

Krishnamurthy Vs. Hemanna

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Court : Karnataka

Decided On : Nov-21-1986

Reported in : ILR1987KAR1466

Judge : Chandrakantaraj Urs and ;Murlidher Rao, JJ.

Acts : Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 - Sections 10 and 13; [Transfer of Property Act, 1882](#) - Sections 43

Appeal No. : R.F.A. No. 115 of 1975

Appellant : Krishnamurthy

Respondent : Hemanna

Advocate for Def. : P. P. Muthanna and ;A.J. Sadashiva, Advs. for R-3

Advocate for Pet/Ap. : V. Krishnamurthi, Senior Adv. for S. K. Venkataranga Iyengar, Senior Adv.

Disposition : Appeal dismissed

Judgement :

Murlidher Rao, J.

1. This appeal is by the plaintiffs in O. S. 93 of 1971, challenging the judgment and decree of the Civil Judge Civil Station, Bangalore, dated 22-2-1975, by which their

suit for declaration of title and perpetual injunction is dismissed, with costs Suit property is S.No. 107 of Byadarhalli Village in Civil Station, Bangalore.

2. Plaintiff-1 claims to be the purchaser of different sites, alleged to have been formed in the land, on 8-1-1960, from Hemanna-1st defendant; he has sold different sites to other plaintiffs, who in turn have sold them to yet others. On the same day i.e. 8-1-1980, other plaintiffs, also claim to have purchased various sites in the said survey number from 1st defendant. It is the case of the plaintiffs that they are owners in possession. Admittedly on the alleged sites no structures have come up and the land continues to be vacant.

3. In retrospect, it is necessary to narrate certain facts, regarding this land, which has been the subject matter of several orders, transactions and a couple of suits. It is admitted that it was an inam land ; one A Michael was the Khayam guttedar. It is said that on 18-3-1942, A. Michael sold the land in favour of B. S. Ramakrishnappa (defendant-2). On 28-10-1942, Michael, in his capacity as khayam guttedar, is alleged to have passed an order for conversion, permitting the land to be used for building purposes. Reliance for this assertion is placed on Exhibit B-24, dated 28-10-1942 which evidences a receipt of Rs. 120/- from B. S. Ramakrishnappa for S. Nos. 107 and 106. Apropos, the original document is not produced and Exhibit P-24 is a true copy. Fact remains that there is no order of conversion, passed by Michael. However on 8-4-1971, the Tahsildar, Bangalore North, passed an order of conversion, but that order was withdrawn on 12-12-1971. Resultant position is that the land remains an agricultural land.

4. Reverting to the narration, the purchaser B. S. Ramakrishnappa (defendant-2) appears to have filed a suit for possession against Michael, khayam guttedar, and obtained Possession through the Court on 17-12-1952, in execution thereof. thereof. On 20-7-1953, it is alleged, B. S. Ramakrishnappa executed a sale deed in favour of G. T. Hemanna (1st defendant) the vendor of the plaintiffs, in the present suit. This is one facet.

Ramakrishnappa (2nd defendant) was a surety of one Vajravelu, Dhanraj Hirachand was the creditor of Vajravelu, he filed a suit in ; O. S. No. 153/49-50, the suit was decreed. In execution No. 216 of 1952-53, the suit land which had

been attached was sold ; the decree holder Dhanaraj Hirachand purchased the same. Sale was confirmed on 25-9-1953. On 22-10-1953, Dhanraj Hirachand sold the same to G.T. Hemanna (1st defendant) the vendors of plaintiffs 1 and 2. Thus, G. T.Hemanna had two sale deeds in his favour viz., one executed, by B. S. Ramakrishnappa (defendant-2) on 20-7-1953 and the second one executed by Dhanraj Hirachand on 22-10-1953. On 24-10-1953, G. T. Hemanna (defendant-1) executed an agreement of sale in favour of 3rd defendant Gowramma wife of 2nd defendant. On the strength of this agreement, Gowramma, the intending purchaser, filed suit for specific performance in O. S. No. 102 of 1970 ; the said suit was dismissed for default on 1-9-1970. This is another facet of this litigation.

