
Sharadamma and Others Vs R. Vishwanath and Others

Regular First Appeal No. 248 of 2012

Court: Karnataka High Court

Date of Decision: March 17, 2015

Acts Referred:

Contract Act, 1872 - Section 23#Criminal Procedure Code, 1973 (CrPC) - Section 107, 145#Hindu Succession Act, 1956 - Section 14(1), 6#Karnataka Municipal Corporations Act, 1976 - Section 482#Karnataka Village Officers Abolition Act, 1961 - Section 5, 6, 7, 7A#Transfer of Property Act, 1882 - Section 4(2)(b), 41, 42, 43, 52

Citation: (2015) ILR Kar 3353 : (2015) 4 KCCR 2962

Hon'ble Judges: Anand Byrareddy, J.

Bench: Single Bench

Advocate: A.S. Mahesha, for the Appellant; K.B.S. Manian, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Anand Byrareddy, J.

This is an appeal by the plaintiff. The parties are referred to by their rank before the trial court for the sake of

convenience. The suit of the plaintiff was filed for the following declaratory reliefs, for possession and consequential injunction:

a. That a sale deed dated 29.3.1985, executed by her husband, S. Ranoji Rao in favour of the first defendant as being null and void

b. That a gift deed dated 26.06.2003 vide document No. 1463/2003-04 recorded in C.D. No. 18, registered before the Sub-Registrar,

Srirampuram, Bangalore, executed by the first defendant in favour of the second defendant as being null and void.

c. That a bifurcation order dated 3.9.2003 passed by the third and fourth defendants as being null and void.

d. To declare the plaintiff as the owner of the suit property as per sale deed dated 3.6.2003, executed by the Karnataka Housing Board in favour

of the plaintiff

e. For possession of the suit property and

f. For injunction restraining the defendants 1 and 2 from alienating the suit property.

2. The facts as stated by the plaintiff are as follows:

The plaintiff having died during the pendency of the suit, the same has been prosecuted by the widow and children of S. Ranoji Rao, the original

plaintiff He is said to have been allotted a residential house by the Karnataka Housing Board (KHB) under a Scheme, known as Industrial Housing

Scheme of the KHB. Under the Scheme the KHB is said to have constructed houses and had allotted the houses on a lease-cum-sale basis. The

plaintiffs husband was said to have been allotted a house bearing No. 52/B, Manuvana Hosahalli, II Phase, Bangalore, measuring East to West 52 +

49 1/2 feet and North to South 25 feet, as per Order dated 24.9.1979. A lease- cum- sale deed was said to have been executed on 21.9.1981,

which was also said to have been duly registered. There was a condition that the said property could not be alienated for a period of 10 years.

And subject to the allottee conforming to other terms and conditions, KHB was to execute an absolute sale deed at the end of 10 years from the

date of the lease-cum- sale deed. In the event of a breach of the conditions, by the lessee, the KHB was empowered to recover possession of the

property and any amounts paid by the lessee would stand forfeited. The price was said to have been fixed at Rs. 11,827/-. The lessee was obliged

to meet all outgoing expenses and charges such as property tax, water and electricity charges, etc.

3. It is stated that the plaintiffs husband, notwithstanding the bar on alienation during the lease period, had mortgaged a portion of the property

measuring 28.6 feet by 25.6 feet, which was more fully described in the Schedule to the plaint, to the first defendant. It is stated that in the year

1985, the first defendant is said to have filed a suit in OS 2167/1985, for permanent injunction claiming to be the owner of the said extent of the

property, against the plaintiff it is further claimed that Rao had become aware only thereafter, that the first defendant had in fact obtained a sale

deed instead of a mortgage deed. In any event, that suit had been decreed in part and the first defendant was permitted to use the door on the

northern side of the suit property, purportedly to provide access to the suit property. The court however, had not entered upon the question of title

to the property.

On the strength of the sale deed said to have been executed by the plaintiff, the first defendant is said to have sought for and obtained a khatha

certificate from defendants 3 and 4 after having obtained an order for bifurcation of the suit property from the main building

However, on the expiry of the ten year period under the lease deed, at the instance of the husband of the plaintiff, the KHB is said to have

executed an absolute sale deed in respect of the entire extent of the property, in consonance with the lease deed, including the extent held by the

first defendant. As the KHB had proceeded on the footing that any such alienation in favour of the first defendant was void ab initio.

