

**V.A. Chinnappa and Others Vs. Chinnappa and Others**

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**Court :** Karnataka

**Decided On :** Sep-19-2014

**Judge :** B.S. Patil

**Appeal No. :** Writ Petition No. 8242 of 2013 (SC/ST)

**Appellant :** V.A. Chinnappa and Others

**Respondent :** Chinnappa and Others

**Judgement :**

(Prayer: This Writ Petition Is Filed Under Articles 226 And 227 Of The Constitution Of India, Praying To Quash The Order Dated 8.11.2010 At Annexure-C Passed By The 2nd Respondent Consequential Mutation At Annexure-C1 Effected By The Third Respondent Dated 1.2.2013 At Annexure-L, Passed By The 4<sup>th</sup> Respondent.)

1. Challenge in this Writ Petition is to the Order dated 01/02/2013 passed by the Deputy Commissioner, Davanagere District, dismissing the appeal filed by the petitioners under Section 5(A) of Karnataka SC and ST (Prohibition of Transfer of Certain Lands) Act, 1979, against the Order dated 08/11/2010 passed by the Assistant Commissioner.

2. The dispute pertains to 4 acres of land bearing Sy.No.32/9 situated in Nilagal Village, Channagiri Taluk of Davanagere District. Petitioner No.1 and respondent No.1 are closely related. The first respondent moved the Assistant Commissioner

seeking cancellation of the alienation and for restoration of the land alleging that the land was sold in violation of the provisions of Section 4 of the Act vide registered Sale Deed dated 14/12/1971 in favour of petitioner No.1. The Assistant Commissioner, upon enquiry found that grant had been made on 20/06/1956 with a condition that the land shall not be alienated for 15 years. However, in violation of the said condition the land had been sold on 14/12/1971 in favour of petitioner No.1 and therefore the sale was illegal as per Section 4 of the Act. This order was appealed again before the Deputy Commissioner. The Deputy Commissioner has also recorded a finding that the land was granted on 20/06/1956 but was sold on 14/12/1971 in violation therein of the non-alienation clause within 15 years and hence the order of the Assistant Commissioner was right and justified.

3. The contention of the learned counsel for the petitioners Sri Ashok R. Kalyanashetty is that, both the authorities have not looked into the original records to know whether the grant was for an upset price or a free grant. He submits that by perusing the revenue records particularly the Mutation entry both the authorities have proceeded to hold that the grant was made on 20/06/1956 violating the non-alienation clause. He points that even if the alleged grant dated 20/06/1956 is taken into consideration the purchase made on 14/12/1971 would be beyond the period of 15 years. He, however, submitted that Mutation entry cannot be the sole criteria to come to the conclusion that there was any such grant with a condition of non-alienation of 15 years.

4. This contention though disputed by the learned counsel for the respondents deserves to be accepted because both the authorities have found that grant was made on 20/06/1956. If it is so, purchase made on 14/12/1971 was beyond 15 years. However, as rightly contended by the learned counsel for respondent No.1, the Mutation entries relied by both the authorities produced at Annexure-K shows that the order of grant was made on 20/06/1957. There is inconsistency and discrepancy regarding the date of grant. This has to be addressed by the authorities with reference to the original records and other supporting material. Therefore, the matter requires reconsideration.

Hence, writ petition is allowed.

Matter is remanded to the Assistant Commissioner for fresh disposal in accordance with law after giving opportunity to both the parties. Consequently the Mutation entry entered in furtherance of the impugned orders is also set aside.

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