

(2004) 09 KAR CK 0043

In the Karnataka High Court

Case No : Regular Second Appeal No. 353 of 2000

Veranna Veerabhadrapa

APPELLANT

Vs

The District Registrar and Another

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 19
Civil Procedure Code, 1908 (CPC) — Section 80
Karnataka Land (Restriction on Transfer) Act, 1991 — Section 3, 4, 8
Karnataka Urban Development Authorities Act, 1987 — Section 19
Registration Act, 1908 — Section 70, 77, 77 (1)

Citation : AIR 2005 Kar 27 : (2004) ILR (Kar) 4699 : (2004) 7 KarLJ 646 :
(2004) 4 KCCR 2886

Hon'ble Judges : A.M. Farooq, J

Bench : Single Bench

Advocate : Tarakram Associates, for the Appellant; Tajuddin, High Court Govt.
Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.M. Farooq, J.—This second appeal is filed by the plaintiff in O S No. 486 of 1997 on the file of the learned Additional Civil Judge (JD), Hubli dismissing the suit and it is directed against the confirming judgment and decree in R A No. 17 of 1999 on the file of the learned Prl. Civil Judge (SD), Hubli dismissing the appeal.

2. Brief facts of the case are that the appellant - plaintiff agreed to purchase land bearing Sy. No. 270/ 1+2+3 measuring 7 acres situated at Gokul, Hubli from one Basappa Unakal and Hanamant Unakal for Rs. 1,61,000/- and entered into an agreement of sale dated 23.7.1985. Since the vendors allegedly did not execute the sale deed as per the agreement, the appellant - plaintiff filed O. S No. 148/86 before the Trial Court for specific performance of the agreement. The suit was decreed on 27.2.1990. Against the said decree an appeal was filed by the owner - vendor which was dismissed. To execute the decree, the appellant filed

Execution Petition No. 585/94 before the Trial Court, which appointed a Commissioner to execute and get the sale deed registered and accordingly the Commissioner prepared the sale deed and submitted the same for registration before the Sub-Registrar, Hubli, who refused to register the sale deed by his order dated 2.2.1996.

3. Against the above said order passed by the Registrar, the plaintiff - appellant filed an appeal before the District Registrar, Dharwar who agreeing with the Sub-Registrar dismissed the appeal and hence the suit as provided u/s 77(1) of the Registration Act was filed.

4. Even though the defendants - respondents appeared before the Trial Court and represented by the Government Pleader they did not file any written statement. The plaintiff examined himself and produced three documents. The Trial Court on the pleadings of the parties, framed the necessary issues and on consideration of the materials on record, negated the contention of the plaintiff and held that the plaintiff has not been able to prove that a direction should be issued to the Sub-Registrar to register the document in question. The appellate Court on appeal has confirmed the judgment and decree passed by the Trial Court and dismissed the appeal.

5. I have heard Sri Tarakaram, learned Senior Counsel who appeared on behalf of the appellant and Sri Tajuddin, learned High Court Government pleader who took notice on behalf of the respondents. It was contended by the learned Senior Counsel that both the Courts below have legally erred in not properly considering the powers of the Sub-Registrar under the Registration Act as well as the Karnataka (Restriction on Transfer) Act 1991, hereinafter called the Restriction on Transfer Act, and under the Urban Land Ceiling Act. It was contended by the learned Senior Counsel that the Sub-Registrar has no power to refuse to register the sale deed when none of the Acts prohibit the registration of the document presented by the Court Commissioner for Registration. It was therefore submitted that this second appeal involves substantial question of law as to whether the Sub-Registrar, second respondent, had jurisdiction to refuse registration of a sale deed when there is no prohibition under any other enactments. On the other hand, the learned High Court Government Pleader submitted that the Sub-Registrar as well as the District Registrar had materials to show that the land in question has been acquired and the appellant -plaintiff was duty bound to produce the necessary certificate showing that the land in question has not been acquired and that there was clearance from the Land Ceiling Authority. He also submitted that the suit is not maintainable for want of notice u/s 80 of CPC.

6. After hearing the learned Counsels and after considering the materials on record, the substantial question of law that is involved in this appeal are.

(1) Whether the Sub-Registrar and District Registrar, the appellate authority were justified in refusing to register the suit document when there is no bar under any

other enactments to register the same?

(2) Whether there is bar under the Restriction on Transfer Act 1991 from registering a document or whether there is any such restriction under the Urban Land Ceiling Act which gives power to the Sub-Registrar to refuse registration?

(3) Whether the suit is maintainable without a notice being issued u/s 80 of CPC?

7. Under the Urban Land (Ceiling and Regulation) Act, 1976 it was held by the Gujarat High Court in J.D. Pathak Vs. V.B. Barot and Another, after a detailed consideration of the various provisions of the Act that under the provisions of the Registration Act, registration can be refused only under two contingencies which are u/s 20(1) whereunder the Registering Officer can refuse to accept for registration defective documents and Section 71(2) under which a document whose registration is refused which bears such endorsement from a competent Sub- Registrar and unless the impediment is removed after following the procedure laid down u/s 72 and other provisions of the Act.