It then transpires that the first defendant had executed a gift deed dated 26.06.2003 vide document No. 1463/2003-04 recorded in C.D. No. 18,

registered before the Sub-Registrar, Srirampuram, Bangalore, in favour of the second defendant, her son, in respect of the suit property.

It is in the above background that the suit was filed.

4. The first and second defendants had contested the suit and it was asserted that the sale deed in favour of the first defendant was brought to the

knowledge of the KHB, which in turn had passed an order terminating the lease deed by an order dated 3.9.1986 and demanded that the

possession of the entire property be handed over. However, the plaintiff as well as they had continued in occupation of the property and hence the

transaction is deemed to have been regularized. The defendants had questioned the bona fides of Ranoji Rao, given his conduct in having executed

a registered sale deed and feigning ignorance of the nature of the transaction, as well as the inaction for over several decades in seeking recovery of

the property.

They even claimed that they had perfected their title by adverse possession, assuming that it could be said that the sale deed under which they had

acquired the suit property was a void or invalid document.

5. On the basis of the above pleadings the trial court had framed the following issues:

1. Whether the plaintiff proves that the sale deed dated 29.3.1985 executed by late S. Ranoji Rao in favour of defendant No. 1 is illegal and null

and void and not binding on her?

2. Whether the plaintiff proves that the Gift Deed executed by defendant No. 1 in favour of defendant No. 2 is null and void and not binding on

her?

3. Whether the plaintiff proves that the bifurcation order dated 3.9.2003 passed by defendants 3 and 4 in respect of the suit schedule property is

null and void and not binding on her?

4. Whether the plaintiff proves that she is the absolute owner of the suit schedule property by virtue of the sale deed dated 3.6.2003 executed by

Karnataka Housing Board?

5. Whether the plaintiff is entitled for possession of the suit schedule property from the defendants 1 and 2?

6. Whether plaintiff is entitled for the relief of permanent injunction against defendants 1 and 2 as prayed in the plaint?

7. Whether suit is barred by limitation?

8. Whether suit is bad for want of notice under Section 482 of KMC Act against defendants 3 and 4?

9. What decree or order?

The trial court had held Issues 1 to 6 in the affirmative and Issues No. 7 and 8 in the negative and decreed the suit as prayed for. It is that judgment

which is under challenge in the present appeal.

6. The primary contention of the learned counsel for the appellant is that even if it could be accepted that Ranoji Rao had no right to sell the suit

property as on the date of the sale in favour of the first defendant, the circumstance that KHB has subsequently executed a sale deed in favour of

the plaintiff in respect of the entire extent of the property covered under the lease-cum-sale deed, including the suit schedule property, as per

registered sale deed dated 30.5.2003, the same would enure to the benefit of the first defendant under the doctrine of feeding the grant by estoppel

and as embodied under Section 43 of the Transfer of Property Act, 1882 (Hereinafter referred to as "the TP Act", for brevity). In this regard the

learned counsel places reliance on the following authorities.

1. Ram Pyare Vs. Ram Narain and Others,
2. Jharu Ram Roy Vs. Kamjit Roy and Others,
3. Hardev Singh Vs. Gurmail Singh (Dead) by LRs.,
4. Syed Bhasheer Ahamed and others Vs. State of Karnataka and others,
5. Lakshmana Gowda and others Vs. State of Karnataka,
6. Sri NI PRA Channabasava Deshikendra Swamigalu Matadhipathigalu Kannada Mutt Vs. C.P. Kaveeramma and Others,
7. Renu Devi Vs. Mahendra Singh and Others,

7. On the other hand, the learned counsel for the respondent would seek to justify the judgment of the trial court and places reliance on the

following authorities and seeks to point out that the authorities cited by the appellant cannot be pressed into service in the facts and circumstances

of the present case.

1. Kartar Singh (Dead) by Lrs. and Others Vs. Harbans Kaur (Smt),
2. N. Srinivasa Rao Vs. Spl. Court under A.P. Land Grabbing (Prohibition) Act and Others,
3. Hardev Singh Vs. Gurmail Singh (Dead) by LRs.,
4. Jharu Ram Roy Vs. Kamjit Roy and Others,
5. Ni. Pra Channabasava D.S. Matadhipathigalu and Kannada Mutt Vs. C.P. Kaveeramma and Others, .

8. In the above facts and circumstances, it is the above legal proposition with reference to which the case of the appellant would have to be

decided.

It would be useful to extract the text of Sections 41 and 43 of the TP Act, which read as follows:

41. Transfer by ostensible owner.--Where, with the consent, express or implied, of the persons interested in immovable property, a person is the

ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was

not authorised to make it:

PROVIDED that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good

faith.

