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Court : Karnataka

Decided On : Jul-10-1997

Reported in : 1998(1)KarLJ630

Judge : Hari Nath Tilhari, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4 and 5; Limited Act, 1963 - Schedule - Articles 65 and 123; [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 13; Mysore Revenue Code - Sections 70

Appeal No. : Writ Petition No. 27313 of 1996

Appellant : Hanumappa

Respondent : Honnappa and Others

Advocate for Def. : Sri Patel D. Karigouder, Adv. and ;Smt. Shantha Kumari, Government Pleader

Advocate for Pet/Ap. : Sri Virupakshaiah Adv. M/s. Ennar Associates

Judgement :

ORDER

1. By this petition, the petitioner has challenged the order of the Appellate Authority, namely the Special Deputy Commissioner, dated 27-10-1986, in SCPTL

(A) 237/84/85, vide, Annexure-D to the writ petition whereby, the Deputy Commissioner has set aside the order of the Assistant Commissioner, dated 3-9-1979, in Case No. SCPTL 4/79-80.

2. The facts of the case in nut-shell are that land measuring 10 acres of Sy. No. 47/2 of village Purlahalli in Challakere Taluk was granted to Hanumanthappa on 5-2-1957. The grantee by virtue of sale deed dated 18-5-1964, transferred the entire granted land in favour of Halappa s/o Jannappa. According to the petitioner's case, the Assistant Commissioner, Chitradurga Sub-division, Chitradurga, initiated suo motu proceedings under Section 5 of the Karnataka State SC and ST (Prohibition of Transfer of Certain Lands) Act, 1978 (Act 2 of 1979) and after due notice to the alienee he passed the order on 3-9-1979, declaring the transfer deed dated 18-5-1964, to be null and void, as being opposed to the non-alienation clause and directed restoration of possession of the land against the alienee in favour of the grantee. The Assistant Commissioner held that the sale of the land to the alienee, namely Halappa was contrary to the conditions of the grant and so null and void.

3. Having felt aggrieved from the order of the Assistant Commissioner, dated 3/4-9-1979, the petitioner preferred the Appeal No. 237/84-85. The Special Deputy Commissioner, Chitradurga, allowed the appeal by order dated 27th October, 1986 and set aside the order of the Assistant Commissioner dated 3-9-1979. The Deputy Commissioner has opined that though the transfer was illegal, being in violation of the non-alienation clause and it had taken place during the period of prohibition, contained in non-alienation clause, yet the transferee has perfected his title over the granted land by enjoying it for 14 years on 1-1-1979 and for this reason, the alienation made in his favour cannot become null and void, nor can the land be restored to the grantee or his heirs. It may be mentioned here that the appeal had been filed originally by the alienee and he having died, the present respondent 1-Honnappa has continued the appeal in the representative capacity representing all the legal heirs of deceased alienee.

4. The petitioner who is the son and heir of the original grantee-Hanumappa, who was arraigned as respondent 4 in the appeal, has filed this writ petition under Article 226 of the [Constitution of India](#). On notice being issued, appearance has

been put on behalf of respondent 1 by Sri Patel Karigouder, an Advocate of this Court. Statement of objections has also been filed on behalf of respondent 3.

5. I have heard Sri Virupakshaiah for the petitioner and Sri Patel D. Karigouder for the contesting respondent 1 as well as Smt. Shantha Kumari, learned Government Pleader appearing for respondents 2 and 3.

6. On behalf of the petitioner, Sri Virupakshaiah submitted that Annexure-A to the writ petition is the Saguvali Chit, which has been issued granting the land in pursuance of the order dated 5-2-1957 and this Saguvali Chit was issued on 29-7-1957. Learned Counsel contended that this land was granted to the grantee Hanumappa, by the Government for cultivation and occupancy rights as depressed person were given. It was a free grant and it contained non-alienation clause, whereunder it was provided that the land in question shall not be alienated for a period of 15 years. Learned Counsel for the petitioner contended that alienation has been made admittedly within a period of 15 years from the date of grant, it was illegal, null and void and as such the Assistant Commissioner rightly passed the order under Section 5 of the Act. But the Special Deputy Commissioner acting as Appellate Authority committed error of law apparent on the face of record when he opined that the deed cannot be declared null and void and possession cannot be restored because the alienee has perfected his title by adverse possession, of 12 years. Learned Counsel for the petitioner contended that by the deed Annexure-A, only occupancy rights were granted and land was only granted for the purpose of cultivation and no ownership rights were transferred under the deed in favour of the grantee and as such the alienee could not perfect his title by adverse possession, unless he pleads and proves to have been in possession adversely to the Government, which has granted the land to the grantee, for 30 years.

