

Hanumakka Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-03-1995

Reported in : ILR1995KAR1168; 1995(2)KarLJ117

Judge : Hari Nath Tilhari, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 10(2); Karnataka Land Revenue Act - Sections 25; Code of Civil Procedure (CPC) - Sections 151

Appeal No. : W.P. No. 36115 of 1994

Appellant : Hanumakka

Respondent : State of Karnataka

Advocate for Def. : H.H. Kaladgi, HCGP

Advocate for Pet/Ap. : M.C. Pyati, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Hari Nath Tilhari, J.

1. This is a Petition under Article 226 of the Constitution of India, whereby the petitioner has prayed for grant and issuance of a Writ of Mandamus or any other appropriate Writ or direction, directing the respondent No. 2 Assistant Commissioner to expeditiously dispose of the petitioner's application dated 7.12.1994 made under the provisions of the Karnataka SC and ST (Prohibition of Transfer of Certain Lands) Act, 1978 for redemption of land in question in favour of the petitioner, as the petitioner claims herself to be the legal representatives of original grantee, in accordance with law. The Writ has been filed on 28.12.1994. There is no grievance at present that the opposite parties have not co-operated in the expeditious disposal of application. If there would have been any such thing, or such grievance the petitioner would have asserted against the Assistant Commissioner, Ramanagar. That as the application Annexure-C has itself been moved under the SC and ST (Prohibition of Transfer of Certain Lands) Act, 1978, on 7.12.1994 and within a short span of two weeks the petitioner has approached this Court for issuance of a Writ of Mandamus for expeditious disposal of her claim. The present Petition appears prima facie to be misconceived. That in the Writ Petition the reason for moving this Writ Petition has been indicated by the petitioner in the Petition to the effect that eucalyptus trees had been planted by her husband on the entire land in dispute and the said trees are now standing. That respondent Nos. 4, 5, 6 and 7 are trying to cut the standing trees which according to the petitioner had been planted by the petitioner's husband. It has so been contended by petitioner's husband. It has so been contended by petitioner's Counsel as well. On behalf of opposite parties, it has been contended by learned Government Pleader Sri H.H. Kaladgi, that petitioner has got alternative remedy by approaching the respondent No. 2 and by moving application for interim relief, as such the Petition is liable to be dismissed.

2. I have applied my mind to the contention of the learned Counsel. In my opinion, the present Writ Petition is premature since not even a month has elapsed from the date of moving of the application under the Act of 1978 by the petitioner before Respondent No. 2. The proceedings have to be conducted according to the law by the Assistant Commissioner and for the present, in my opinion, no cause of action has occurred to the petitioner for moving this Writ Petition for issuance of Writ of Mandamus as prayed for.

3. That as regards petitioner's apprehension that Respondents - 6 and 7 may cut down the trees on the land which were planted by her husband, the petitioner should have moved an application for Interim relief in the nature of temporary injunction restraining the opposite party from cutting the trees.

4. It is well settled principle of law as laid by their Lordships of Supreme Court in the case of Special Reference No. 1 of 1964 : AIR 1965 SC745 , as well as in later Decision as held, to the effect that Interim relief can be granted as an ancillary relief to the main relief as the Assistant Commissioner is the Revenue Court as the Revenue Authorities constituted under the Karnataka Land Revenue Act are declared to be Revenue Court. That as such under Section 25 of the Act which declares that inherent powers shall remain vested in the Revenue Authority, the inherent power to pass such orders as are necessary in the interest of Justice do stand vested in Assistant Commissioner.

5. Section 24 of the Land Revenue Act, clearly declares that Revenue officers with exception to Tashildar or lower to Tashildar to be in the Revenue Courts and Section 25 declares that inherent powers are vested in the Revenue Courts to pass orders necessary in the interest of Justice and prevent the abuse of the process.

6. Section 25 of the Karnataka Land Revenue Act reads as under:

'25. Savings of inherent powers of a Revenue Court :- Nothing in this Act, shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Revenue Court.'