In between this period, the sons of B.S. Ramakrishnappa (2nd defendant) filed a suit in O.S. No. 66, of 1966, against their father which was withdrawn and dismissed on 25-11-1966.

5. As stated above S. No. 107 was an inam land. On the coming into force of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954, (herein after referred to as the Act), personal inams and certain miscellaneous inams were abolished. The Act applied to personal inams, except en-franchised inams, inams in khayam gutta villages, Kodagi and Bawadi Daswandam inams and miscellaneous service inams, other than inams held by village offices. The date of vesting was notified as 1-2-1959 ; consequently the land vested in the State Government. Hemanna, claiming himself to be entitled for the registration as occupant, filed application; similar applications were filed by 2nd defendant B. S. Ramakrishnappa and his wife Gowramma. The Deputy Commissioner, Inams Abolition, by his order dated 1-5-1967, allowed the application of Hemanna (defendant-1) vide Ext. P-12 and rejected the claims of B. S. Ramakrishnappa (defendant-2) and Gowramma (defendant-3). As against this order, defendants 2 and 3 filed appeal Nos. 2110 and 2436 of 1967, before the Karnataka Appellate Tribunal. Hemanna (defendant No. 1) and Michael, original khayam guttedar, were impleaded as respondents. The Appellate Tribunal, by its order dated 5-9-1968, allowed the appeals ; after setting aside the orders of Deputy Commissioner, occupancy rights were registered in the names of B. S. Ramakrishnappa and Gowramma (defendants 2 and 3) vide Exhibit P-10. Though, by this date the

appellants claim to have purchased the land, they did not challenge this order, nor, was it challenged by their vendor G.T. Hemanna; thus the said order has become final. The land, which had vested in the State Government, got vested in defendants 2 and 3. Hemanna, the vendor of appellants filed a review petition, which was rejected on 3-7-1969, (vide Exhibit D-2).

6. For two years there was lull; on 16-7-1971, the present suit is filed claiming reliefs, as mentioned above, defendants 1 and 2 remained ex parte. Third defendant contested the suit. She denied plaintiffs' title and possession. She asserted that she was in possession. She contended that the sale deeds, on which plaintiffs rested their claims, did not convey title, as on that date the vendor had no subsisting title. It is stated that after the grant of occupancy rights, premium, as required by the Act, was paid. Plaintiffs filed a rejoinder; they contended that the land, having been converted, had ceased to be an agricultural land. In view of Section 13 of the Act, they are entitled to retain the land and are unaffected by the orders of the Appellate Tribunal under the Act. On the pleadings, the Court below framed the following issues :-

'Whether the plaintiffs are the owners of suit properties by virtue of sale deed executed by defendant ?

OR

Whether plaintiffs have no title as the land vested in Government under Inam Abolition Act and whether plaintiffs rights are not affected by force of Section 13 of that Act?

Whether the plaintiffs were in possession of the suit lands on the date of suit?

Whether the plaintiffs were in possession of the Suit lands on the date of suit?

Whether plaintiffs are entitled to declaration and injunction'?

Each of parties examined four witnesses and produced several documents.

7. The Court below, after appreciating the evidence, held that the land, being an inam land, it had vested in the Government; plaintiffs have no title and they were

not in possession, on the date of the suit. The orders of Appellate Authority under the Act have become final and are binding on the plaintiff's and their vendor. The land had not been converted. Thus holding, it dismissed the suit.

8. Mr.V. Krishna Murthy learned Counsel for the appellants, contended as follows :-

1) Land having been converted by, Michael, appellants are entitled to hold it as a converted land ;

2) The orders of Karnataka Appellate Tribunal are void, and are not binding on the appellants ;

3) Alternatively, the grant of occupancy rights in favour of defendants 2 and 3, by the Appellate Tribunal, enures to their benefit, as per Section 55 read with Section 43 Transfer of Property Act ; and

4) Being a vacant site, possession follows title and therefore plaintiffs should be deemed to be in possession.

In support of the first contention, reliance was placed on Section 13, which reads thus :--

'13. Right to agricultural land used for non-agricultural purposes.

