

Halappa Bln Rangappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Jun-30-1992

Reported in : ILR1992KAR2517; 1992(3)KarLJ135

Judge : Hakeem, J.

Acts : Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 54; General Clauses Act - Sections 6

Appeal No. : W.P. No. 1199 of 1992

Appellant : Halappa Bln Rangappa

Respondent : State of Karnataka

Advocate for Def. : D. Srishaila, Adv. for R-3 and R-4

Advocate for Pet/Ap. : B.S. Hadimani, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Hakeem, J.

1. The short question that falls for consideration is whether notwithstanding the repeal of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 ('the Act') by Act 4 of 1991, the restriction imposed therein is enforceable in the proceedings under Section 54 of the C.P.C. pending as on the date of the repeal.

2. The brief facts are as follows:-

Under a registered Sale Deed dated 1-12-1975, Rangappa, father of the petitioners, purchased 2 acres 30 guntas of land from the sons of Marulayya (4th respondent herein). Later, in the suit for partition between the said Marulayya and his children, to which Rangappa was a party, the Civil Court held that what is acquired by the said Rangappa under and the said Sale Deed was only the 2/5th undivided right, title and interest of the sons of respondent-4, as against the 3/5th share held by respondents-3 and 4, and a preliminary decree was accordingly passed. The petitioner's father unsuccessfully challenged the said decree upto the stage of Second Appeal in this Court. Later, in the final decree proceedings instituted by respondents-3 and 4, the executing Court referred the decree under Section 54 of the C.P.C. to the Deputy Commissioner for effecting partition of lands by metes and bounds. In those proceedings, the petitioner's father, inter alia, raised a contention that since partition of the property would result in fragmentation of holdings in contravention of the Act, partition of the land (totally measuring 2 acres 20 guntas) is not feasible. While the said proceedings under Section 54 of the C.P.C. were still pending before the Deputy Commissioner, the Repealing Act 4 of 1991 came into force, whereupon the Deputy Commissioner held that in view of the removal of restriction on fragmentation by the Repealing Act, the matter before him for consideration under Section 8 of the repealed Act did not survive any longer. The said order being challenged was affirmed by the Karnataka Appellate Tribunal.

3. The contention of Sri Hadimani, learned Counsel for the petitioners, is that by virtue of the saving clause under Section 2 of the Repealing Act, the proceedings already pending before the Deputy Commissioner are not affected. Reliance is placed upon Clause (d) of Section 2 of the Repealing Act which provides that the

repeal shall not affect 'any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced'. On the other hand, it is urged by Sri D.R.Rajashekharappa, learned Counsel for the contesting respondents, that the pending proceedings were, in fact, under the provisions of Section 54 of the C.P.C., in which the provisions of the Act was incidentally attracted; and in view of the removal of restriction against fragmentation of holdings by the Repealing Act, the question of giving effect to the provisions of the repealed Act did not arise. There is considerable force in this contention.

4. The repealing provision in the instant case reflects the principle found in Section 6 of the General Clauses Act. It appears to be well settled that the distinction between what is, and what is not a right preserved by the provisions of Section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of', or liberty to apply for, acquiring a right. A distinction is drawn between a legal proceeding for enforcing a right acquired or accrued and a legal proceeding for acquisition of a right. The former is saved whereas the latter is not. In that view of the matter, what is sought to be achieved by the petitioners herein is to pursue the proceedings in the expectation of a right which ought to have accrued to them but for the repealing of the Act. In *B.L. MONGYAL v. H.R. ROAOJI RAO*, : ILR 1987 KAR867, this Court has held that the provisions become relevant only at the time of actual division of the land pursuant to a preliminary decree for partition and separate possession. Even in the case of partition without intervention of the Court, the Act, as it stands on the date of actual division, is applicable. In that view of the matter, I do not find any error in the view taken by the Appellate Tribunal.

5. The other contention urged on behalf of the petitioners regarding their right to harvest the standing crops, is left open to be considered in the final decree proceedings.

6. In the result, for the reasons stated above, the Writ Petition is dismissed.

