

(2005) 10 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 10571 of 1997

Sripad Ekanath Gaonkar

APPELLANT

Vs

Assistant Commissioner, Kumta Division

RESPONDENT

Date of Decision : 21-10-2005

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 61, 61 (1), 61 (3)

Citation : (2006) ILR (Kar) 1895 : (2006) 2 KCCR 106 SN

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : V.P. Kulkarni, for the Appellant; R. Kumar, HCGP for R1, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—This writ petition is filed by the petitioner challenging the order dated 25.7.1996 passed by the respondent Assistant Commissioner in case LRM.AP.CR.95/95-96.

2. The brief facts leading to this case are that the land bearing survey No. 98/A measuring 1 acre 17 guntas 8 annas of Hanehalli village, Kumta taluk was granted by Land Tribunal to one Devu Honnappa Gowda and the occupancy rights was issued to him on 25.5.1981 as per Annexure-A. The petitioner herein was looking after Devu Honnappa Gowda therefore he made a registered will bequeathing some portion, i.e., 82 ft x 66 ft., of the said survey number in favour of the petitioner under a registered will dated 9.4.1985. Thereafter, pursuant to the said will the petitioner's name was incorporated in the record of rights. But respondent Asst. Commissioner issued notice to the petitioner as well as Devu Honnappa Gowda u/s 61 of the Karnataka Land Reforms Act stating that the Devu Honnappa Gowda has violated Section 61 of the Act by transferring a portion of the land in favour of the petitioner. To this the petitioner has given reply. Thereafter by order dated 25.7.1996 the respondent herein has passed order for vesting of the land granted to Devu Honnappa Gowda. Therefore the

petitioner has challenged the said order in this writ petition.

3. Heard learned Counsel for the petitioner and the learned High Court Govt. Pleader for the respondent.

4. It is contended by the learned Counsel for the petitioner that after issue of form No. 10 in the year 1981 in favour Devu Honnappa Gowda he executed a registered will bequeathing 5 guntas of land in favour of the petitioner and accordingly mutation was effected by the concerned revenue authorities hut the Asst. Commissioner has initiated proceedings u/s 61 of the Karnataka land Reforms Act that there is violation of Section 61 of the Act in transferring the land by way of sale in favour of the petitioner by Devu Honnappa Gowda, which is not correct. It is contended that Devu Honnappa Gowda has not sold the land to the petitioner, in fact the petitioner was looking after Devu Honnappa Gowda therefore out of love and affection he has executed a registered will bequeathing 5 guntas of land, therefore there is no contravention or violation of Section 61 of the Act. It is further contended Section 61(3) of the Act has provided beneficiary of the land to bequeath the entire land or a portion of the land in favour of any third party. Therefore, the impugned order passed by the Asst. Commissioner is illegal and violative of Section 61(3) of the Karnataka Land Reforms Act.

5. In support of his contention the learned Counsel for the petitioner has relied on a decision reported in the case of Koragappa Gowda Vs. Jinnappa Gowda and Others, wherein this Court held that:

Careful perusal of the language used in Section 61 of the Karnataka Land Reforms Act, 1961 discloses that the Legislature has guardedly omitted transfer by will viz., by bequeath. Therefore, it cannot be said that the provision is not clear and unambiguous. In other words, the language is very clear and unambiguous, There is no prohibition transfer of land, occupancy of which has been granted to a tenant by will. Therefore, bequest of land under the will does not amount to transfer.

In another decision reported in the case of Smt. Sumathi and Another Vs. Vittala Kanchan, this Court held that:

Bequeath by way of Will in favour of family members is not prohibited u/s 61(1) of the K.L.R. Act, 1961.

6. On the other hand the learned High Court Govt. Pleader submits that the petitioner is stranger to the beneficiary of the tenanted land who got the land under the Karnataka Land Reforms Act and will amount to transfer of a piece of land to a third party within a period of 15 years from the date of grant and therefore, the respondent-Asst. Commissioner has rightly passed the impugned order on the ground that there is violation of Section 61(3) of Act. Hence, the present writ petition is liable to be dismissed.

7. Having heard the arguments of both parties, I proceed to see whether the impugned order under challenge passed by the respondent is violative of Section

61 of the Karnataka Land Reforms Act or not.

8. A short point that has to been questioned in this writ petition is whether a Will made in favour of the petitioner by Devu Honnappa Gowda, i.e., grantee of the land by the Land Tribunal, is violative of Section 61 of the Karnataka Land Reforms Act.

9. By reading of Section 61 of the Karnataka Land Reforms Act, indicates that the provisions of Section 61 is applicable only to transfer made in respect of granted lands through a registered sale deed, gift deed, exchange, lease or assignment. In the instant case Sri Devu Honnappa Gowda executed a will in favour of the petitioner as a gratitude for the help and other assistant received by him while he was sick. This Court in the case of Koragappa Gowda (supra) has clearly held that there is no prohibition for transfer of a land granted by the Tribunal through a Will. Hence, the Will executed by Devu Honnappa Gowda either becomes an assignment or transfer of title. A Will can always be revoked at any point of time by the tester during his life time. But in the case of a deed it is ordinarily irrevocable, unless there is an express power of revocation.

10. Therefore, in view of the above facts and circumstances of the case, and in view of the decisions rendered by this Court (supra), it can safely be said that there is no bar to bequeath the property by way of Will by a tenant, in whose favour the occupancy right been granted by the Tribunal. Hence the impugned order under challenge passed the respondent is liable to be quashed.

11. According, writ petition is allowed and the impugned order dated 25.7.1996 passed by the respondent-Assistant Commissioner is hereby quashed.