

Ninge Gowda Vs. Jayamma and ors.

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Court : Karnataka

Decided On : Jan-29-1980

Reported in : AIR1980Kant166; ILR1980KAR589; 1980(2)KarLJ25

Judge : K. Jagannatha Shetty, J.

Acts : Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 - Sections 4, 5 and 6; Karnataka Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 1967

Appeal No. : Writ Petn. No. 8916 of 1979

Appellant : Ninge Gowda

Respondent : Jayamma and ors.

Advocate for Def. : Chandrasekhariah, Adv.

Advocate for Pet/Ap. : R.J. Babu, Adv.

Judgement :

ORDER

1. One Rame Gowda got by a partition an extent of land measuring 30 1/2 giants in Survey No. 161/1A of Chinakurali village Pandavapura Taluk. Out of that, he sold 18 giants of land to the petitioner Ninge Gowda by a registered sale deed dated- 16th Aug., 1975. Thereupon the wife and three children of Rame Gowda

presented a petition before the Deputy Commissioner, Mandya under S. 39 of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 ('the Act'). Without even a notice to the petitioner, the Deputy Commissioner held that the sale was void because the land sold was a fragment as defined under the said Act. The petitioner unsuccessfully challenged the order of the Deputy Commissioner before the Karnataka Appellate Tribunal. The Tribunal no doubt, held that the Deputy Commissioner ought not to have made the order without hearing the petitioner. Yet it confirmed the order of the Deputy Commissioner on the sole ground that there was no valid defence for the petitioner in the case. It held that the alienation made by Rame Gowda was in clear transgression of the provisions of S. 6 of the Act. The validity of these orders is called into question in this writ petition.

2. It is now not necessary to consider whether the order of the Deputy Commissioner was void because it was made without any notice to the Petitioner. In the appeal, the petitioner had an adequate opportunity. The Tribunal has considered the case on merits after hearing counsel on both sides. Therefore, I straightway go into the merits of the matter.

3. The Tribunal has held that the alienation made by Rame Gowda was contrary to S. 6 of the Act. S. 6 is in the following terms :

'6. Fragmentation Prohibited. - No land 'in any area shall be transferred or partitioned or sub-divided so as to create a fragment.'

It is dear from the above provision that what has been prohibited is a transfer or Partition or a sub-division so as to create a fragment. If the land was already a fragment, S. 6 cannot be a bar. This may sound illogical, but law is not logic. That is also the view taken by a Bench of this Court in Chayappa Santammappa v. Mohamad Hasan ((1964) 1 Mys LJ 166 at p. 169). There is also another reason in support of the alienation. The land as a fragment was not notified as required under S. 4 (2) so as to fall within the scope of S. 5 of the Act. Therefore, the alienation cannot be found fault with.

4. In the result, the rule is made absolute and the impugned orders are quashed. In the circumstances, however, I make no order as to costs.

5. Petition allowed

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