(2008) 01 SC CK 0115

Supreme Court of India

Case No: Civil Appeal No''s. 7875-7876 of 2001

Kaliyamma and Others		APPELLANT
	Vs	
Deputy Commnr. Chitradurga Distt. and Others		RESPONDENT

Date of Decision: Jan. 3, 2008

Acts Referred:

- Karnataka High Court Act, 1979 - Section 4
- Karnataka High Court Rules, 1959 - Rule 43G, 43J
- Karnataka Scheduled Castes and Schedules Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1979 - Section 5(

Citation: (2008) AIRSCW 4850 : (2009) 1 ALT 31 : (2008) 1 CHN 177 Supp : (2008) 2 CLT 329 : (2008) 1 JT 182 : (2008) 2 KarLJ 385 : (2008) 2 MLJ 58 : (2008) 1 SCALE 3 : (2008) 4 SCC 137

Hon'ble Judges: P. Sathasivam, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: Shantha Kumar Mahale, Rajesh Mahale and P. Narasimhan, for the Appellant; D.N. Goburdhan, Pinky Anand, Sanjay R. Hegde and Amit Kr. Chawla, for the Respondent

Final Decision: DIsmissed

Judgement

Arijit Pasayat, J.

Challenge in these appeals is to the judgment of a Division Bench of the Karnataka High Court dismissing the writ appeal filed u/s 4 of the Karnataka High Court Act, 1979 (in short the ''High Court Act''). Challenge in the appeals was to the judgment of the learned Single Judge of the Karnataka High Court.

2. Background facts in a nutshell are as follows:

Eight acres of land in Survey No. 59 were granted to two persons namely Rangappa and Nagappa sons of Kariyappa. According to the appellants, the said Nagappa and

Rangappa formed a joint family with one Budappa and in a partition, out of eight acres of joint family lands, five acres were given to Nagappa and three acres were given to Budappa. The said Budappa sold three acres of land to one Thippreeranna by registered sale deed dated 3.2.1965 and remaining five acres of Nagappa were acquired by the vendee in the Court auction on 15.8.1966. Aforesaid Thippreeranna sold eight acres of land under the registered sale deed dated 23.2.1981 in favour of Devraj and the appellants herein are his legal heirs. The Karnataka Schedule Castes and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act, 1979 (in short the ''Act'') came into force with effect from 1.1.1979. One Rangaswamy claiming to be the son of grantee Rangappa and one Sanna Karriyamma claiming to be the legal representative of Nagappa filed application for declaration that the sale was null and void and restoration of possession from the purchaser before the Assistant Commissioner Chitradurga Sub division.

3. These applications were clubbed and enquiry was conducted. The Assistant Commissioner came to hold that when the grant was in favour of general category, the allotment was in Form-I and when it is in the name of persons belonging to the Schedule Castes and Schedule Tribes, it is in Form II.

4. It was the stand of the appellants that the grant was made in Form I an, therefore, the land will not come within the purview of the depressed class category and would be under the general category. Therefore, it was submitted that since they were in possession for more than 12 years from the date the Act came into force they have perfected the title by adverse possession. Legal representatives of the grantee filed appeal u/s 5A of the Act before the Deputy Commissioner. The said Authority allowed the appeal and set aside the order of the Assistant Commissioner holding that in these cases grant has been made during 1957 under the Land Revenue Code and the right of possession in respect of the grantee is limited. It was noticed that there was a condition not to alienate the land in question for a period of 10 years. In these cases the alienation took place much before completion of the ten years'' period. Since the land was alienated during the non-alienable period, the land vested with the Government. It was also noticed that the period would be 30 years and not 12 years as contented.

5. The matter was challenged by the appellants before the learned Single Judge who dismissed the writ petition but inter alia directed as follows:

Whether respondents 2 & 3 have been the legal heirs of the grantee either as sons or adopted sons or in any manner under the law. That question has yet to be decided by the Assistant Commissioner when he has to restore the land to the grantee or his heirs in pursuance of the appellate order. Before actual delivering and restoring possession, the Assistant Commissioner should examine this question and if grantee or heirs are found m possession, the possession has to be restored to them. But if it is not practicable and possible to restore possession of the granted land to the grantee or his heirs u/s 5(1)(b). later part will automatically stand vested

in the Government.

The matter was carried in writ appeal. As noted above, the same was dismissed by the impugned order.

6. The stand taken before the High Court essentially was that the land was granted under the non-depressed class category and, therefore, the period is 12 years to substantiate the plea about adverse possession.

7. Learned Counsel for the respondents on the other hand supported the orders passed by the Deputy Commissioner and the High Court which held that the appellants were not the first purchasers, they in fact are the second purchaser, and in both Forms land Form 2 the non-alienable period is the same.

8. Above being the position there is no merit in these appeals. Similar issues came up for consideration before this Court in Guntaiah and Ors. v. Hambamma and Ors. [2005 (6) SCC 228]. In paragraph 8 of the judgment, it was inter alia observed as follows:

The finding of the Full Bench of the Karnataka, High Court is that if the grant is made under Rule 43-J, there could not have been any condition restricting the alienation and if at all there were any such conditions they are null and void. This view has been taken for the reason that conditions restricting alienations are given under Clause (4) of Rule 43-G and these provisions would apply to grant of lands made under the preceding rules and not apply to Rule 43-J which comes after Rule 43-G of the Rules of 1960. This view has been taken based on the title /marginal note of Rule 43-G. The Full Bench was also of the view that under Rule 43-J, it is not stated that there shall be any conditions prohibiting alienation. Therefore, the Court held that Authorities were not empowered to impose any such conditions.

In view of what has been stated above the inevitable conclusion is that the appeals are without merit, deserve dismissal, which we direct. There will be no order as to costs.