7. Learned Counsel for the petitioner made reference to the decision of the Supreme Court in the case of *Manchegowda v State of Karnataka*. He also made reference to a latter decision of the Supreme Court in the case of *Sunkara Rajyalakshmi v State of Karnataka*.

8. On behalf of the respondents it has been contended that the alienee had been in peaceful occupation and possession for more than 12 years from the date of alienation and he had been in possession for about 14 years on the date the Act came into force. Learned Counsel contended that when grant was made in favour of the grantee and invalid alienation was made and alienee had taken possession under the deed, alienee's possession from that date became adverse and so on the completion of 12 years possession, under invalid deed of transfer the alienee has perfect title by adverse possession and therefore, the Deputy Commissioner was justified in taking the view that on the date the Act 2 of 1979 was enforced the present respondent 3 had perfected title by adverse possession and the land could not be restored. He submitted that almost full ownership rights were given to the grantee. Learned Counsel for the respondent further contended very emphatically that this petition may be dismissed on the ground of laches and delay as the order impugned in the writ petition has been passed on 27th October, 1986 and the writ petition had been filed in this Court challenging the order dated 18-9-1996, as such the petition has been delayed by 10 years. Learned Counsel contended that the petition should be thrown out on the ground of non-joinder of the brothers of the petitioner as party in the writ petition and non-joinder of the brothers of respondent 3 as party in the writ petition.

9. In the rejoinder the petitioner's Counsel submitted that the appeal had been prosecuted by the present respondent 3 in the representative capacity for other heirs of original alienee and as appears from the judgment that the present respondent 3 was the only appellant. After the death of his father, the present petitioner impleaded respondent 3 only as the party in that capacity. The petitioner's Counsel further submitted that so far as other heirs of the grantee are concerned, this petition has been filed for the benefit of the heirs of the grantee, but he has claims along with them and in that capacity. Learned Counsel contended that in the interest of justice and interest of the grantee as well as interest of law enacted, under Act 2 of 1979, the petition may not be thrown on this technical ground particularly when counter has been filed, it may be decided on merits.

10. To the contentions of the petitioner's Counsel that the order impugned was ex parte and he had no notice of the order, learned Counsel for the respondent contended that he had filed the copy of the order sheet which reveals that notice had already been served by the Appellate Authority, but the petitioner abstained from participating and therefore, it cannot be said that he had no notice of the order.

11. I have applied my mind to the contentions of the learned Counsel for the parties. It is one of the trite principles of law that technicalities are not to be allowed to hamper the course of justice and to frustrate the object of the Act. The writ jurisdiction is discretionary and where it appears to the Court that real injustice is imminent from the orders of the subordinate authority or Courts, it may take cognizance of fact. As regards the question of delay even on the facts as stated by respondent's Counsel that the petitioner or his father or respondents in the appeal were served with the notice but they abstained from hearing and they did not appear. Then in that case, the order in the appeal can be said to have been passed no doubt on merits but ex parte. It is also one of the basic settled principles of law under the law of limitation, where Limitation Act applies in the matter of setting aside ex parte order, that application for setting ex parte decree in every suit or proceeding, it is provided that limitation may start from the date of knowledge of the parties, where summons was not duly served. Here the party had no knowledge of the order passed. No doubt even if it is taken that he was served with the notice of the appeal and thereafter absented, the decree was passed but no notice of that decree was issued to the present petitioner, the date of knowledge is material. Even otherwise, if there has been some delay or there has been delay in filing the writ petition, it is at the stage of admission, the Court can throw out the petition, on the ground of laches and delay. But when notice was being issued and appearance was put, matter has been heard on merits, this Court is not always bound to dismiss the writ petition on the ground of laches and I do not think it proper to dispose of the writ petition or dismiss the writ petition on the ground of laches. The other point that has been urged is that necessary parties have not been impleaded. In the present case the parties had been acting in the representative capacity. The respondent 3 when he filed the appeal, he did not implead his other brothers and it is only his name did appear in the appeal.