'Where any land used for agricultural purposes has been converted for any purpose unconnected with agriculture, the holder of such land shall be entitled to keep the land provided that such conversion was not void or illegal under any law in force at that time....'

To attract this provision, two conditions must be fulfilled; firstly, the land must have been converted before the date of vesting and secondly, such conversion must not be void or illegal. In the instant case, there is no material to support the first condition. As already mentioned, there is no specific order of conversion by the Competent Authority. Ext. P-24, on which reliance is placed, apart from being inadmissible in evidence, is only an acknowledgment evidencing receipt of Rs. 120/-. Anthony Michael (DW-3) is the son of Anthony Michael who has clearly

stated that Ext.P-24 (a) is not the conversion certificate and certificates issued by his father were not in that form. As mentioned earlier Ext.P-24 is a true copy. This being the factual position, the question of considering the fulfilment of second condition does not arise. We agree with the finding recorded by the Court below and affirm the same.

9. As regards the second contention, the consistent view of this Court is that the adjudication by the authorities under the Act is exclusive and Civil Court has no jurisdiction to entertain a suit for declaration of title or possession in respect of lands vested in the State Government.

In Chandrasekharaiah v. State of Mysore, 1963. Mys. L.J. 553 it was observed -

'...In a case like this where the Deputy Commissioner is constituted a special tribunal for the adjudication of a claim arising under the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954, the adjudication made by him should be as complete and full as an adjudication made by a civil court whose jurisdiction in regard to such adjudication under the Act is no longer exercisable....'

In Kempamma v. Kempanna, 1964 (2) Mys L.J. 444 Division Bench of this Court held:-

'...The only ownership which the plaintiff could have claimed in the suit lands was the ownership attributable to his right as a permanent tenant of those lands. If that right disappeared when the inam village vested and that right stood displaced by a right to seek registration under Section 5 of the Act and it is only that right which is enforceable against the Government in whom the inam village vested, it is difficult to understand what kind of a declaration the Munsiff could make in favour of the plaintiff.'

In Rangappa v. Chinnappaiah, 1965(1) Mys. L.J. 145 the same Division Bench reaffirmed the view, in the following words :-

'There is yet another reason for which we should, in my opinion, say that an order made by the Deputy Commissioner under Section 10 of the Inam Abolition Act cannot be challenged or called in question before the Civil Court save either on the

ground that there was non-compliance with the provisions of the Act or that the statutory tribunal did not act in conformity with the fundamental principles of judicial procedure. The reason why I say so is that once the Deputy Commissioner is constituted the tribunal to make the adjudication under Section 10 and that adjudication is subject to appeal under Sub-section (1) of Section 28, there is, as pointed out in *Devika Charyulu v. State of A.P.*(2), a bar of the jurisdiction of the Civil Court by necessary implication.

So, it appears to me that we should not accede to the argument of Mr. Raghavachar that there is some kind of concurrent jurisdiction in the Civil Court and in the Deputy Commissioner to adjudicate upon a claim to be registered as an occupant under any of the provisions of the Inam Abolition Act. Since the recognition of any such concurrent jurisdiction would lead to inevitable clash of jurisdictions, the proposition cannot be sound.'

A Full Bench of this Court in *T. Srirangachar and Anr. v. State of Mysore*, 1966 (1) Mys. L.J. 655 over-ruling the earlier decision in *Raje Urs v. State of Mysore*, 1964 (2) Mys. L.J. 291 has held thus :-

'The decision of the Deputy Commissioner under Section 10 of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 that certain lands should be registered under Sections 4, 5, 6 or 9 of the Act is final (subject to the decision in appeal, if any) if such decision has been rendered in conformity with the provisions of the Act and the Rules made thereunder'.

Finally, in *Manikyam v. Thimmaiah*, 1983 (1) KLJ 328 Single Judge of this Court relying on the earlier decisions, held that :

'Civil Court ceases to have jurisdiction to decide the question of title, when once the land vested in the Government under the Inams Abolition Act. All such questions have to be decided only by the special forum created under the Act.'

