insofar as it relates to the dismissal of his O.S. No. 127/1993.

3. I have heard the arguments of Sri. R. Badrinath, the learned Counsel for the appellant-plaintiff and Sri. T.S. Venkatesh, the learned Counsel for the respondent-defendant. Perused the impugned judgment of the Appellate Court and also that of the Trial Court. Also perused the entire material on record.

4. This Court has formulated three substantial questions of law on 10.12.2002 while admitting this appeal. Further, on 11.8.2008 one more substantial question of law has been formulated in addition to the said three substantial questions. However, after hearing the arguments of the learned Counsel, for both the sides, the only one substantial question of law formulated by me is as under:

Whether the transaction between the appellant and the 1st defendant (who are respectively plaintiff and defendant in O.S. No. 124/1993) in respect whereof the document Ex.PI dated 18.2.1987 came to be executed, amounts to "Transfer"

within the meaning of Section 3(e) of PTCL Act so as to make said transaction violative of the provisions of Section 4 of the said Act and thus the said document is "null and void?"

5. It is not in dispute that the land in question was granted to the 1st respondent Mulabagalappa who is defendant in the said O.S. No. 124/1993 that was filed by the appellant herein against him seeking the relief of injunction restraining the said defendant from interfering with taking of the fruits by the appellant-plaintiff from the mango trees that were grown on the land during the period in respect whereof the registered document Ex. P1 was executed by the defendant in favour of the plaintiff.

6. On careful reading of Ex. P1, it is seen that the said document is described as "Sale Deed" in respect of the sale of usufructs of the said land. Further, it could be seen from the recitals of the said document that the defendant Mulabagalappa (hereinafter the parties will be referred to as per their rank in O.S. No. 124/1993 only) sold in favour of the plaintiff Venkata Reddy right to enjoy the fruits of the mango trees grown in the said land for a period of 40 years from the date of the said document for a consideration of Rs. 35,000/-. Thus it is clear that under the said documents, the plaintiff Venkata Reddy paid to the defendant Mulabagalappa a sum of Rs. 35,000/- as consideration amount and the defendant transferred his right in the said mango trees and thereby agreed that the plaintiff would be entitled to enjoy the fruits of the said mango trees for a period of 40 years from the date of the said document. Having regard to this nature of the said transaction that occurred between the parties to the said suit under the said document, I am of the considered opinion, that though the said transaction is described as "sale" and though the document is described as "Sale Deed", in substance the said transaction was one of usufructory mortgage with possession of the said land and the said mango trees grown thereon entitling the plaintiff to enjoy the fruits of the said trees for a period of 40 years from the date of the document and as such the said document could only be a mortgage deed in substance and not a sale deed.

7. Section 3(e) of PTCL Act defines the term "Transfer" to mean a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage lease or any other transaction. From a plain reading of this definition, it is crystal clear that the above said transaction entered into between the plaintiff and the defendant in the said suit, (who are respectively appellant and 1st respondent herein) under the said registered document Ex. P1 was transfer" within the meaning of this definition.

8. Section 4 of PTCL Act prohibits the transfer of granted lands. It says that 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 grant of such land or the law providing for

such grant shall be null and void and no right title or interest in such land shall be conveyed or deemed effort to have conveyed by such transfer. Sub Section (2) of Section 4 further provides that "No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government".

9. It is not in dispute that the said land was granted to Mulabagalappa for the reason that he happened to be a member of scheduled caste. Therefore, the mortgage of the said land by the defendant - grantee in favour of the plaintiff authorising the plaintiff to enjoy usufructs was clearly in violation of the provisions of Section 4 of the PTCL Act. It is held by this Court in the case of Dattatrl v. Mysore Mills Limited Bhadravathi reported in 2000(2) Kr. L.J 21 that usufructory mortgage of the granted land amounts to transfer and if such transfer is without the previous permission of the State Government, it is null and void and mortgagee is liable to be evicted and the land has to be resumed by the Government for restoration to the grantee. Therefore, following this decision, since the plaintiff transferee acquired the said land and mango trees by way of the said transfer made in his favour by the defendant without the permission of the Government, the said transfer shall have to be held Mull and void" conveying no right, title or interest in such land by the defendant in favour of the plaintiff.

10. Further, Section 5(3) provides that "where any granted land is in the possession of a person other than the original grantee or his legal heir it shall be presumed, until contrary is proved, that such person has acquired the land by transfer which is "null and void under the provisions of Section 4(1) of the FTCL Act". This being so, the burden is heavy on the plaintiff to prove that the said mortgage was not obtained by him in contravention of the provisions of Section 4 of the FTCL Act

11. For the reasons aforesaid, the substantial question of law formulated supra shall have to be answered in the "affirmative" which goes against the appellant-plaintiff and in favour of the respondent - 1st defendant. Since the said transaction under Ex.PI was in total violation of the provisions of Section 4(1) of the PTCL Act, the possession of the land in question along with the mango trees grown thereon by the plaintiff could not be held to be lawful possession. Therefore, the Appellate Court was quite justified in passing the impugned judgment and decree reversing the judgment and decree passed in O.S. No. 124/1993 that was filed by the appellant-plaintiff against the respondent-defendant and consequently dismissing the said suit Therefore, the present appeal deserves to be dismissed as being devoid of merits.

12. Accordingly, the same is dismissed. However, the appellant, herein as a respondent in the proceedings before the Asst. Commissioner that may be initiated against him by the legal representatives of the deceased grantee Mulabagalappa seeking resumption of the said land, shall be entitled to take all such contentions as are permissible under law and thereby contest the said

proceedings. It is made clear that the Asst Commissioner shall dispose of the matter before him without being influenced by any of the observations made by this Court, in this judgment. There is no order as to costs in this appeal.