

(2010) 10 KAR CK 0051

In the Karnataka High Court

Case No : Regular Second Appeal No. 100 of 2004

Thoti Venkatappa (Dead) by L.R. and Others

APPELLANT

Vs

Sriramalu Naidu

RESPONDENT

Date of Decision : 23-10-2010

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 4 (3), 5 (6)

Citation : (2011) 2 KarLJ 224

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : H. Giridhar and A.G. Bopanna, for the Appellant; B. Veerappa, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—This is Defendants appeal challenging the judgment and decree dated 6-12-2003 passed in R.A. No. 49 of 2000 on the file of Civil Judge (Senior Division), KGF, wherein the judgment and decree dated 3-6-2000 passed in O.S. No. 241 of 1988 dismissing the suit of Plaintiff is reversed. In this appeal for the sake of conveniences parties herein are referred to by their rank in the original suit.

2. Brief facts leading to this appeal are as under:

Plaintiff is the agreement holder for purchase of suit schedule land i.e., land bearing Sy. No. 20, measuring to an extent of 2 acres 38 guntas situated at Ivarahalli Village, Kyasamballi Hobli, Bangarpet Taluk. Admittedly, the suit schedule land is thoti inamti land, which was regranted in favour of 1st Defendant. The undisputed facts are that, on 10-6-1973 original Defendants 1 to 4 entered into an agreement with Plaintiff for sale of suit schedule land for valuable consideration of Rs. 10,000/-. In terms of Section 53A of the Transfer of Property Act, 1882 possession was delivered to Plaintiff on 10-6-1973 itself. Since that day Plaintiff has improved the property by spending considerable

amount of money for its improvement.

3. In view of the Karnataka Village Offices Abolition Act, 1961 coming into force on 1-2-1963 the suit schedule land had vested in Government. Hence from 1-2-1963 till 10-6-1973 the date of agreement of sale Defendants were in possession of the suit land as Barawardars, they had no title to the suit property. Subsequent to the Plaintiff was put in possession of suit land under the aforesaid agreement of sale there was some obstruction by Defendants to the possession, cultivation and enjoyment of suit schedule property by Plaintiff. Hence. O.S. No. 40 of 1978 was filed by Plaintiff for the relief of permanent injunction. The said suit came to be decreed by judgment and decree dated 8-3-1983. The said judgment and decree was not challenged by Defendants, therefore, it reached finality. As on the date of decree in O.S. No. 40 of 1978 the Karnataka Village Offices Abolition (Amendment) Act had come into force on 7-8-1978 by introducing Section 5(6) to the amended Act, which prevented holder of said land from entering into an agreement with third parties and that agreement holders would not get any right to such properties. It is further seen that in the year 1980 there was one more attempt by some third parties to disturb the possession of Plaintiff, which resulted in Plaintiff filing the suit in O.S. No. 156 of 1980 against the said third parties which also came to be decreed by judgment and decree dated 8-3-1983. Subsequently, on 5-10-1987 Defendants secured regrant in their favour by order of Tahsildar dated 5-10-1987. Thereafter, Plaintiff filed present suit in O.S. No. 241 of 1988 seeking specific performance of agreement dated 10-6-1973 and for decree of permanent injunction against Defendants to protect his possession, cultivation and enjoyment of suit schedule property pursuant to agreement dated 10-6-1973.

4. In the said proceedings, Defendants 1 to 4 entered appearance, filed their written statement denying execution of agreement of sale of suit schedule property in favour of Plaintiff on 10-6-1973. Denied delivery of possession of suit property to Plaintiff in part performances of said agreement. They contended that they are in possession of suit property and at no point of time they parted with possession of suit schedule property in favour of either Plaintiff or any other person. However, in the said written statement they admit the earlier suit filed by Plaintiff for permanent injunction and the same being decreed in favour of Plaintiff.