43. Transfer by unauthorised person who subsequently acquires interest in property transferred.--Where a person fraudulently or erroneously

represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer

shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract

of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these

fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the

contract of sale, may require A to deliver Z to him.

We may now notice the interpretation of the law in the decisions cited by the appellant, senatem.

a) In Ram Pyare"s case, the facts were as follows:

Matbar Mal, who had Sirdari rights over the disputed land, deposited an amount equal to ten times the land revenue payable on the land in order

to acquire Bhumidhan rights. This he could do under sec. 134 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 as it then stood. The

deposit was made on October 28, 1961. On the same day, Matbar Mal sold the land to the present appellant. On October 30, 1961, a certificate

to the effect that he had acquired Bhumidhan rights was issued to Matbar Mal under sec. 137 of the U.P. Zamindari Abolition and Land Reforms

Act, 1950. Thereafter the sons of Matbar Mal filed a suit for cancellation of the deed of sale executed by Matbar Mal on October 28, 1961 in

favour of the defendants. The suit was dismissed by the court of the Additional Munsif and the appeal by the plaintiffs was also dismissed by court

of the Temporary Civil and Sessions Judge, Deoria. On second appeal by the plaintiffs, however, a single judge of the High Court of Allahabad

allowed the appeal following a Division Bench judgment of the same court in Dhani Ram v. Jokhu (Second Appeal No. 4276 of 1964) and

decreed the suit.

The ground on which the second appeal was allowed by the High Court was that the Sirdar who deposited the requisite amount acquired

Bhumidhan rights not from the date of deposit but from the date of the grant of the Bhumidhan certificate, and, therefore, Matbar Mal who

executed the sale deed on October 28, 1961 had no right to execute the same on that day as he acquired Bhumidhan rights with effect from

October 30, 1961 only, which was the date of the issuance of the Bhumidhan certificate.

The defendant was in appeal before the Apex Court.

On facts, the Apex court held that:

The amount of deposit under sec. 134 of the U.P. Zamindan Abolition Act was made on October 28, 1961 and it was on the same day that the

sale deed was executed by Matbar Mal. It is clear that Matbar Mal erroneously represented to the vendee that he was authorised to transfer the

property and professed to transfer such property for consideration. The very execution of the sale deed on the same day as the deposit of the

requisite amount under sec 134 is significant enough to establish that the sale deed was the result of an erroneous representation by Matbar Mal. It

is also clear that the present plaintiffs who are the sons of the vendor, Matbar Mal cannot possibly claim the transferees in good faith which indeed

they do not claim to be. Section 43 clearly applies to the situation.

On the interpretation of Section 43, the Apex court quoted with approval the following opinion expressed in *The Jumma Masjid, Mercara Vs.*

Kodimaniandra Deviah, wherein with reference to the decision of the Madras High Court in *The Official Assignee of Madras and Another Vs.*

Sampath Naidu, it was held thus:

This reasoning is open to the criticism that it ignores the principle underlying S. 43. That section embodies, as already stated, a rule of estoppel

and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation.

It is immaterial whether the transferor acts bona fide or fraudulently in making the representation. It is only material to find out whether in fact the

transferee has been misled. It is to be noted that when the decision under consideration was given, the relevant words of S. 43 were, "where a

person erroneously represents", and now, as amended by Act 20 of 1929, they are "where a person fraudulently or erroneously represents", and

that emphasises that for the purpose of the section it matters not whether the transferor acted fraudulently or innocently in making the

representations and that what is material is that he did make a representation and the transferee has acted on it. Where the transferee knew as a

fact that the transferor did not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer.

Section 43 would then have no application and the transfer will fail under S. 6(a). But where the transferee does act on the representation, there is

no reason why he should not have the benefit of the equitable doctrine embodied in S. 43, however, fraudulent the act of the transferor might have

been.

b) In *Jharu Ram Roy's* case, the facts were as follows:

One *Nakho Ram* was the owner of the suit property. He had two sons, namely, *Rajiv Lochan Roy* and *Kamjit Roy*. The property in the suit

admeasured 16 Bighas 4 Kathas. *Rajiv Lochan* executed two deeds of sale in 1982, in respect of about 4 Bighas of land, inter alia, contending that

he had half share in the said property. It was not in dispute that the family of Nakho Ram was governed by Dayabhaga School of Hindu Law.

