

Shivanna and Others Vs. The State of Karnataka, Represented by The Learned State Public Prosecutor and Another

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Court : Karnataka

Decided On : Feb-14-2017

Judge : R.B. Budihal

Appeal No. : Criminal Revision Petition Nos. 645, 637 of 2015

Appellant : Shivanna and Others

Respondent : The State of Karnataka, Represented by The Learned State Public Prosecutor and Another

Judgement :

(Prayer: These Criminal Revision Petitions are filed under Section 401 Cr.P.C praying to set aside the criminal proceedings in C.C.No.829/2013 pending on the file of learned Prl.Civil Judge and JMFC, Kanakapura, arising out of Crime No.219/2013 of the 1st respondent police station under Section 143, 447, 427, 506 read with Section 149 of IPC.)

1. Since these two petitions are ordered to be listed together and since common questions of law and facts are involved in both these petitions and as the learned senior counsel for the petitioners in both the petitions and the learned Counsel for respondent No.2/complainant in both the cases have submitted common arguments on both the matters, they have been taken up together to dispose of

them by this common order.

2. CrI.RP.645/2015 is preferred by the petitioners being aggrieved by the order dated Nil passed by the JMFC Court, Kanakapura in C.C.No.829/2013 pending on the file of PrI.Civil Judge and JMFC, Kanakapura, arising out of Crime No.219/2013 of respondent No.1 Police Station for the offences punishable under Sections 143, 447, 427, 506 read with Section 149 of IPC.

3. CrI.RP.637/2015 is preferred by the petitioners accused praying to set-aside the order dated Nil passed in C.C.No.891/2013 pending on the file of PrI.Civil Judge and JMFC, Kanakapura, wherein the Magistrate has passed an order of taking cognizance for the offences and ordered for issue of process to the petitioners/accused returnable by 04.01.2013.

4. Perusing the petitions in both the cases, the brief facts in CrI.RP.No.645/2015 are that accused No.1 lodged the complaint against Ajith Srinivasan/complainant and others on 26.08.2013, which came to be registered in Crime No.220/2013 for the offences punishable under Sections 506 read with Section 34 of IPC and Section 3(1)(iv) of SC/ST (POA) Act, 1988, and on the same day the FIR was submitted. The complaint filed by accused No.1 has the reference of mutation, RTC in the names of the accused in respect of the land in question as on the date of lodging of complaint by CW-1/complainant on 26.08.2013 and also grant of an order of status-quo by the Civil Court granted on 19.08.2013 in O.S.No.371/2013 on the file of the Civil Judge, Kanakapura. The interim order of status-quo was in force up to 03.09.2014. Vacating of interim order in the suit has been challenged in M.A.No.42/2014 and the same is still pending before the Senior Civil Judge at Kanakapura. The further averments show that the land in question was alienated by the members of the Thoti family in favour of one Sri.Dyavarase Gowda through sale deed dated 07.10.1967, but Dyavarase Gowda never came into the possession. The Asst. Commissioner., Ramanagara, through his order dated 16.11.1973 declared the sale deed dated 07.10.1967 as null and void holding that the same is against to the scheme of the Karnataka Village Offices Abolition Act, 1961, (for short, 'KVOA' Act). The order dated 16.11.1973 remained unchallenged till date. By virtue of the order of the A.C., dated 16.11.1973, the land came to be

resumed to the Government and the mutation and RTC continued in the name of Tahsildar, Kanakapura, till the land was re-granted to the LRs of the Barabardar through the order dated 03.05.1993. The order of re-grant also remained unchallenged. By virtue of the order of re-grant, the mutation and RTC came to be recorded in the names of re-grantees i.e., the members of the Barabardar Thoti family. The mutation and RTC was in force along with the order of status-quo of the Civil Court as on the date of registration of the crime in question including the alleged offence of trespass. The LRs of Dyavarase Gowda are said to have executed sale deed in favour of CW-1 Ajith Srinivasan on 12.11.2003, without any right, title and interest, as the sale deed dated 07.10.1967 is declared by the A.C. as null and void against to the scheme of the KVOA Act. Respondent No.1/Police has not verified or examined the documents of the title in the names of the accused including the order of Civil Court as on the date of registration of the crime in question and wrongly filed the charge sheet and the learned Magistrate has also wrongly taken cognizance. The complaint lodged by accused No.1 is closed with final 'B' report, which is challenged before the appropriate court and this itself show that there is no protection to the persons belonging to Scheduled Caste or Scheduled Tribe. The charge sheet in question and order of taking cognizance by the Court below is contrary to the documents, Court order and the same is abuse of the process of law and liable to be quashed.

