

(1999) 05 KAR CK 0023

Karnataka High Court

Case No: Writ Petition No. 29155 of 1997

Mahadevappa and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision: May 11, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Karnataka Land Revenue Act, 1964 - Section 66 A, 66 B
- Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Section 4, 4 (1), 5

Citation: (2002) ILR (Kar) 45 : (1999) 5 KarLJ 732

Hon'ble Judges: Hari Nath Tilhari, J

Bench: Single Bench

Advocate: Sri Mahesh R. Uppin for Sri B. Veerabhadrappe, for the Appellant; Sri V. Jayaram, Government Advocate and Sri B.V. Prakash, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This writ petition is directed against the judgment and order dated 18-9-1997 passed by the Deputy Commissioner, Shimoga District, Shimoga, in Case No. SC.ST 34 of 1992-93 dismissing the petitioners' appeal and confirming the order dated 30-10-1992 passed by the Assistant Commissioner, Shimoga Sub-Division, Shimoga, in Case No. PTCL.CR. 7 of 1991-92 u/s 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act No. 2 of 1979), holding that the transfer made by the grantee in favour of the petitioners vide the sale deed dated 4-5-1964 to be null and void and directing its resumption after evicting the petitioners and the restoration of its possession to the grantee.

2. The facts of the case in nutshell are:

That the land in question is a subject-matter of the case, has been granted as per the petition allegation in favour of one Gaddalappa S/o Basappa, the father of respondents 4 to 6 on 22-5-1956 with the condition that the granted land should not be alienated for a period of fifteen years. That on 4-5-1964 the land in question was sold by respondents 4 to 6 in favour of the present petitioners for a valuable consideration of Rs. 3,000/- under a registered sale deed. After the coming into force of Karnataka Act No. 2 of 1979 respondents 4 to 6 moved the Assistant Commissioner, Shimoga Sub-Division, Shimoga for restoration of the granted land. The Assistant Commissioner vide the order dated 30-3-1992 as mentioned earlier, held that the transaction of sale made in favour of the petitioners was in breach of the terms of the grant and had been in violation of the condition of the grant which prohibited alienation of the granted land for a period of fifteen years. The petitioners have filed the appeal before the Deputy Commissioner, Shimoga District, Shimoga. The Deputy Commissioner after hearing the parties by his order dated 18-9-1997 held that the grantee belongs to Adi Karnataka which is one of the Scheduled Castes. It further found that even under the rules relating to the grant the transaction of sale was void as per Section 43-G as operating in 1955-56, where it is restricted for a period of fifteen years because the sale was made within the prohibitory period i.e., within eight years from the date of the grant. As regards the plea of adverse possession the Appellate Court observed that the present petitioners were not entitled to claim adverse possession or acquisition of title by adverse possession and dismissed the appeal. Feeling aggrieved of the said order, the purchasers have come up before this Court under Articles 226 and 227 of the Constitution of India.

3. I have heard Sri Mahesh R. Uppin, holding brief for Sri B. Veerabhadrappe, learned Counsel for the petitioners, Sri V. Jayaram, learned Government Advocate for respondents 1 to 3 and Sri S.V. Prakash, learned Counsel for respondents 4 to 6.

4. The learned Counsel for the petitioners submitted that the Assistant Commissioner did not record the finding whether the grantee belongs to Scheduled Castes. He further submitted that the Assistant Commissioner also did not record finding whether the grant was made free of cost or for upset price or for reduced upset price. He submitted that even otherwise also, the petitioners have acquired title by adverse possession and the finding recorded is contrary and suffers from law.

5. The above contentions of the learned Counsel for the petitioners have been hotly contested by Sri S.V. Prakash, learned Counsel for respondents 4 to 6 as well as by Sri V. Jayaram, learned Government Advocate for respondents 1 to 3.

6. It has been pointed out by the learned Counsel for respondents 4 to 6 that the Deputy Commissioner has clearly observed and found that the granted land belongs to the Adi Karnataka community which is one of the castes mentioned in the list of Scheduled Castes. He further submitted that so far as the price is concerned, even if

1956 Rules are applied, where the grant is made for an upset price or for reduced upset price in both situations the transfer having been made within eight years from the date of grant i.e., the transfer has been made on 4-5-1964 was well within prohibitory period. The sale made on 4-5-1964 was well within eight years from the date of the grant i.e., 22-5-1956. So the sale was rightly held to be null and void being in contravention of the terms of the grant as well as rules relating to the grant.