3. It was also not in dispute that in 1982, Nakho Ram was alive and he expired only in the year 1990. The appellant before the Apex Court

however, claimed that in terms of the aforementioned deeds of sale executed by Rajiv Lochan in the year 1982, he had remained in possession of

the vested property since the date of purchase. It was not in dispute that in the year 1990, a proceeding under Section 107 as also Section 145 of

the Code of Criminal Procedure was initiated and Respondent No. 1 in the appeal, was, in those proceedings, herein was put in possession of the

property.

4. Respondent No. 1 had filed a suit in the year 1991 for declaration of his title, confirmation of possession as also a decree for setting aside two

deeds of sale executed by Rajiv Lochan in the year 1982. The said suit was dismissed by the learned Trial Judge, inter alia, holding that the legal

representatives of the proforma respondents not having been brought on record, the suit had abated. It was held that the defendant-appellant

acquired title to the suit property by adverse possession. The suit so far as it related to setting aside the aforementioned deeds of sale was,

however, held to be barred by limitation.

5. The First Appellate Court, however, on an appeal preferred by the contesting respondents, reversed the said findings of the Trial Court opining

that as the appellant- defendant was a party to the fraud perpetrated by Rajiv Lochan in so far as he was, at all material times, aware that in the

year 1990, Nakho Ram was alive and not dead, he could not take benefit of the said deeds of sale and the same were void ab initio. The High

Court, had affirmed the said view.

The apex court held thus:

9. In this case, as the appellant averred that although in the deeds of sale, a stipulation was made by Rajiv Lochan that his father had expired, it

cannot be said to be a case where he fraudulently or erroneously represented that he was authorized to transfer the said immovable property. As

noticed hereinbefore, a finding of fact had been arrived at by the First Appellate Court that the appellant was a party to the fraud and that he was

not victim thereof

10. Our attention, however, has been drawn to a decision of this Court in Hardev Singh Vs. Gurmail Singh (Dead) by LR., . In the said decision

this Court laid down the law in the following terms:

12. In order to get the benefit of the said provision, the conditions which must be satisfied are:

(1) the contract of transfer was made by a person who was competent to contract; and

(2) the contract would be subsisting at the time when a claim for recovery of the property is made.

13. However, the provisions would have no application if the transfer was invalid as being forbidden by law or contrary to public policy, as

envisaged under Section 23 of the Contract Act. Thus, no estoppel can be pleaded contrary to the provisions of a statute. The "rule of feeding the

estoppel" shall apply in absence thereof.

14. The doctrine of feeding the estoppel envisages that "where a grantor has purported to grant an interest in land which he did not at the time

possess, but subsequently acquires, the benefit of his subsequent acquisition, goes automatically to the earlier grantee, or as it is usually expressed,

feeds the estoppel".

15. The principle is based on an equitable doctrine that a person who promised to perform more than he can perform must make good his contract

when he acquires the power of performance. The difference between the ambit of Section 41 and 43 of the Act is apparent. Whereas Section 41

provides that a transfer by an ostensible owner cannot be avoided on the ground that the transferor was not authorized therefore, subject to the

condition that the transferee should take reasonable care to ascertain that the transferor had power to make the transfer and to act in good faith

before a benefit thereof is claimed by him. Section 43, on the other hand, enables the transferee to whom a transferor has made a fraudulent or

erroneous representation to lay hold, at his option, of any interest which the transferor may subsequently acquire in the property, unless the right of

any subsequent purchaser for value without notice is in effect.

11. Fraud vitiates all solemn acts. As the appellant was aware of the fact that Nakho Ram had not expired in 1992, in our opinion, the provisions

of Section 43 of the Transfer of Property Act cannot be said to have any application in the instant case.

c) In Hardev Singh's case, the facts were as follows:

Harcharan Singh, the original Defendant No. 1, allegedly transferred some properties in favour of his wife Udham Kaur in lieu of maintenance

pursuant to a compromise entered into by and between them. She claimed herself to be the absolute owner thereof in terms of Section 14(1) of the

Hindu Succession Act, 1956. She filed a suit against her husband Harcharan Singh for a declaration that she was the owner in possession of the

suit land. The learned Trial Judge was of the opinion that as she had been in possession of the property in lieu of maintenance, she was "entitled to

enjoy the fruits thereof only during her life time". An appeal was preferred against the same and the Appellate Court declared her to be the full

owner in possession of the suit land. During the pendency of the said suit, Harcharan Singh is said to have sold the said land to the respondent

herein under a sale deed dated 17.3.1982 and put him in possession. Another suit was filed by Udham Kaur.