5. In CrI.R.P.No.637.15 the facts pleaded are that the land in Sy.No.6 of Mohalli, Uyyamballi Hobli, Kanakapura Taluk measuring 3 acres and 15 guntas had a service Imam land. The fore-fathers of the petitioners had been Baravadars. By promulgation of 'KVOA' Act, the said land came to be vested in the State. The forefathers of the petitioners Smt.Nanjamma and Smt.Dundamma had sought for re-grant of the said land before Tahasildar, Kanakapura. After due enquiry, in 1993, the said land came to be re-granted to the said family members of Baravadars. The said land had been sold to one Dyavarase Gowda vide registered sale deed 07.10.1967 and after due enquiry, the sale came to be annulled by the Assistant Commissioner vide order dated 16.11.1973, as per Document No.1. The Tahasildar during the course of enquiry came to the conclusion that the fore-fathers of petitioners were the members belonging to the family of Barvaradars and the same came to be re-granted in favour of said Smt.Nanjamma and

Smt.Dundamma. During the course of enquiry, the said Dyavarase Gowda had participated in the proceedings but had failed to produce any documents supporting her version. In view of the said re-grant, the revenue authorities changed Khata in favour of said re-grantees. The said Dyavarase Gowda had also submitted a representation before the Tahasildar for seeking cancellation of khata made in favour of the said Barawardars. After a formal enquiry, the Tahasildar had passed orders for making Khata in favour of said Dyavarase Gowda. The same was challenged in the appeal before the A.C. Ramanagara in R.A.68/2003-04, who after hearing, passed an order on 17.10.2005 remanding the case to the Tahasildar for fresh disposal. Accordingly, the Tahsildar, Kanakapura held an enquiry and passed an order on 12.12.2012 for making khata in the name of the petitioners and then family members (Family members of Barvardhars). Respondent No.2 and one Vinay Karthik started illegally interfering with the family members' peaceful possession and enjoyment of Barwardars. At that stage, Smt.Lakshmamma and two others filed a suit in O.S.No.371/2013 on the file of Civil Judge and J.M.F.C., Kanakapura for permanent injunction and obtained an order for maintaining status-quo. The change of khata in favour of purchasers had been rejected by the order of the competent authorities, the LRs could not have conveyed right, title and interst in respect of the said property in favour of respondent No.2 and is joint purchaser. In spite of the fact that petitioners have been legal owners in possession of the said property, supported by the documents, respondent No.2 and his supporters caused obstruction on 18.10.2013 at 12.40 p.m. Respondent No.2 appeared before respondent No.1 Police and submitted a written complaint stating that, when he had been to his farm, his workers Bhagya and Yogesh informed him that on 13.10.2013 at 4 p.m., petitioner No.1 and five others illegally trespassed to his land and tried to enter, when Bhagya was cleaning the house. The petitioners had also threatened them of dire consequences and they will be removed from the place. On the basis of the said complaint, case came to be registered in crime No.258/2013 against the petitioners.

6. At that stage, petitioner Nos.1 and 2 had filed a petition under 482 of CR.P.C. in Criminal Petition No.6957 and 6956 of 2013 before this Court. After hearing, this Court had disposed of the petitions with a direction to the respondent-Police to

consider the documents produced by the petitioners before filing the final report. But though such documents were produced before respondent No.1-Police, they have ignored the said documents and submitted the final report against them. The learned Magistrate has passed the order taking cognizance and order for issue of process to the accused, the order is illegal improper and not sustainable in law. The order is not even signed by the learned Judge and it is not even dated, these would go to show that there is absolutely no application of judicial mind by the learned Judge.