5. With these rival contentions, the Court below proceeded to frame the following issues:

(1) Whether Plaintiff proves that the Defendants agreed to sell the suit land to the Plaintiff for Rs. 10,000/- and executed the agreement of sale dated 10-6-1973 subject to regrant of the suit land to the Defendants?

(2) Whether the Plaintiff proves that he is in lawful possession of the suit land?

(3) Whether the Plaintiff proves that he has improved the suit land by spending Rs. 30,000/-?

(4) If Issue No. 1 is held in the affirmative whether the Plaintiff is entitled to get the sale deed duly registered in pursuance of the agreement as prayed in the plaint?

(5) Whether the Plaintiff is entitled for permanent injunction prayed for?

(6) Whether the Plaintiff is entitled for a decree as prayed for?

(7) To what order or decree?

6. Plaintiff in support of his case examined himself as P.W. 1 and adduced evidence through an independent witness, Doraiswamy Naidu, as P.W. 2 and in support of his case produced and marked 35 documents. On behalf of Defendants, 4th Defendant adduced evidence as D.W. 1 and in support of their case they produced certified copies of judgments passed in two proceedings as Exs. D. 1 and D. 2. In the said proceedings, another document was also produced and marked as Court document, i.e., joint memo filed in O.S. No. 156 of 1980, which was filed by Plaintiff against third parties for the relief of permanent injunction.

7. The Court below on appreciation of the pleadings, oral and documentary evidence available on record proceeded to dismiss the suit. However, while dismissing the suit held two of the issues i.e., issue regarding execution of agreement by Defendants in favour of Plaintiff and improvement made by Plaintiff in respect of suit schedule property in affirmative and the other issues regarding lawful possession and right to get sale deed executed in his favour was held against Plaintiff. The Plaintiff being aggrieved by the same, challenged the said judgment and decree by filing appeal in R.A. No. 49 of 2000 on the file of Civil Judge (Senior Division), KGF.

8. In the said proceedings, First Appellate Court on appreciation of grounds urged in the appeal and the findings given by the Trial Court for dismissal of suit framed the following points for consideration:

(1) Whether the Trial Court erred in holding that the agreement of sale is void in view of Section 5(6) of the Karnataka Village Offices Abolition Act?

(2) Whether the judgment and decree of the Trial Court need modification at the hands of this Court?

(3) What order?

9. Thereafter, after hearing the Counsel for both parties held the points in affirmative holding that in the principal Act there was no prohibition for transferring service inam land even after the land was resumed to Government subsequent to Abolition of Village Offices Act. In the instant case, Plaintiff has entered into agreement with Defendants subsequent to Village Offices was abolished and the land was resumed to Government. Therefore, the decision on which Trial Court relied upon for rejecting the prayer of Plaintiff for specific performance is incorrect and following the principles laid down in Lakshmana

Gowda v. State of Karnataka and Ors. 1981(1) Kar. L.J. 1 (DB), held that Plaintiff will get right to acquire suit schedule property and the possession of Plaintiff was held to be lawful. It is further observed that in the absence of any document produced by Defendants to show that they have acquired possession of suit schedule land subsequent to regrant in their favour and the evidence on record showing clear continuous possession of suit schedule land by Plaintiff from the date of agreement till date of filing of suit establishes that he is in lawful possession. Therefore, in the light of Plaintiffs possession being lawful in the light of decision rendered in Lakshman Gowda's case and the ratio laid down therein being confirmed by Apex Court in State of Karnataka and another etc. Vs. G. Seenappa and another, etc. etc., , followed by Full Bench of this Court in Syed Bhasheer Ahamed and others Vs. State of Karnataka and others, , the First Appellate Court reversed the finding of Trial Court so far as it pertains to issues 2, 4, 5 and 6. It is also necessary to say at this juncture that so far as the finding of Trial Court in respect of issues 1 and 3, the same was not challenged by Defendants and it has become final.

