

Mallappa Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jul-27-1998

Reported in : 1998(6)KarLJ660

Judge : Mohamed Anwar, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4 and 5; [Limitation Act, 1963](#) - Schedule - Article 65

Appeal No. : Writ Petition No. 12526 of 1987

Appellant : Mallappa

Respondent : State of Karnataka and Others

Advocate for Def. : Sri Siddagangaiah, High Court Government Pleader, ;Sri N.S. Venugopal and ;Sri M.S. Narayana Rao, Adv.

Advocate for Pet/Ap. : Sri B. Veerabhadrapa, Adv.

Judgement :

ORDER

1. Heard the learned Counsels for both parties.
2. The bone of contention between the parties is the land measuring 2 acres in Sy. No. 7 in Hadigere Village, Tarikere Taluk of Chickmagalur District. It was granted

under darkhast to H.M. Basappa on 4-9-1962 by the Government with a condition imposed on the grant that the granted land shall not be alienated for a period of 15 years. In breach of the said condition the land was purchased on 29-4-1966 by the father of petitioners, named Marappa. Thereafter, the purchaser and the grantee died. On the death of grantee, his son respondent No. 4 made an application before the Assistant Commissioner under Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act for the resumption of the lands asserting that the said land was alienated to said Marappa by his (respondent 4's) late father in breach of said non-alienation condition. On enquiry, the order Annexure-B dated 6-5-1987 was passed by the Assistant Commissioner holding the said sale null and void and directing petitioner's eviction therefrom for the purpose of its restoration to respondent 4. An appeal against the said order of the Assistant Commissioner has been dismissed by the Deputy Commissioner under his order dated 18-8-1997. Both the said orders at Annexure-B and C are now challenged by the petitioners.

3. Earlier, by an order dated 26-3-1992 of the learned Single Judge the petition was dismissed. The petitioner's appeal in W.A. No. 1588 of 1992 against the said order also came to be dismissed by order dated 1-9-1992. Aggrieved by the said orders of this Court the legal representatives of the purchaser deceased Marappa approached Supreme Court in Civil Appeal No. 4616 of 1997. The said appeal was disposed of by Supreme Court by its order dated 18th March, 1994 setting aside the orders dated 1-9-1992 and 26-3-1992 of this Court and remitting matter with a direction to this Court to decide and dispose of the same in the light of the decision of Supreme Court in K.T. Huthegowda v Deputy Commissioner.

4. In the case of K.T. Huthegowda, supra, in similar circumstances the matter was remitted to this Court with the following directions:

'Accordingly the order of the Appellate Court is set aside and the High Court is requested to examine the aforesaid question on the materials produced on behalf of the appellant and the concerned respondents. It need not be pointed out that any claim made on behalf of the appellant, that the grant by the State Government in favour of the original grantee was in the nature of absolute grant, reserving no

right, title, interest and that transferee has perfected his title by continuous and adverse possession over such transferred land, shall be examined taking into consideration, as to whether the appellant had raised this question at the earliest opportunity i.e., before the Assistant Commissioner and what material had been produced by the appellant before the Assistant Commissioner in support of such claim. It need not be impressed that the object and the scheme of the Act is to protect the interest of the members of the Scheduled Castes and Scheduled Tribes, who shall be deemed to be a weaker section of our community and the transfer in favour of the appellant admittedly being in contravention of the terms of the grant in favour of the original grantee, heavy onus rests on the appellant, to show to the Court that by his continuous and adverse possession, the right, title and interest of the grantee has been extinguished before the commencement of the Act'.

It was further held by Supreme Court:

'If by grant, the transferee has acquired absolute title to the land in question from the State Government, then subject to protection provided by the different provisions of the Act, he will be subject to the same period of limitation as is prescribed for other citizen by the provisions of the Limitation Act, in respect of extinguishment of title over land by adverse possession. On the other hand, if the land has been allotted by way of grant and the title remains with the State Government, then to extinguish the title that has remained of the State Government by adverse possession, by a transferee on the basis of an alienation made in his favour by an allottee, the period of limitation shall be 30 years'.

5. In the present case it is not in dispute that the land was granted by the concerned Revenue Authority to the grantee on 2-9-1962 with the said condition imposed on the grant prohibiting alienation thereof for 15 years. Whether such a grant passed a title in the grantee or the same remains vested with the State Government finds its answer in a later decision of Supreme Court in D.N. Venkatarayappa and Another v State of Karnataka and Others . The Supreme Court has held:

'The rule governing the grant prohibited alienation of the lands in question permanently. The lands in question were granted to Scheduled Caste person taking into account their social backgrounds, poverty, illiteracy and their inherent weakness for being exploited by the affluent section of the society. Under these circumstances, the conditions were imposed that the grantees should not alienate the lands granted to them. Sections 66-A and 66-B of the Land Revenue Code authorise the State to resume the land for violation of the terms of the grant, Therefore, if the terms of the grants, which hedged with conditions, and the class of persons to whom the lands are granted, are taken into account and considered, it is not possible to accept the contention of the learned Counsel for the petitioners that the title in the lands had passed absolutely to the grantees. I am of the view that the title to the lands continued to remain in the State and what has been transferred to the grantees is the right to continue to be in possession of the lands granted to them and enjoy the same in perpetuity subject to the condition that they do not violate the conditions of the grant'.

Therefore, the grant in question being conditional grant, in the light of afore-quoted pronouncement of the Supreme Court it necessarily follows that the grantee did not acquire title over the granted land but the same remained with the State Government itself. As a result, the prescribed period of limitation for the purchaser to acquire title by adverse possession as against the State is 30 years prior to the date 1-1-1979 on which date the Act came into force. So plea of adverse possession will not be available to the petitioners.

6. Apart from the above, no material has been placed before me from petitioner's side showing that the case of adverse possession was pleaded for the purchaser before the Assistant Commissioner during his enquiry specifically disclaiming title to the property as has been held in *Chandevaram v State of Karnataka and Others* . Therefore, petitioners could not make out a case of being in adverse possession of the granted land for the simple reason that the date of grant of land to the grantee was 4-9-1962 which was well within the period of 30 years prior to 1-1-1979.

7. Hence the petition is dismissed.