7. Heard the arguments of the learned senior counsel appearing for the petitioners-accused in both the petitions and also the learned Counsel appearing for the respondent No.2-complainant in both the petitions.

8. It is the contention of the learned senior counsel for the petitioners that land bearing Sy.No.6 of Mohalli, Uyyamballi Hobli, Kanakapura Taluk measuring 3 acres and 15 guntas is the disputed property in both these petitions. The said land was originally Thoti Inam Land and one Kalamallaiah was the Barabardar of the said land, who sold the said property in favour of one Dyavarase Gowda under the registered sale deed dated 07.10.1967. However, it is his contention that the possession of the said land continued with the present petitioners and their predecessors in title. He has also submitted that on the basis of the said sale deed revenue authorities made the entries in the name of one Dyavarase Gowda, the purchaser of the property, and the said entries were during the lifetime of Dyavarase Gowda, but it is denied by the petitioners that neither Dyavarase Gowda nor his family members were put into actual possession and enjoyment of the said land in spite of the registered sale deed, and the possession continued with the petitioners only. He has also submitted that the legal representatives of Kalamallaiah filed an application seeking re-grant of the lands and the land has been granted in favour of the LRs of Kalamallaiah by an order dated 03.05.1993 by the jurisdictional Tahasildar. He has further submitted that though on the basis of the registered sale deed in favour of Dyavarase Gowda and thereafter, name of his LRs came to be entered by the revenue authorities in the record of rights of the said land, the petitioners challenged the same before the Tahasildar, who ordered to enter the name of LRs of Kalamallaiah, the original Thoti Barabardar, and when

the appeal was preferred before the Asst. Commissioner, he has also accepted the contention of the revision petitioners and rejected the contention of the LRs of respondent No.2-complainant with regard to the said entries. He has also submitted that when the order of the Asst. Commissioner was challenged before the Deputy Commissioner in revision petition under Section 136(3) of Karnataka Land Revenue Act, the Deputy Commissioner wrongly allowed the revision petition and ordered to enter the name of the purchaser from LRs of Dyavarase Gowda.

Learned senior counsel has also submitted that the order of the Deputy Commissioner is not final, as the petitioners herein have challenged the same before this Court by filing the writ petition, which is still pending. He has further submitted that when the predecessor in title namely Kalamallaiah was the original Barabardar, who was in possession of the said property, thereafter, in view of coming into the force of 'KVOA' Act, the said land was vested with the State. Subsequently, the LRs of Kalamallaiah made an application seeking re-grant of the said land in their favour, accordingly, it was re-granted. The revision petitioners are continuously in possession of the said property, they have constructed the house building and staying there.

When things stood thus, respondent No.2- complainant, who claims to be the purchaser of the property from the LRs of Dyavarase Gowda, the original purchaser, contends that the revision petitioners committed criminal trespass into the said property and committed the alleged offences under Section 143, 447, 427, 506 read with Section 149 of IPC and criminal case came to be registered against the petitioners. He has also submitted that when the petitioners themselves have continued into the actual possession under the re- grant order, the question of committing criminal trespass into the said land does not arise at all. It is also his contention that when the respondent No.2- complainant started to cause obstruction to the possession and enjoyment of the petitioners, they have filed the civil suit in O.S.No.371/2013 on the file of the Principal Civil Judge, Kanakapura, and status-quo order was passed in the said suit against the respondent No.2-complainant. Therefore, he has submitted that the matter is purely civil in nature, no criminality is involved in the proceedings, hence, entertaining the complaint and taking cognizance against the petitioners does not

arise at all.