10. Being aggrieved by the judgment and decree passed by First Appellate Court the Defendants have come up in this appeal challenging the finding given therein on the ground that First Appellate Court while considering the case of Plaintiff in the light of judgment rendered in Lakshmana Gowda's case which was decided in the year 1981, the amended Section 5(6) of the Karnataka Village Offices Abolition Act, 1961 had not come into force. Therefore, the said judgment will not enure to the benefit of Plaintiff in the light of amendment to the Act, which has come in the year 1978 including Sub-section (6) to Section 5, wherein clear prohibition is brought into the Act curtailing the rights of parties from entering into agreement for sale of inam lands after abolition of the Village Offices and before regrant of such lands in their favour. According to Defendants, the ratio laid down in Lakshmana Gowda's case, which was confirmed by Apex Court in G. Seenappa's case, will not enure to the benefit of Plaintiff as it is contrary to the provisions of law as it stood after amendment to the Act in 1978.

11. In this appeal, after service of notice to Plaintiff, Plaintiff has come on record. This Court on perusal of the divergent findings given by both the Courts below and the grounds urged in this appeal framed the following substantial question of law for consideration:

(1) Whether the order of regrant made subsequent to an agreement of sale would enure to the benefit of agreement holder under the Karnataka Village Offices Abolition Act, 1961?

12. Heard the Counsel for Appellants and Respondent in this appeal, perused the divergent findings of the Courts below on the issues and points framed by them for consideration in the said proceedings and on reappreciation of the same, this Court answer the substantial question of law in the affirmative for the following reasons.

13. The fact that as on the date of Karnataka Village Offices Abolition Act came into force on 1-2-1963 there was no prohibition under the said Act for the village officers who are holding inam lands in their favour from entering into agreement for sale of said lands even after the said lands are vested with the Government. The said position continued till amendment to the Principal Act which came into force on 7-8-1978, wherein by introduction of Section 5(6) a restriction was imposed regarding the right of Village Officers from entering into an agreement for transfer of land resumed by Government under Clause (3) of Section 4 which are entered into prior to regrant. At this juncture this Court would refer to the decision rendered by Larger Bench of this Court in the matter of B. Haleshappa and Ors. v. State of Karnataka and Ors. ILR 2002 Kar. 4306 (CB), wherein while considering the effect of amendment to the Karnataka Village Offices Abolition Act this Court while answering question of No. 1 at para 24 has held as under

24. In any view of the matter, the observation of the learned Single Judge that the decision in Syed Bhasheer Ahamed's case is per incuriam on the ground that Section 3(2) was not considered is not correct, as already stated. It is also to be seen that once the controversy has been set at naught by the Apex Court, this Court cannot go into it, to interfere or clarify the order of the Apex Court. In view of the above, we confirm the questions answered in Syed Bhasheer Ahamed's case. The questions formulated and referred for reconsideration of this Bench have to be answered in terms of the Full Bench decision of this Court in Syed Bhasheer Ahamed's case and Lakshmana Gowda's case and accordingly, we answer the questions by reiterating them in the following manner:-

Question No. 1: In the negative. The provisions of Section 5(4) to (6) of the Act as amended by Amendment Act, 1978, are prospective and not retrospective.

Question No. 2: In the affirmative. The Pull Bench in Syed Bhasheer Ahmed's case was justified in taking the view that Section 5(4) is prospective.