3. The respondent had raised a plea in the suit that he was a bona fide purchaser for value, whereas the case of Udham Kaur was that as the

properties were purchased during pendency of the suit, the same was hit by the "doctrine of lis pendens", as envisaged under Section 52 of the TP

Act. The said contention of the respondent was not accepted by the learned Trial Judge as also by the First Appellate Court holding that the

transaction was hit by the doctrine of lis pendens. In the Second Appeal, one additional ground was taken namely, having regard to the death of

Udham Kaur, the properties devolved upon the appellant as also on Harcharan Singh in equal shares; and, thus, he should be declared to be the

owner of the lands in terms of Sections 41 and 43 of the Act.

4. The High Court, had rejected the contention that Section 41 of the Act would be attracted, but opined that Section 43 would.

The appellant therein was thus before the Apex court. Incidentally, the counsel for the respondent has also placed reliance on this decision.

The Apex Court dwelt on the distinction between Section 41 and Section 43 of the TP Act, thus:

9. Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an

act which has been done and that he would not offer any opposition thereto, although the same could not have been lawfully done without his

consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so

sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

10. The ingredients of Section 41 of the Act are:

- 1) the transferor is the ostensible owner;
- 2) he is so by the consent, express or implied, of the real owner;
- 3) the transfer is for consideration;
- 4) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

11. Section 43, on the other hand, embodies a "rule of feeding the estoppel" and enacts that a person who makes a representation shall not be

heard to allege the contrary as against a person who acts thereupon and it is immaterial whether the transferor acts bona fide or fraudulently in

making the representation. [See The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah, .

12. In order to get the benefit of the said provision, the conditions which must be satisfied are:

- (1) the contract of transfer was made by a person who was competent to contract; and
- (2) the contract would be subsisting at the time when a claim for recovery of the property is made.

13. However, the provisions would have no application if the transfer was invalid as being forbidden by law or contrary to public policy, as

envisaged under Section 23 of the Indian Contract Act. Thus, no estoppel can be pleaded contrary to the provisions of a statute. The "rule of

feeding the estoppel" shall apply in absence thereof.

14. The doctrine of feeding the estoppel envisages that "where a grantor has purported to grant an interest in land which he did not at the time

possess, but subsequently acquires, the benefit of his subsequent acquisition, goes automatically to the earlier grantee, or as it is usually expressed,

feeds the estoppel".

15. The principle is based on an equitable doctrine that a person who promised to perform more than he can perform must make good his contract

when he acquires the power of performance. The difference between the ambit of Section 41 and 43 of the Act is apparent. Whereas Section 41

provides that a transfer by an ostensible owner cannot be avoided on the ground that the transferor was not authorised therefor, subject to the

condition that the transferee should take reasonable care to ascertain that the transferor had power to make the transfer and to act in good faith

before a benefit thereof is claimed by him. Section 43, on the other hand, enables the transferee to whom a transferor has made a fraudulent or

erroneous representation to lay hold, at his option, of any interest which the transferor may subsequently acquire in the property, unless the right of

any subsequent purchaser for value without notice is in effect.

On facts it was held thus:

21. It is one thing to say that the respondent was aware of the litigation, but it is another thing to say that he did not purchase the property on

representation of Harcharan Singh. In fact, from the judgment of the courts below, it does not appear that any finding has been arrived at to the

effect that the respondent herein was aware that the said Harcharan Singh had no title over the property

And it was concluded thus:

The plea of inapplicability of Section 43 of the Transfer of Property Act could have been taken by Harcharan Singh and not by the appellant, who

has based his claim on the basis of the Will.

d) In Syed Bhasheer Ahmed's case, a Full bench of this court was dealing with a reference made by a Division Bench on a doubt entertained by it

as to whether the decisions in Hanumaiah Vs. State of Karnataka, and Chikkanarasaiah Vs. Tirupataiah, had laid down the correct law and in view

of the decisions of the Supreme Court in State of Karnataka and another etc. Vs. G. Seenappa and another, etc. etc., and Guruputrappa Mallappa

Harkuni Vs. The Tahsildar and Others, .