Learned senior counsel has further submitted that the order taking cognizance, which are challenged in the above two petitions clearly show that there is no application of judicial mind by the learned Magistrate to the available materials and the learned Magistrate has blindly took cognizance, which is against the mandatory provisions of Section 190 of Cr.P.C. Even, in one case in the order taking cognizance, the signature of the learned Magistrate does not appear and in both the matters, date is also not mentioned that on which particular day the order is passed, hence, this clearly show that the impugned orders are without application of mind and ignoring the fact that the matter involved is purely civil in nature. He has also submitted that the documents on the side of the revision petitioners/accused were not at all considered by the Police while investigating the case, even though there was a direction from this Court in the writ proceedings to the Investigating Officer to look into those documents before filing the charge sheet in the case. Learned senior counsel has submitted that the said aspect is also not looked into the by the learned Magistrate while taking cognizance in both the matters. Hence, he has submitted to allow the petitions and to set-aside the impugned orders in both the matters or in the alternative, to allow both the petitions and to set-aside the impugned orders and remand back the matters to the learned Magistrate for fresh consideration.

In support of his contentions, learned senior counsel has relied upon the following decisions:

- i. AIR 2013 SC 3018 in the case of Dharam Pal and Ors v. State of Haryana and Anr.;
- ii. AIR 2015 SC 2757 in the case of S.R.Sukumar v. S.Sunaad Raghuram;
- iii. AIR 2015 SC 3656 in the case of Mohd. Khalid Khan v. State of Uttar Pradesh and another.

9. Per contra, learned counsel for respondent No.2/complainant has submitted that the original Thoti Barabardar namely Kalamallaiah during his lifetime sold the said

property in favour of one Dyavarase Gowda and the respondent No.2/complainant in-turn purchased the property from the LRs of said Dyavarase Gowda. He has also submitted that the sale deed is not yet cancelled as respondent No.2/complainant challenged the order of Deputy Commissioner passed in the revision petition by filing a writ petition before this Court, which is still pending.

Learned counsel has further submitted that the sale made by Kalamallaiah in favour of Dyavarase Gowda was in the year 1967, hence, it is his contention that when the land, which is Thoti Inam Land, the Barabardar of the said land, sold the property under the registered sale deed in between 1963 and 1978, the said sale is valid and the Barabardar cannot contend that the sale is invalid. In this connection, he has submitted that Basheer Ahmed's case reported in ILR 1994 (1) KAR 159 is also with similar facts and it is aptly made applicable to the facts of the present case. He has also submitted that when the original Thoti Barabardar sold the property in the year 1967 and subsequently, in the year 1993 when there is a re-grant of the said land in favour of the LRs of Kalamallaiah under Section 43 of Transfer of Property Act under the principle of feeding the grant by estoppel, the predecessors become the absolute owner of the property and the grantees cannot question the said sale.

It is his contention that under the sale deed from the LRs of Dyavarase Gowda, respondent No.2/complainant continued to be in possession of the property, constructed the house property and cultivating the land growing crops. It is also his contention that as per the registered sale deed, name of respondent No.2/complainant entered into the record of rights of the said land and when it was challenged by the revision petitioners, though there are orders against respondent No.2/complainant for deleting his name and to enter the name of the petitioners, but the said orders of the Tahasildar and the Asst. Commissioner were challenged by respondent No.2/complainant before the Deputy Commissioner and the Deputy Commissioner passed the order in Revision Petition No.97/2011-12, wherein the Deputy Commissioner relying upon the decision of this Court reported in AIR 1994 KAR 227 in the case of Syed Basheer Ahmed and others V/s State of Karnataka, allowed the revision petition and set-aside the order passed by the Tahasildar dated 12.12.2012 and MR.No.4/2003-04 dated 27.01.2004 in respect of the

revision petitioner therein was confirmed subject to final decision in O.S.No.371/2013 on the file of the Prl. Civil Judge and JMFC., Kanakapura. Hence, he has submitted that the order of Deputy Commissioner itself shows that the sale deed in favour of the complainant is not set-aside. However, he has submitted that against the order of Deputy Commissioner, the petitioners herein preferred the writ petition before this Court and the same is pending. With regard to the revision petitioners filing civil suit in O.S.No.371/2013 and the status-quo order in the said suit is concerned, learned counsel has submitted that he appeared in the case, filed objections to I.A.No.1 and when I.A.No.1 was heard on merits, the learned Civil Judge dismissed the application I.A.No.1. However, he has submitted that the revision petitioners preferred Miscellaneous Appeal and the same is pending consideration.