7. Sri S.V. Prakash, learned Counsel for respondents 4 to 6 submitted that upset price is not arbitrarily fixed, but it really represents the actual market value of the land as can be ascertained by local enquiries and examination of the record. So the learned Counsel submitted that if the land is granted for upset price, it means for the market value or something nearer to the market value, then the rider against transfer or alienation of granted land is to operate for ten years. If it is free of cost and it is not for upset price or for reduced upset price, the land granted shall not be alienated for a period of fifteen years from the date of the grant. The learned Counsel contended that even if it has not been decided whether the grant was made free of cost or the grant was made for an upset price or for reduced upset price is not very material. As in the present case even if ten years prohibition period be taken as prohibiting alienation, the transfer or sale having been made in favour of the petitioners within eight years from the date of the grant has resulted in breach of the condition or prohibition or law relating to it. So it has been rightly held as void.

8. As regards adverse possession, the petitioners could not claim adverse possession. The respondents' learned Counsel contended that the petitioner has entered under the colour of the title claimed from the grantee and such a person could not be the owner. By transfer of grantee's right if at all, as not absolute owner's right were granted to grantee and unless and until it is proved and shown that the grantee had been granted rights and title of the owner. He further submitted when the petitioners have entered into possession according to the petitioners' case under the transfer deed from the grantee he entered in the capacity of grantee or licensee at the most and as such the present petitioners could not claim adverse possession till they did vacate the possession which they have entered into under the deed and then claim title by hostile adverse possession against a real owner. So it is not open to them to claim title. Further, the learned Counsel contended that from 1964 to 1979 no doubt fifteen years period did pass, but for claiming title by adverse possession against the Government the owner, claimant who claims title by adverse possession shall have to establish 30 years hostile possession against the owner i.e., State before the Act came into operation, whereunder the transfer has been declared to be illegal, null and void or at least he should have been in hostile adverse possession for 30 years by way of adverse possession from the date of coming into force of the Act. The learned Counsel for respondents 4 to 6 contended that respondents 2 and 3 did not commit any error in

rejecting the plea of adverse possession.

9. I have applied my mind to the contentions advanced by the learned Counsels appearing for the parties.

10. That as per the petitioners' own assertion that the land was granted on 22-5-1956 with a condition that the said land should not be alienated for 15 years. That under the terms of the grant the land could not be alienated for a period of 15 years. The fact that the transfer has been made in breach of this condition. The transfer was made within eight years. So u/s 4(1) of the Act that the transfer was void and comes within the purview of Section 4(1). Section 4(1) declares that notwithstanding anything in any law, agreement, contract or instrument any transfer of granted land made in breach of the terms of the grant shall be void. No doubt it declares that the transfer made in breach of the provisions of law relating to the grant shall also be void. Anyway in the present case the transfer being in breach of the condition incorporated in the grant prohibiting alienation for 15 years itself can be said to be void as transfer has been made within 8 years. Even if it be taken that the grant is for upset price or for reduced upset price, but the alienation or transfer was made in favour of the petitioners within eight years of the date of the grant i.e., within the prohibitory period of 10 years as provided under the rules in force in 1956 which says that in the case of grant made for upset price or reduced upset price, the granted land shall not be alienated for 10 years. In this view of the matter, in my opinion, the finding that the sale has been null and void cannot be said to be bad in law. The Appellate Authority itself found that the grantee belongs to Adi Karnataka. As regards the plea of adverse possession, a person claiming title by adverse possession has to plead and assert his hostile possession against the true owner of the land. When a person enters into possession either as licensee or grantee, then nature of his possession cannot be said to be hostile to the owner. That a transferee under a valid transfer, enters into the shoes of transferor and gets no better right than the transferor. The transfer deed has been obtained within the said period and then his possession is of same nature of the grantee or licensee. In the case claim of title by adverse possession against individuals 12 years period may be sufficient, but in the case of such claim against State it has to be shown and established for thirty years.

11. It may be clarified where the transferee proves that the grantee has been given the absolute ownership rights under the grant by the Government. Then in those cases definitely twelve years period may be sufficient, but not otherwise with reference to land granted. In the case of land rules prohibiting alienation to the effect that the grantee will not alienate the land for a period may be 10 years or 15 years or 20 years, the provisions of Sections 66-A and 66-B of the Land Revenue Act, authorise the Government to resume the land. At the most when the grant had been made in favour of grantee State retained certain rights and there has been no transfer of absolute rights in favour of the grantee. In such cases adverse and

hostile possession against State is to be established for a period of 30 years.

12. The learned Counsel for the petitioners admit that claimants have been in possession under the transfer from the grantee. So they based their possession under the colour of rights from the grantee and such possession cannot be deemed to be adverse possession to that of the State. When I so observe, I find support for my view from the decision of their Lordships of the Supreme Court in the case of D.N. Venkatarayappa and Another v State of Karnataka and Others. Thus considered, in my opinion there is no force in the contention of the learned Counsel for the petitioners.

13. The writ petition as such is hereby dismissed. Costs made easy.