10. Mr. Krishna Murthy however maintained that the orders passed by the authorities under the Act are null and void; and that they do not affect appellants' right and they need not take action to have them set aside. Counsel relied on the

following passage in Administrative Law (2nd Edn.) by Durga Das Basu, at page 277 :-

'When a decision is said to be a nullity, it should follow that the aggrieved person may disobey with impunity such a void decision and need not wait for obtaining a declaration from a competent Court that it is null and void. At any rate, he may impeach its validity in a collateral proceeding, as in the case of a decision without jurisdiction '

The above is an extract from the decision in *Anisminic v. The Foreign Compensation Commission and another*, (1969) 1 All. E.R. 208.

De-Smith has quoted the above passage in *Judicial Review of Administrative Action* (4th Edition) at page 152 ; the Learned author has posed a question :

'Is it correct to say that there are no degrees of nullity' If so, does it follow that *ex nihilo nihil fit* - out of nothing comes nothing? Because the answers to these questions are in the negative, the differences between void and voidable acts are less than one might suppose'.

At page 153, the Learned author has stated thus :

'.....Again, although an *ultra vires* decision is ineffective against the party aggrieved, he may need, for his own protection, a formal pronouncement of a Court setting the decision aside or declaring it to be void. Meanwhile, he may be enjoined from disregarding the decision until its validity has been finally determined. If he takes no judicial proceedings at all within the prescribed statutory time-limit, the void decision will become as impregnable as if it had been valid in the first place. And until he has obtained such a judicial pronouncement in an appropriate form of proceedings, third parties (lacking *locus standi* to impugn the invalid decision) may be obliged to treat it as if it were valid.'

H.W.R. Wade in *Administrative Law*, 5th Edition, has explained the position thus :

'The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances.

The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for One purpose and valid for another : and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result.

'Void' is therefore meaningless in, any absolute sense. Its meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over 'void or voidable' can be avoided.....

11. In *Lovelock v. Minister of Transport*, (1980) 40 Pr.C.R 336 Lord Denning said :

'I have got tired of all the discussion about 'void' and 'voidable'. It seems to me to be a matter of words - of semantics - and that is all. The plain fact is that, even if such a decision as this is void or a nullity, it remains in being unless and until some steps are taken before the Court to have it declared void.'

12. The basis urged by the Learned Counsel to characterize the order of Appellate Tribunal as 'nullity' is that it was a 'converted land' (which we have rejected) and secondly the appellants were not notified and they were not parties to those proceedings. The appellants are purchasers after the date of vesting ; on the dates they purchased, the land had vested in the State free from all encumbrances. Further their vendor Hemanna was a claimant and was a party to the proceedings. Indeed, having succeeded before the Deputy Commissioner, he lost before the Appellate Authority. His attempt by review proved unsuccessful. Hemanna could have filed a Writ Petition, which he did not do. Appellants, who had purchased the site by then, could have challenged the order by filing a Writ Petition, on the same analogy, as they have filed the present suit. In the circumstances, we are not persuaded to accept the contention ; in our opinion, the orders passed by the

Appellate Authority under the Act is valid and it is binding on the appellants, who have stepped into the shoes of Hemanna. Hence we reject the second contention.