It is also his contention that so far as taking cognizance is concerned, there is no necessity for the learned Magistrate to pass a detailed order and if there is an application of mind by the learned Magistrate while passing the order taking cognizance, that is enough, and only on the ground that it was not signed by the learned Magistrate and no date is mentioned, it cannot be said that it is an illegal order. He has also submitted that looking to the order passed by the learned Magistrate taking cognizance in both the matters, the Magistrate has clearly mentioned that he perused the charge sheet material, which is more than enough. Hence, he has submitted that if there is any grievance by the petitioners herein, they can very well file an application seeking their discharge from the proceedings under the relevant provisions of law. Therefore, he has submitted that there is no merit in these petitions and same are to be dismissed.

In support of his contention, learned Counsel has relied upon the following decisions:

- i. ILR 2016 KAR 2233 in the case of N.Venkateshappa vs. Munemma and Others;
- ii. (2015) 7 SCC 440 in the case of Prasad Shrikant Purohit vs. State of Maharashtra and Another;

iii. (2012) 9 SCC 460 in the case of Amit Kapoor vs. Ramesh Chander and Another;

iv. AIR 1985 SC 628 in the case of Pratibha Rani v. Suraj Kumar and Another.

10. I have perused the grounds urged in the revision petition, impugned orders passed by the learned Magistrate in both the cases, which are challenged in these petitions, the documents produced on both sides and also the decisions relied upon by the counsel on both sides, which are referred above and also considered the submissions made by the learned Counsel on both sides at the Bar.

11. Certain facts are not in dispute that the land bearing Sy.No.6 of Mohalli, Uyyamballi Hobli, Kanakapura Taluk measuring 3 acres and 15 guntas was the Thoti Inam Land and one Kalamallaiah, the predecessor of the revision petitioners was the original Barabardar of the said land.

12. Looking to the revenue entries mentioned in the record of rights of the said land, for certain period the name of respondent No.2/complainant was also mentioned as the owner in possession of the said land and for some period the names of the revision petitioners was also mentioned in the said entries. There are orders from the revenue authorities i.e., Tahasildar, Asst.Commissioner and the Deputy Commissioner, but as admitted by both sides, the order passed by the Deputy Commissioner setting-aside the order of Tahasildar and confirming the entry of the name of the respondent No.2/complainant to the said landed property has been challenged before this Court by filing the writ petition by the petitioners herein and the said matter is still pending before this Court for consideration; so also, in the suit O.S.No.371/2013, the order passed on I.A.No.1 dismissing the said application for injunction against respondent No.2/complainant, the petitioners preferred the Miscellaneous Appeal, which matter is also pending consideration. These facts are also not disputed by both sides. But the main aspect to be considered by this Court in these two petitions is that whether the order passed by the learned Magistrate taking cognizance and issuing of process to the petitioners is in accordance with law or not?

13. Perusing the documents produced in the case, as per Annexure-ZA it shows that there is one more suit in O.S.No.826/2014 filed by the petitioners and others against respondent No.2/complainant herein, so also, against the LRs of original predecessor of Dyavarase Gowda and the said suit is for the relief of declaration that the sale deed dated 07.10.1967 obtained by defendant No.1 i.e., Dyavarase Gowda and sale deed dated 12.11.2003 obtained by defendant No.2 i.e., respondent No.2 herein, are null and void and also seeking declaration that the plaintiffs in the said suit are lawful owners in possession and enjoyment of the suit schedule land for having perfected their title by adverse possession with consequential relief of injunction and the said suit is also pending.