Therefore, the petitioner cannot be said to have committed anything wrong when he impleaded the present respondent 1 as representing the other heirs and acting in the representative capacity, as he has been acting in course of proceedings in the first appeal. The petitioner in this case has not claimed anything adverse to his brothers or other legal representatives of the grantee. Learned Counsel stated that it was filed for the benefit of those others i.e., for the benefit of his own brothers as well. In such circumstances, I do not think it just and proper to dismiss the writ petition on these technical grounds. No doubt it would have been proper if those brothers of the petitioner would have been impleaded as co-respondents. At this stage if I so order for their impleadment, it may delay the disposal. I take the statement of the petitioner's Counsel on its face value that the petition had been filed by the petitioner for the benefit of his own brothers that is other legal representatives of grantee. That as regards the merits of the case, a perusal of Saguvali Chit per se reveals that by this document, ownership of the land had not been granted in favour of the grantee and it was a free grant as mentioned in the deed itself, for no upset price. There has been no dispute on the point between the parties. The deed also indicates that there has been non-alienation clause to the effect that the granted land shall not be alienated for a period of 15 years. If this clause would not have been there, it might have been argued on the basis of Section 70 of the Mysore Revenue Code, that the occupancy rights granted are heritable and transferable. But they are subject to any law or condition under the rules framed under the Code. As there is non-alienation bar of 15 years and the grant also contains such a bar that land shall not be alienated for 15 years. In the present case, the alienation has been made within the period of almost 7 years from the date of grant, that is during the period of operation of non-alienation clause, alienation had been made by the grantee and so definitely, the alienation had been illegal, null and void.

12. That as regards question of petitioner's possession, in my opinion, there is much substance in the contentions of the petitioner's Counsel, that Deputy Commissioner applied wrong period when he held that alienee has perfected title by adverse possession on 1-1-1979. Their Lordships of the Supreme Court in the case of Manchegowda, supra, as well as in the case of Sunkara Rajyalakshmi, supra and the latter decisions, has clearly laid down that in cases whereunder the

grant the Government has granted full ownership and full or entire right and interest in land to the grantee and the grantee has made invalid alienation, i.e., in breach of non-alienation clause, the period of 12 years may be relevant and may be applicable to determine the question of accrual of title by adverse possession. But where the Government has not granted the ownership rights in favour of the grantee, but only something like occupancy rights or licence rights, then 12 years period is not at all relevant and title by adverse possession cannot be perfected by 12 years possession, the reason being that title by adverse possession is to be claimed and accrues only against the true owner of the property, granted in respect of which, grantee has been conferred, rights other than ownership rights, namely occupancy rights, the party claiming title by adverse possession against the Government or to say the alienee from the grantee has to plead, prove and establish that he has been in possession and enjoyment of the property from the date of alienation adversely to the owner i.e., Government for 30 years before the enforcement of the SC and ST (Prohibition of Transfer of Certain Lands) Act, 1978.

13. In this case, admittedly 30 years adverse possession against the Government has not been established and the Deputy Commissioner by having wrongly applied doctrine of the period of 12 years adverse possession to perfect the title, in my opinion, committed error of law apparent on the face of record and on the basis of that error it had committed further error of law apparent on the face of record in taking the view that the alienation could not be declared or held null and void. The question of accrual of title by adverse possession could have arisen and had to be considered only if the title would have been shown to have been perfected by 30 years of open hostile adversepossession. That in the present case, in my opinion as 30 years period was material and the alienee had to prove his adverse and hostile possession against the Government, which he had failed to plead and prove, as such the order impugned passed by the Deputy Commissioner namely the order dated 27-10-1986, Annexure-D, deserves to be quashed and order passed by the Assistant Commissioner dated 3-9-1979, deserves to be maintained.

Thus considered, the writ petition is hereby allowed. The order dated 27-10-1986, passed by the Special Deputy Commissioner, namely respondent 2, copy of which is Annexure-D to the writ petition, is hereby quashed and the order of the Assistant Commissioner dated 3-9-1979 is maintained. The respondents are directed to implement and to give effect to the order dated 3-9-1979. It shall be implemented for the benefit of the heirs of original grantee. The cost of the petition are made easy.

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