

**Chikkathimmegowda Vs. Deputy Commissioner**

**Chikkathimmegowda Vs. Deputy Commissioner**

**SooperKanoon Citation :** [sooperkanoon.com/384331](http://sooperkanoon.com/384331)

**Court :** Karnataka

**Decided On :** Aug-20-1991

**Reported in :** ILR1991KAR3238; 1992(1)KarLJ229

**Judge :** M. Ramakrishna, J.

**Acts :** Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) ACT, 1978 - Sections 5A; Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) ACT, 1984; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 5 and 5(4)

**Appeal No. :** W.P. No. 17912 of 1991

**Appellant :** Chikkathimmegowda

**Respondent :** Deputy Commissioner

**Advocate for Def. :** M. Siddagangaiah, HCGP for R-1 and R-2

**Advocate for Pet/Ap. :** M. Shivappa, Adv.

**Disposition :** Writ petition allowed

**Judgement :**

ORDER

**M. Ramakrishna, J.**

1. Heard Sri M, Shivappa, learned Counsel for the petitioner and perused the order of the Assistant Commissioner at Annexure-A, I.A. No. 1 filed before the Deputy Commissioner for granting stay and the notice issued by the Deputy Commissioner as per Annexure- C.

2. Sri M. Siddagangaiah, learned High Court Government Pleader, on the direction of the Court, has taken notice for respondents 1 and 2. I heard him also.

3. The matter arises this way:

Two acres of land in Sy. No. 243 situated in Maraninganahalli village, Maddur Taluk, Mandya District, was granted in favour of Yalavaiah, father of respondent-3 Gooli @ Mollaiah, under the Land Grant Rules subject to certain condition regarding alienation. After the death of the grantee, his wife sold 30 guntas out of it by two registered sale deeds in favour of the petitioner and since then he has been in possession and enjoyment of that extent of land.

After coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (the Act for short), respondent-3, son of the original grantee, made an application before the Assistant Commissioner for reliefs under Sections 4 and 5 of the Act. The Assistant Commissioner, having notified both parties, held an enquiry and passed an order as per Annexure-A declaring the alienations made in favour of the petitioner as null and void on the ground that they were made in contravention of the condition of the grant and directing restoration of the land in favour of respondent-3.

Aggrieved by the said order, the petitioner preferred an appeal in PTCL. 14/91-92 before the Deputy Commissioner. Along with the appeal, he also filed an application for an interim order of stay of the order impugned therein.

The grievance of the petitioner is that the Deputy Commissioner never considered the said application and passed any order thereon. Instead, he issued a notice as per Annexure-C directing them to appear before him on 2-9-1991 at 3 P.M. for hearing the arguments on the Appeal. Hence this petition.

4. Now the question that arises for my consideration in this petition is whether the Deputy Commissioner was right in not considering the application for interim stay, in the absence of a specific provision to that effect in the Act?

5. Section 5A of the Act as amended by Karnataka Act No. 3 of 1984 with effect from 3-3-1984 reads:

'5A. Appeal to the Deputy Commissioner -

Any person aggrieved by an order passed after the commencement of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 by the Assistant Commissioner to take possession of land under Clause (a) of Sub-section (1) of Section 5 or to restore the land under Clause (b) of the said Sub-section may prefer an appeal to the Deputy Commissioner having jurisdiction within a period of three months from the date on which the order was communicated to him:

Provided that the Deputy Commissioner may admit an appeal preferred against such an order after the period referred to in Sub-section (1), if satisfied that the appellant had sufficient cause for not preferring an appeal within the period:

Provided further that the Deputy Commissioner shall admit an appeal against an order passed by the Assistant Commissioner before the date of such commencement if, on the said date, a Writ Petition preferred against such order or an appeal preferred against the order passed in such Writ Petition is pending in any Court.

(2) The Deputy Commissioner shall dispose of the appeal in the prescribed manner and the order passed by him shall be final.'

6. Perusal of the above provisions makes it clear that there is no provision enabling the Deputy Commissioner to consider an application for interim stay pending disposal of the appeal before him. Even Rule 5 of the Rules framed under the Act, which deals with the manner of disposal of appeal by the Deputy Commissioner, does not provide for consideration of an interlocutory application. Therefore, in the absence of such a provision either in the Act or in the Rules,

whether the Deputy Commissioner being the Appellate Authority under the Act could exercise the discretionary powers of an Appellate Authority for purposes of disposing of an application for interim stay pending disposal of the appeal, is the question to be considered.

7. It is not in dispute that in a large number of appeals arising under Section 5A of the Act, the Deputy Commissioners have been considering applications for interim orders providing relief. It is nobody's case that, in the instant case, the Deputy Commissioner has either refused to pass orders or rejected the interim prayer for want of specific provision under the Act. It is needless to point out that the Deputy Commissioner exercising powers under the Act is a quasi-judicial authority and as such he can exercise powers under Order 41 Rule 5 of the Code of Civil Procedure to dispose of an application for interim order in an appeal Under Section 5A of the Act, in the absence of specific provision in that behalf under the Act.