The incidental reference to the doctrine of feeding the grant by estoppel in considering the conspectus of Sections 5, 6, 7 and 7A of the Karnataka

Village Offices Abolition Act, 1961, is sought to be relied upon by the learned counsel for the appellant.

e) In Lakshmana Gowda's case, a division bench of this court was considering the legal status of holders of service mam lands before the same

was re-granted to them and the right if any vested in transferees, who were unauthorized holders of such Service mam lands, claiming under the

grantees and incidental questions. This decision is again referred to only to urge the application of the doctrine of feeding the grant by estoppel, as

made applicable in certain circumstances and discussed in the said judgment.

f) The decision in Sri Nipra Channebasava Deshikendra Swamigalu Matadipathigalu"s the facts of the case before a division bench of this court

was as follows:

The appellant was said to be the Mathadhipati of a religious institution called Kannada Math. The dispute related to certain lands which were

granted as Jagir lands by the Rajah of Coorg in 1809. The lands were allotted in favour of the predecessor of the respondents. The lands were

mam lands and the imams stood abolished on the enactment of the Karnataka Certain Inams Abolition Act, 1977 ("the 1977 Act" for brevity).

Upon abolition of mams, the lands stood vested with the State, free from encumbrances. Since the 1977 Act was one of agrarian reforms and the

purpose of the 1977 Act was to benefit the original holders of the land, the holders i.e., mamdars or their tenants were given a right to claim regrant

of the land.

An application was said to be made by the institution for regrant of the land under the 1977 Act. The respondents, namely, the erstwhile

mortgagees also sought for regrant of the land. Their claim was rejected and the land was granted in favour of the Mathadhipati by the competent

authority and the same was affirmed by the Division Bench of the High Court.

Since the occupancy certificate was not being granted, the appellant filed a writ petition in the nature of writ of mandamus and subsequently

occupancy certificate was granted.

The appellant claimed that he was put in possession by the competent authority under the 1977 Act. The respondents claimed that by virtue of the

order of regrant in favour of the appellant, the earlier mortgage was revived and the Tahsildar had no jurisdiction to deliver possession to the

appellant. The order of the Tahsildar for delivery of possession was quashed. There was an order of remand passed by a learned Single Judge

which was questioned by the respondents. The writ appeals were filed by the appellant on the ground that the scope and ambit of Section 4 of the

1977 Act had not been considered. The learned Single Judge found that the Tahsildar had not properly conducted the enquiry and set aside the

impugned order and remanded the matter to the Tahsildar for fresh enquiry. The learned Single Judge further directed that Respondents 1 to 5

should be re-inducted to possession of the land subject to the final result of the enquiry.

Aggrieved by the order of the learned Single Judge filed separate writ appeals. Similarly, the respondents also filed a writ appeal questioning the

order of remand. The Division Bench with reference to Section 42 of the Transfer of Property Act, 1882, held that the said provision has

application.

It was held that Section 4(2)(b) does not expressly or impliedly provide that after regrant the encumbrance created would not get revived. Under

the said provision, the land after passing of the 1977 Act shall stand vested in the State Government free from all encumbrances and the transferees

cannot enforce their contractual rights against the Government.

It was held that Section 4(2)(b) is silent with regard to contractual rights of the alienee after regrant in respect of alienation validly created prior to

vesting in favour of the Government. Therefore, with reference to Section 43 of the TP Act, it was held that it is clearly applicable to the facts of

the case.

g) In *Renu Devi's* case, the Apex Court did not apply Section 43 of the TP Act, but has explained the scope of the provision thus:

The doctrine of feeding the grant by estoppel which is in essence a principle of equity stands statutorily recognised in India by Section 43 of the

Transfer of Property Act. Section 43 of the TP. Act does not in terms apply to the facts of the present case, inasmuch as the deed dated

22.3.1979 is not a transfer for consideration: we are referring to Section 43 abovesaid as illustrative of the doctrine and its statutory recognition in

Indian Law.

13. The rule of feeding the estoppel, as recognized in English law and set out in *Rajapakse v. Fernando*, LEX/SLSC/0003/1920 : (1920) AC 892,

at page 897 is,

"where a grantor has purported to grant an interest in land which he did not at the time possess, but subsequently acquires, the benefit of his

subsequent acquisition, goes automatically to the earlier grantee, or as it is usually expressed, feeds the estoppel."

Mulla states in the work on Transfer of Property Act (Ninth Edition, 2000, atp. 310):

The Principle is based partly on the common law doctrine of estoppel by deed and partly on the equitable doctrine that a man who has promised

more than he can perform must make good his contract when he acquires the power of performance.