8. The Registration Act itself is a complete Code and nothing in the Act authorize either the State Government or the Registrar to instruct the Sub-Registrar not to register a document. That the Sub-Registrar and Registrar are authorities under the statute and they draw their authority from the statute and therefore their statutory functions cannot be curtailed by Government under any executive order. The Karnataka Land (Restriction on Transfer) Act was enacted to impose restriction on transfer of land which have been either acquired by Government or in respect of which acquisition proceedings have been initiated by the Government. Sections 3 & 4 of the Act read as under:

3. Prohibition on transfer of lands acquired by Government - No person shall purport to transfer by sale, mortgage, gift, lease or otherwise any land or part there of situated in any urban area which has been acquired by the Government under the Land Acquisition Act, 1894 (Central Act 1 of 1894) or any other law providing for acquisition of land for a public purpose.

4. Regulation of transfer of lands in relation to which acquisition proceedings have been initiated. - No person shall, except with previous permission in writing of the competent authority, transfer, or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which is proposed to be acquired in connection with the Scheme in relation to which the declaration has been published u/s 19 of the Bangalore Development Authority Act 1976 or Section 19 of the Karnataka Urban Development Authorities Act, 1987.

Therefore, as could be seen from the above provisions that what is prohibited is alienation of lands situated in Urban Area which has been acquired by the Government. Section 4 regulates the transfer of lands in which acquisition proceedings has been initiated. Section 9 is the penal provision and if any person contravenes the provision of Section 3 or 4, he shall be punished with

imprisonment or fine as stated thereunder. Therefore, what could be gathered from the above Sections is that there is a bar from alienating acquired land and land which are to be acquired could be transferred by getting the necessary permission etc., as provided u/s 4. Section 8 of the Act reads as follows:

8. Restriction on registration of transfer of land. Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clauses (a) to clause (c) of sub-section (1) of Section 17 of the Registration Act, 1908 (Central Act 16 of 1908) purports to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof referred to in section 4, no registering officer appointed under that Act shall register any such document unless the transferer produces before such registering officer a permission in writing of the competent authority for such transfer.

Further there is also a penal provision which takes care of any contravention. That if any land as described u/s 4 is being transferred No Registering Officer under the Registration Act shall register such documents unless the transferor produces before such registering authority a permission in writing of the competent authority for such transfer. Therefore, it is only when a document purports to transfer a land described u/s 3 or u/s 4 of the Act that the registering authority can refuse to register the document. Therefore, it is necessary that there should be materials before the registering authority to come to the conclusion that the land which is being purported to be alienated comes under the prohibition mentioned in Section 3 & 4 of the Act. Unless the registering authority holds that the land which is the subject matter of the document to be registered is a land coming u/s 3 & 4, then he cannot refuse to register the document. The burden to prove that the land in question does not come within the prohibition of Section 3 & 4 of the Act does not lie on the transferor or transferee who comes before the Sub-Registrar to get the document registered. Under the said Act there is penal provision and contravention is made punishable. If there are specific materials available with the Registrar the same could be the basis of such refusal.

9. The learned Civil Judge (SD) appears to be of the view that since the suit filed against the Government Officers the State Government should have been a party and non impleading of the State Government is fatal to the proceeding instituted by the applicant. When the applicant has impleaded the District Registrar the appellate authority and the Sub-Registrar and when the Assistant Government Pleader has represented them I do not think that the appellant should have done anything more in the matter by impleading all other authorities. It has to be held that non-impleading of any other authority other than the two respondents impleaded before the learned Prl. Civil Judge at Hubli does not make the appeal not maintainable. Further, the lower Courts are also wrong in holding that a notice is necessary to be issued u/s 80 of the CPC. The question of issuing notice u/s 80 of CPC does not arise since the appellant is questioning the veracity of the

order passed by the appellate authority rejecting the appeal and the suit is filed u/s 77 of the Registration Act 1908. The said proceeding is in the nature of an appeal from the order of refusal to register u/s 70 of the Registration Act. Hence question of issuing notice u/s 80 CPC does not arise.

10. The Sub-Registrar and the District Registrar have referred to some entries found in the revenue records and also referred to the letter from the Land Acquisition Officer. There is no notification issued to acquire the land. Before me the learned High Court Government Pleader who appeared on behalf of the respondents could not produce any such order of acquisition of the land in question. Moreover, the Urban Land Development Authority has issued a letter dated 12.12.1995 to the effect that the land in question was not acquired. Further if there was any acquisition what the authorities could have done is to produce the acquisition notifications. Such notifications have not been produced. Therefore, I am clearly of the view that the Sub-Registrar has committed an error in refusing to register the document.

11. In the light of the above facts, there was no ground at all for the Sub-Registrar to refuse registration of the document. The appellate authority also did not bestow any attention to the provisions of the Restriction on Transfer Act and it has simply endorsed the view of the Sub-Registrar without applying its mind. On consideration of the entire facts and circumstances of the case and the materials on record and on the arguments addressed on behalf of the respondents, it has to be held that no ground is made out by the respondents to refuse the registration of the document in question. The appeal, therefore, is found to involve the substantial question of law as to whether the Registrar as well as Sub-Registrar have refused to exercise the jurisdiction vested in them in refusing to register the document and as to whether the Courts below have committed illegality in dismissing the suit by ignoring to consider the provisions of the two above mentioned Acts.

12. The Trial Court as well as the lower appellate Court have, therefore committed legal error in holding that there is no ground to direct the Sub-Registrar to register the document in question. The impugned judgment and decrees of the courts below cannot therefore be upheld. They have to be set aside. They are accordingly set aside. The suit filed by the plaintiff-appellant is decreed and the orders passed by the Sub-Registrar and District Registrar are set aside. There shall be a decree directing the Sub- Registrar, Tahsildar Compound, Hubli to register the document presented by the appellant-plaintiff. This appeal is accordingly allowed. In the facts and circumstances of the case, no order as to costs.