8. Order 41 Rule 5 C.P.C. provides:

'Rule 5(1). Stay by Appellate Court:-

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order Stay of execution of such decree.'

9. Having regard to the language employed in the above Rule, it is clear that discretionary power has been conferred upon the Appellate Authority to consider the interim prayer. In other words, to grant or not to grant the interim prayer is purely the discretion of the Appellate Authority. Indeed, such an order may also be granted subject to certain conditions that may be imposed during the stay order depending upon the circumstances of the case.

10. By a perusal of the powers conferred upon the Appellate Authority under Rule 5, it is clear that no order for stay of execution shall be made under Sub-rule (1) or

Sub-rule (2) unless the Court making it is satisfied -

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

The other aspect that can be gathered from Sub-rule (4) is, subject to the provision of Sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application. Thus the Appellate Authority is competent to pass an *ex parte* order for stay pending disposal of I.A. by ordering notice to the opposite party. In other words, that order is subject to modification when the Appellate Authority finally decides the I.A.

11. In *G.L. JAGADISH v. SHAMANTHA KUMARI* while considering the question whether the Family Court exercising jurisdiction under Section 7(2)(a) of the Family Courts Act, 1984 has jurisdiction to pass an *ex parte* interim order of maintenance, this Court has held as follows:-

'In aid of the final relief, an interim *ex parte* order can be granted. That it is so cannot at all be doubted. In the absence of such power the very jurisdiction to pass final order in many cases would be rendered ineffective. When the Court has jurisdiction to pass final order, the power to pass interim order stems from the very power to pass final order. In the absence of such a power the jurisdiction will not be meaningful and effective.'

While laying down the above Ruling, the Ruling of the Supreme Court in *SAVITHRI v. GOVIND SINGH* has been followed.

12. There is one more aspect that may be considered in this behalf. Chapter V of the Karnataka Land Revenue Act, 1964 (the Act of 1964 for short), deals with appeal and revision under which comes Section 55 dealing with the powers of Appellate Authority including the power of staying execution of orders. Under Sub-

section (2) of Section 55, the Appellate Authority can direct that execution of the order appealed from be stayed for such time as it may deem fit or till the decision of the appeal whichever is earlier and may on sufficient cause being shown cancel or vary such order made directing stay. Therefore, the Deputy Commissioner, in the instant case, being the Revenue Officer exercising powers under Section 5A of the Act as Appellate Authority undisputedly has powers to grant interim relief subject to limitations as provided under Order 41 Rule 5 C.P.C. Therefore, viewed from these circumstances, there is no hesitation in my mind that the Deputy Commissioner/Appellate Authority has sufficient power to grant relief by way of staying operation of the order of the Assistant Commissioner till the disposal of the appeal and to modify or vary such order as he deems fit. Thus the question can be answered positively that the Deputy Commissioner as Appellate Authority under Section 5A of the Act, has sufficient power to grant interim relief, even though there is no express provision to that effect in the Act.

13. In the instant case, the complaint is that the Deputy Commissioner has not passed any order on the interlocutory application presented along with the appeal. The grievance of the petitioner is that if no order of stay is made staying operation of the order of the Assistant Commissioner, there is likelihood of the order appealed from being executed and the petitioner dispossessed. That apart, in such an event, the appeal itself would become infructuous leading to multiplicity of proceedings, resulting in frustration.

14. Complaints of this type are coming only from the District of Mandya. Despite the filing of the interlocutory applications along with the appeals against the orders of the Assistant Commissioners, no orders are being passed on such applications, as a result of which the parties are made to approach this Court by way of Writ Petitions. As I have already observed, the Appellate Authority under the Act is clothed with the power of granting interim reliefs. But it has failed to do so. There is no reason why the litigant public should be driven to this Court resulting in unnecessary expenditure, waste of time, multiplicity of proceedings and above all frustration. This can be avoided if the Appellate Authority passes appropriate orders on interlocutory applications, pending disposal of the appeals. In the circumstances, it seems to me that a general observation may be made in this

behalf saying that whenever an application is filed, along with the appeal under Section 5A of the Act, seeking interim relief, the Deputy Commissioner shall consider such an application and pass appropriate orders in exercise of the discretionary powers vested in him by law.

15. In the result, this Writ Petition is allowed. The Deputy Commissioner, Mandya District, Mandya, respondent-1 herein, is hereby directed to consider the interlocutory application pending in appeal No. PTCL. 14/91-92 filed by the petitioner herein and pass appropriate orders. He is further directed to dispose of the appeal on merits, in accordance with law and in the light of the observations made above, after affording opportunity to both parties of being heard, within a period of three months from the date of receipt of this order.

There shall be an interim order of stay of the order impugned therein pending disposal of the appeal.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**