14. It is the grievance of the petitioners herein that earlier the petitioners filed Crl.P.Nos.6956/2013 and 6957/2013 under Section 482 of Cr.P.C. seeking to quash the proceedings initiated in Crime No.219/2013 and 258/2013 by the first respondent-Sathanur police and those criminal petitions were dismissed by this Court vide order dated 26.11.2013 holding that the case is still under investigation and if no material is found during investigation against the petitioners, 'B' report will be filed by the police. Petitioners were also directed to place the evidence available with them before the police for consideration. It is the grievance of the petitioners herein that though all the necessary documents were filed before the police by the petitioners to demonstrate that they are in possession of the land in question and they have not committed any offence as alleged in the complaint, without entertaining those documents, the police have filed charge sheet against the petitioners in both the crimes.

15. The materials placed on record shows that earlier both these revision petitions i.e., Crl.R.P.No.645/2015 and Crl.R.P.No.637/2015 were heard together and a common order dated 15.12.2015 was passed disposing of the revision petitions, with the specific direction to the respondent-police to conduct further investigation under Section 173(8) of Cr.P.C. and to submit proper further report to the jurisdictional magistrate. The revision petitioners herein were also directed to produce all the available material before the police for consideration in respect of Crime Nos.219/2013 and 258/2013. It is the grievance of the petitioners herein that even though they have produced the said documents, the police have not

taken them into consideration and no further investigation was conducted under Section 173(8) of Cr.P.C. as directed by this Court vide its order dated 15.12.2015.

16. Looking to these aspects of the matter and as the civil and criminal proceedings are still pending before the Courts of law, I will not discuss about the merits of the case, since it will affect the pending proceedings. When there are two civil suits pending, one is for permanent injunction and another is for declaration of two sale deeds as null and void and further, on the order passed on I.A.No.1 in O.S.No.371/2013 there is Miscellaneous Appeal pending before the Principal Civil Judge (Sr.Dn.), Kanakapura, so also, there are two writ proceedings pending before this Court, the police ought to have taken these aspects into consideration during the course of investigation.

17. Admittedly, the endorsement issued by the police as per Annexure "ZC" dated 20.2.2016 makes it clear that they have not conducted further investigation as per Section 173(8) of Cr.P.C., as directed by this Court. Even in the order passed by the learned Magistrate while taking cognizance, no specific reference is made that the materials produced by the petitioners before the police were also part of the charge sheet. Apart from that, in the order passed by the learned Magistrate while taking cognizance, it is mentioned that he has perused the charge sheet material. It is no doubt true that no detailed order is necessary while taking cognizance of the offences, if there is application of mind by the learned Magistrate while taking judicial notice of the facts. But in these two particular cases, in view of the criminal and civil proceedings pending before the criminal and civil Courts and the proceedings before the revenue Courts i.e., before the Tahsildar, Assistant Commissioner and the Deputy Commissioner and also the writ proceedings challenging the said orders and when it is the case of the revision petitioners that they have produced all these documents before the police as directed by the Court, it was the bounden duty of the police to conduct further investigation, as directed, under Section 173(8) of Cr.P.C. and further, it was also the duty of the learned Magistrate to look into all those materials while passing the order.

18. Further, the order passed by the learned Magistrate in C.C.No.891/2013 taking cognizance of the offences does not bear his signature and also no date is

mentioned to show on which particular day the order was passed. In C.C.No.829/2013 though signature is affixed to the order of taking cognizance, date is not mentioned. Both the orders are verbatim except the change in mentioning the accused numbers.

19. Looking to the materials placed on record and several proceedings pending before the Courts of law between the parties, the learned Magistrate ought to have considered the same before proceeding to pass the orders, which is not done in this case. Hence, the orders passed by the learned Magistrate taking cognizance of the offences are not sustainable in law, in view of my above discussion and it requires reconsideration by the learned Magistrate.

20. Hence, both the criminal revision petitions are allowed and the orders dated NIL passed in C.C.Nos.829/2013 and 891/2013, taking cognizance of the offences against the revision petitioners herein, are hereby set aside. The matters are remitted back to the concerned Magistrate Court for consideration of the materials placed on record and to pass orders afresh, in accordance with law.

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