14. If the substantial question of law framed in this case is looked into in the light of this judgment what could be understood is that any agreement that is entered into by the parties for sale of inam land subsequent to 1978 i.e., the date on which the amendment came into force will not be valid and would not confer any right to the purchaser under the said agreement. Whereas in the instant case, the agreement of sale between Plaintiff and Defendants is entered into much earlier to that i.e., on 10-6-1973. It is also not in dispute that pursuant to said agreement the Plaintiff was put in vacant possession of said land. It is further not in dispute that he has carried out improvement on the said land as observed by Trial Court while answering issue No. 2, which is not challenged by Defendants and the same has reached finality. What was rejected by Trial Court is lawful possession of Plaintiff over suit schedule property in view of the amended provision of the Act, which is at Section 5(6) which prohibited transfer of inam land subsequent to the Act coming into force. The Larger Bench of this Court in the matter of B. Haleshappa, has held that the amended provisions under the Act would be prospective in nature. If that is taken into

consideration and considering the fact that possession, cultivation and enjoyment of Plaintiff over suit schedule property is confirmed by judgment and decree passed on 8-3-1983 in O.S. No. 40 of 1978 filed against Defendants and also in O.S. No. 156 of 1980 filed by Plaintiff against Defendants for the relief of permanent injunction.

15. However the Defendants contend that the judgment and decree passed by First Appellate Court relying upon the decision of Lakshmana Gowda's case is contrary to the provisions of amended Act which has come into force in 1978 and the said judgment and decree is passed without looking into the same, therefore, the ratio laid down would not apply to the case on hand, on the contrary, the ratio laid down by the Apex Court in Taibai v. Annasaheb Goudappa Patil, 1996(6) Kar. L.J. 594 , case would enure to their benefit, wherein the Apex Court has held as under:

KARNATAKA VILLAGE OFFICES ABOLITION ACT, 1961, Section 5(3) and (6) -- As amended by Act 13 of 1978 -- Vatan land -- Regrant of, to erstwhile holder of Village Office --Agreement to sell entered into by erstwhile holder of village office event before regrant of vatan land resumed from him -- Agreement is null and void -- Benefit of doctrine of part performance in Section 53A of the Transfer of Property Act, not attracted.

16. On going through the aforesaid decision it is seen that the facts and circumstances of the said case are totally different from that of the case on hand. In the said case the Apex Court has come to the said conclusion in view of the fact, in the said case the vendors had filed suit seeking possession of the property from the agreement holder on the ground that in the light of the amended provision of the Karnataka Village Offices Abolition Act the vendors are entitled to seek restoration of the land. In the instant case, Defendants are trying to set up the defence for denial of execution of sale deed pursuant to the agreement in view of the amended provision of Section 5(6). Admittedly, possession of suit schedule property was given by Defendants to Plaintiff way back on 10-6-1973 itself which is confirmed by judgment and decree for permanent injunction suffered by them in O.S. No. 40 of 1978 on 8-3-1983. The Defendants did not choose to challenge the same and it has reached finality. Therefore, in effect, as on the date when the Act came into force they were not in possession of the property and as admitted by themselves Plaintiff was in possession of said property. In such circumstances, to seek the benefit of said Act what was available to Defendants was filing a suit seeking possession of the property, which was surrendered by them under agreement of sale. If such a step was taken by them, probably their case would have stood on par with that of Taibai's case and the ratio enunciated in the said judgment would have enured to their benefit.

17. Admittedly, in the present case no such steps are taken by Defendants from 1978, the year the Amended Act came into force till this day or at least from the date of regrant which has taken place in the year 1987. Admittedly, 23 years

have elapsed, no steps are taken and the period of limitation for filing such a suit seeking possession of property under the amended provisions of Section 5(6) of the Karnataka Village Offices Abolition Act has also lapsed. Further, in the light of decision rendered by this Court in the matter of Lakshmana Gowda, which is confirmed by Apex Court in the matter of Seenappa and the same ratio being followed by Larger Bench in the matter of B. Haleshappa, wherein the application of Act is held to be prospective, this Court would not hesitate to accept the finding given by First Appellate Court in reversing the dismissal of suit filed by Plaintiff. Therefore, this Court answer the aforesaid question of law in favour of Plaintiff and confirm the judgment and decree passed by First Appellate Court in reversing the judgment and decree dismissing the suit of Plaintiff.

18. Accordingly, the appeal filed by Defendants is dismissed without any order as to costs.