13. The next contention of Sri Krishnamurthy is that plaintiffs got title on the principle of 'feeding the grant by estoppel'. The argument constructed is, that plaintiffs have purchased the land from Hemanna (1st defendant) in 1960 ; Hemanna in turn had purchased the land from B.S. Ramakrishnappa (2nd defendant) on 20-7-1953 (Ext. P-3) in the first instance and on 22-10-1953, from Dhanraj Hirachand-decree-holder-auction purchaser ; therefore it is maintained, the benefit of grant of occupancy rights in favour of B.S. Ramakrishnappa would enure to the benefit of Hemanna, which in turn, passes on to them. This conclusion, it is said, flows from Section 43 of the Transfer of Property Act. That Section deals with transfers by unauthorised persons, who subsequently acquire interest in the property sold. The first ingredient of that Section is 'fraudulent or erroneous representation' by the transferor. In the instant case admittedly B.S. Ramakrishnappa is not the transferor of plaintiffs; there is no privity of contract between them. There is neither a plea nor evidence to infer, much less to accept, the foundation of fraudulent or erroneous representation. On the day the plaintiffs purchased the land, it had vested in the State Government. In the proceedings for the grant of occupancy rights, plaintiffs' vendor Hemanna and B.S. Ramakrishnappa were contesting each other. Their claims were mutually exclusive. Both were asserting their claim, in their own right. In July 1953, when Hemanna purchased the land, he had believed that his vendor, whether B.S. Ramakrishnappa or Dhanraj Hirachand, had absolute right, which was saleable. Indeed Hemanna applied for the grant of occupancy rights on the strength of the sale deed executed by B.S. Ramakrishnappa. The Appellate Authority has held that Ramakrishnappa never parted with his possession and Hemanna, the plaintiff's vendor, admitted that he had never paid the land revenue. The Appellate Tribunal has held that Hemanna was not in possession. Further as per Section 3(b) of the Act, the right, title and interest of the Inamdar, vested in the State, free from all encumbrances and the word Inamdar' includes the successors in interest of Inamdar.

14. On the facts, we are convinced that there was no fraudulent or erroneous representation to attract the provisions of Section 43 of the Transfer of Property Act. Being a rule of estoppel, its benefit cannot be extended in favour of persons, who have purchased the land, when it had vested in the State Government. Further 'estoppel' can be held only against the person who had made fraudulent or erroneous representation and not against those who are not parties to such contract or transfer. In this regard there is no plea nor is there any issue. In *Banwarilal v. Sukhdarshan Dayal*, : AIR 1973 SC814 in similar circumstances, the Court held as follows ;

'.....Evidence regarding the representation is vague and true facts were known to those who purchased the sub-plots after Plot No. 19 was sold to Manohari Devi in 1946. Besides, estoppel is but a rule of evidence and except in cases like those under Section 43 of the Transfer of Property Act, when a grant is void by estoppel, the rule does not operate to create interest in property regarding which the representation is made....'

15. In *Anand Padban v. Dhuba Mohanty*, 10. : AIR1979 Ori5 it was held thus :

'Where some of the defendants and the predecessor in title of the other defendants entered into contracts of sale for valuable consideration and representing that they were authorised to transfer the property and later the defendants applied for settlement of the aforesaid lands under the Orissa Estates Abolition Act and the land was settled on them under the Act held that where the land was settled on heir of the original vendors, Section 43 would have no application as the land was settled on these defendants in their own right and not as heirs of the original landlords but in case of other defendants who were the original vendors and on whom lands were settled under the aforesaid Act, Section 43 of the T.P. Act would apply in full vigour.....'

16. In the instant case, B.S. Ramakrishnappa and Gowamma had got the occupancy rights in their own right, as being in possession and as successor in interest of Michael and not through Hemanna, appellants' vendor. For the aforesaid reasons, this contention urged for the first time in this appeal, deserves to be rejected and accordingly it is rejected.

17. The last submission was regarding possession. Court below has held that plaintiffs have failed to establish their possession. In the 'Inam' proceedings, which culminated in the order of Karnataka Appellate Tribunal on 5-9-1968, it is held that defendants 2 and 3 are in possession. Plaintiffs have not produced any document to evidence their possession. Neither the plaintiffs nor their predecessor-in-title, Hemanna, have established their possession, on the date of the suit. In that view, the Court below was justified in refusing to grant decree for injunction. We see no reason to differ from that conclusion.

For the aforesaid reasons, this appeal fails ; it is accordingly dismissed ; no costs.

ORDER

Chandrakantaraj Urs J.

After we had read out the Judgment as above the learned Counsel appearing for the appellants made an oral request for grant of certificate of fitness to appeal to the Supreme Court under Article 133(c) of the Constitution of India.

We do not think that there arises any substantial question of law of general importance which is once again required to be decided by the Supreme Court. We have followed the decisions of the Supreme Court on the questions of law which have been raised. Certificate is refused.

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