In *Tilakdhari Lal and Another vs. Khedan Lal and Others* AIR 1921 112 (Privy Council) , Lord Buckmaster stated the rule of estoppel by deed as

follows-

If a man who has no title whatever to property grants it by a conveyance which inform would carry the legal estate, and he subsequently acquires

an interest sufficient to satisfy the grant, the estate instantly passes"".

14. Though there is some doubt expressed by Indian scholars and authorities if the common law doctrine of "the estate instantly passes" is

applicable in India but there is no doubt that the doctrine of feeding the estoppel applies in India. The rule is that if a man, who has no title whatever

to the property, grants it by a conveyance which in form carries the legal estate, and he subsequently acquires an interest sufficient to satisfy the

grant, the estate instantly passes. (See Mulla, *ibid.* p. 312). Equity treats that as done which ought to be done. The doctrine may not apply if the

deed of transfer itself was invalid or if the third party has acquired title bona fide, for consideration and without notice.

9. On the other hand, the legal position as interpreted in the facts and circumstances of the authorities cited by the learned counsel for the

respondent is as follows:

a) In Kartar Singh's case, the appellant before the apex court was the defendant. The respondent therein is said to have executed a sale deed in

the year 1961, in favour of the defendant, alienating lands on her behalf and on behalf of her minor son. The son, on attaining majority, is said to

have filed a suit seeking a declaration that the sale of his share in the lands, so alienated, did not bind him. The suit is said to have been decreed in

his favour. But before taking possession of his share of the land, in terms of the decree, he is said to have died. His mother, as a Class - I heir

under Section 6 of the Hindu Succession Act, 1956, read with the Schedule thereto succeeded to the estate. The defendant had then claimed the

benefit of Section 43 of the TP Act. The High Court, in a second appeal had refused to set aside the decree of the trial court and denied the

remedy under Section 43 of the TP Act.

The apex court held thus:

4. A reading clearly shows that for the application of Section 43 of the TP Act, two conditions must be satisfied. Firstly, that there is a fraudulent

or erroneous representation made by the transferor to the transferee that he is authorised to transfer certain immovable property and in the

purported exercise of authority, professed to transfer such property for consideration. Subsequently, when it is discovered that the transferor

acquired an interest in the transferred property, at the option of the transferee, he is entitled to get the restitution of interest in property got by the

transferor, provided the transferor acquires such interest in the property during which contract of transfer must subsist.

5. In this case, admittedly, Kulwant Singh was a minor on the date when the respondent transferred the property on 19.4.1961. The marginal note

of the sale deed specifically mentions to the effect:

... that the land had been acquired by her and by her minor son by exercising the right of pre-emption and that she was executing the sale deed in

respect of her own share and acting as guardian of her minor son so far as his share was concerned.

6. It is settled law that the transferee must make all reasonable and diligent enquiries regarding the capacity of the transferor and the necessity to

alienate the estate of the minor. On satisfying those requirements, he is to enter into and have the sale deed from the guardian or manager of the

estate of the minor. Under the Guardian and Wards Act, the estate of the minor cannot be alienated unless a specific permission in that behalf is

obtained from the district court. Admittedly, no such permission was obtained. Therefore, the sale of the half share of the interest of Kulwant Singh

made by his mother is void.

7. Section 43 feeds its estoppel. The rule of estoppel by deed by the transferor would apply only when the transferee has been misled. The

transferee must know or put on notice that the transferor does not possess the title which he represents that he has. When noted in the sale deed

had put the appellant on notice of limited right of the mother as guardian, as a reasonable prudent man the appellant is expected to enquire whether

on her own the mother as guardian of minor son is competent to alienate the estate of the minor. When such acts were not done the first limb of

Section 43 is not satisfied. It is obvious that it may be an erroneous representation and may not be a fraudulent one made by the mother that she is

entitled to alienate the estate of the minor. For the purpose of Section 43 it is not strong material for consideration. But on declaration that the sale

is void, in the eye of law the contract is non est to the extent of the share of the minor from its inception. The second limb of Section 43 is that the

contract must be a subsisting one at the time of the claim. A void contract is no contract in the eye of law and was never in existence so the second

limb of Section 43 is not satisfied.

The Apex then quoted the ratio as laid down in the Jumma Masjid case supra and concluded that in cases where the transferee knows as a fact

that the transferor does not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. Section

43 would then have no application and the transfer would fail under Section 6(1) of the TP Act.

b) In Jharu Ram Roy's case, a three judge bench of the apex court has applied and followed the ratio laid down in Hardev Singh, supra.