7. Section 25 of the Karnataka Land Revenue Act 1964 is analogues to Section 151 of C.P.C. whereunder it has been declared that inherent powers do stand vested in the Civil Courts and nothing in the provision of the Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary in the interest of Justice and to prevent the abuse of the process of the Court. A reading of Section 25 of the Act as well as Section 151 of C.P.C. firstly will show that whether Civil Court or Revenue Court, the

Legislature deems it and has considered that inherent powers are always vested in the Court as the constituent part of the Court. These two Sections only clarify that none of the provisions either of the Karnataka Land Revenue Act or that of C.P.C. should be taken to limit or curtail the inherent powers which are already vested in the Court. Clear departure can be marked and can be taken note of, if we have a glance of Section 482 of Cr.P.C. The Cr.P.C. indicates that inherent powers have been taken and have been declared to continue to vest only in the High Court but not in the subordinate Criminal Courts.

8. Section 482 of Cr.P.C. reads as under :

'Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise secure the ends of justice.'

9. Bare reading of Section 25 the Karnataka Land Revenue Act as well as 151 of C.P.C. and Section 482 of the Cr.P.C. firstly shows under the Code of Criminal Procedure, the concept of inherent powers with reference to Subordinate Courts is not applicable. That Section 482 Cr.P.C. declares that inherent powers only of the High Court will not be affected because of any other provisions in the Cr.P.C. But that is not so with respect to Subordinate Courts either under Code of Civil Procedure or Karnataka Land Revenue Act 1964. While under Section 151 of C.P.C., the inherent powers of the Civil Court and under Section 25 of the Karnataka Land Revenue Act, the inherent powers of the Revenue Court whether the Court of original jurisdiction or appellate jurisdiction or supervisory jurisdiction have been maintained and retained and they are entitled to pass suitable order in the circumstances of the case or as they deem necessary for the purpose of securing Justice and for the purpose of preventing the abuse of process of the Court.

10. A perusal of Section 11 of the Karnataka S.C. and S.T. (Prohibition of Transfer of Certain Lands) Act 1978 provides that in case of any provisions of law being inconsistent with the provisions of the Act of 1978 i.e., if there is any other law inconsistent with provisions of Karnataka Act No. 2/79 then in that case the

provisions of the Karnataka SC and ST (Prohibition of Transfer of Certain Lands) Act will prevail.

11. Section 25 of the Karnataka Land Revenue Act, in my opinion, is not inconsistent with any other provisions of Karnataka Act No. 2/79 that is the Karnataka SC and ST (Prohibition of Transfer of Certain Lands) Act 1978.

12. Reading of Section 10(2) of the Karnataka Act, further supports the view that when the Assistant Commissioner performs his duty as Revenue Court and exercising his powers under Act No. 2/79, the Assistant Commissioner is required to exercise powers and perform his duty keeping in view the provisions of Chapter V of the Karnataka Land Revenue Act. Section 25 is contained in Chapter V of the Karnataka Land Revenue Act.

13. In view of the above, I am of the opinion that in a situation like the one as alleged by the petitioner in his Petition and in particular when he has filed the Petition on the alleged apprehension, it is open to the petitioner to approach the Assistant Commissioner before whom his application under the Act No. 2/79 is pending for obtaining of suitable orders to prevent the abuse of the process of the Court as well as in the ends of Justice and it was open to the Assistant Commissioner to consider and dispose of the application for grant of Interim Relief pending disposal of the main matter under the Act. In my opinion, he has got his remedy to approach the Assistant Commissioner under Section 25 of the Act, and it is within the power of the Assistant Commissioner to grant or refuse the relief thereunder keeping in view the ends of objects for which inherent powers are conferred. For the present, the Writ Petition, subject to above observations, is hereby dismissed, as the same is premature as well as misconceived and for the reasons that petitioner has got alternative remedy equally or more efficacious. Thus the Writ Petition is being disposed off finally.