

Narayanamma Vs. Munikempaiah and Others

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Court : Karnataka

Decided On : Jun-16-2015

Judge : The Honourable Acting Chief Justice Mr. Subhro Kamal Mukherjee & the Honourable Mrs. Justice B.V. Nagarathna

Appeal No. : Writ Appeal No. 4152 of 2013 (SCST)

Appellant : Narayanamma

Respondent : Munikempaiah and Others

Judgement :

(Prayer: This writ appeal is filed U/S 4 of the Karnataka High Court Act praying to set aside the order passed in the Writ Petition No.8696/2007 dated 5/6/2013.)

1. This is a writ appeal against the judgment and order dated June 5, 2013, passed by the Hon'ble Single Judge in Writ Petition No 8696 of 2007 (SC/ST).
2. One Munikempaiah was a member of Scheduled Tribe Community. He was granted 2 acres of land on March 23, 1962. There was a clear condition stipulated in the allotment deed that the grantee would not alienate the land in question for a period of fifteen years.
3. In spite of such stipulation, the said Munikempaiah, on May 23, 1973, sold that land in favour of one Hanumanthappa for valuable consideration. f

4. Subsequently, on October 10, 1977, the said Munikepmaiah and Hanumanthappa jointly executed a registered deed of sale in favour of this appellant.

5. When the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, came into force, Munikempaiah applied for restoration of land in his favour.

6. The Assistant Commissioner found that, the prohibition was not applicable, however, in Appeal No.LND SC/ST(A)23/2005-06, the Deputy Commissioner found that, in view of the breach of condition stipulated in the deed of sale, the deed of transfer in favour of the purchaser in 1977 was void. The said order was challenged in Writ Petition No.8696 of 2007 by the purchaser, which came to be dismissed being devoid of merit. Hence, this appeal.

7. Learned advocate for the appellant submits that, the deed dated May 23, 1973 is, in fact, a mortgage deed. In 1977 both the original allottee and the purchaser executed the deed in favour of the appellant and that there was stipulation in the deed of 1977 that the deed of 1973 was mortgage deed.

8. Ordinarily, under Sections 91 and 92 of the Indian Evidence Act, 1972, a written document is the sole repository of the transaction between the parties. When the terms of any transaction have been reduced to the form of a document, they must be proved by the production of the document itself. The Judicial community in Dinomoyee -Vs- Roy Luchmiput, reported in 7 IA 8, held that it has been the cardinal rule of evidence, not one of technicalities, but of substance, which has been dangerous to depart from, that where written document existed, they should be produced as being the best evidence of their own contents.

9. The document is produced before us. The language is very clear. It is a sale deed. It was executed during the prohibited period. Hanumanthappa did not acquire any interest in the property by virtue of the said deed inasmuch as the said document was executed during the prohibited period. Thus, he had no saleable right. Consequently, the respondent had no right to execute a sale deed jointly with Hanumanthappa in favour of the appellant. We, therefore, concur with the

opinion of the Hon'ble single Judge, that the transfer in favour of the appellant was void and, thus, the original grantee was entitled to restoration of the possession.

10. We do not find any substance in the appeal. Therefore, the appeal is dismissed.

11. We make no order as to costs.

12. In view of the dismissal of the appeal, the interlocutory applications would not survive for consideration.

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