In Nipra Channabasava D.S. Mathadhipathigalu Kannada Mutt's case, which was an appeal before the Apex Court against the decision of a

division bench of the Karnataka High court referred to above, the Apex court had reversed the decision of the division bench of this court and

remanded the matter for a fresh consideration while holding that Section 43 of the TP Act could not be applied to the facts of that case, and held

thus:

16. The sine qua non for application of Section 43 is that at the initial stage the person should have fraudulently or erroneously represented that he

is authorized to transfer certain immovable property or professes to transfer such property for consideration. Only if this precondition is satisfied,

the question of option of the transferee arises in case the transferor acquires any interest in the property at any time during which the contract of

transfer subsists. Therefore, the High Court was not justified in concluding that Section 43 is relevant.

In the light of the above decisions, the settled legal position in the interpretation of the scope and applicability of Section 43 of the TP Act

depending on the facts and circumstance of each given case, and the doctrine of feeding the grant by estoppel may be summarized thus:

i) The doctrine of feeding the estoppel envisages that, where a grantor has purported to grant an interest in land which he did not at the time

possess, but subsequently acquires, the benefit of his subsequent acquisition, goes automatically to the earlier grantee, or as it is usually expressed,

feeds the estoppel.

ii) In order to get the benefit of the said provision, the conditions which must be satisfied are:

(1) the contract of transfer was made by a person who was competent to contract; and

(2) the contract would be subsisting at the time when a claim for recovery of the property is made.

However, the provisions would have no application if the transfer was invalid as being forbidden by law or contrary to public policy, as envisaged

under Section 23 of the Contract Act. Thus, no estoppel can be pleaded contrary to the provisions of a statute. The "rule of feeding the estoppel"

shall apply in absence thereof.

iii) For the application of Section 43 of the TP Act, two conditions must be satisfied. Firstly, that there is a fraudulent or erroneous representation

made by the transferor to the transferee that he is authorised to transfer certain immovable property and in the purported exercise of authority,

professed to transfer such property for consideration. Subsequently, when it is discovered that the transferor acquired an interest in the transferred

property, at the option of the transferee, he is entitled to get the restitution of interest in property got by the transferor, provided the transferor

acquires such interest in the property during which contract of transfer must subsist.

10. On the facts of the present case on hand, it would be necessary for the appellant to demonstrate that the requisite conditions as stated above in

invoking the aid of Section 43 of the TP Act was present, in the defendant -appellant having transacted in respect of the suit property.

From a plain reading of the Sale deed, Exhibit P-21, dated 29.3.1985, executed by the plaintiff in favour of the defendant, in respect of the suit

schedule property, though the recitals indicate that both the parties were proceeding on the erroneous presumption that the plaintiff was the

absolute owner of the suit property, it was evident that apart from the Lease-cum-Sale agreement and incidental documents held by the plaintiff

clearly indicated that he was not the absolute owner of the property. The parties even had the benefit of the services of a legal counsel, who had

surely scrutinized the papers in preparing the sale deed and endorsing the same.

However, Clause 7 of the Sale Deed would leave no doubt that the parties were fully aware that the transaction was executory in nature and that

the necessary conveyance of title by the KHB in favour of the plaintiff was pending, in order to confer title on the plaintiff The said clause loosely

translated to English reads thus:

In the event of any dispute raised by the Karnataka Housing Board, I shall, at my expense address the same. And I shall with expedition secure a

Sale Deed in my favour, a photocopy shall be provided to you. The extent of the property now conveyed to you shall stand vested in you

absolutely. The remaining extent of the property shall be properly demarcated and separated by a compound wall to be erected at my cost. You

shall be the absolute beneficiary of all that portion of the property hereby conveyed. To ensure the smooth transfer of the electricity meter and the

water supply meter existing in the portion of property conveyed and the Khatha certificate etc., I shall execute an affidavit and undertake to

endorse applications to be made in that regard.

The above would clearly indicate that the defendant was not misled or defrauded in proceeding on the basis that the plaintiff was the absolute

owner of the property, on the other hand the defendant was fully aware of the same. It was also brought home to him when the KHB had promptly

terminated the lease agreement executed in favour of the plaintiff on being approached by the defendant with a request to confer title on him in

respect of the portion of the property conveyed to him by the plaintiff

The fact that KHB has executed a sale deed subsequently, in favour of the plaintiff, even though the lease agreement was terminated, is not the

subject matter of the present lis.

The defendant was therefore not in a position to invoke Section 43 of the TP Act.

The appeal is dismissed. No order as to costs.