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Court : Karnataka

Decided On : Jun-07-2011

Reported in : 2012(2)KCCR1529

Judge : The Honourable Chief Justice Mr. J.S. Khehar &Amp; H.G. Ramesh

Appeal No. : Writ Appeal No. 512 of 2011 (SC/ST)

Appellant : Bhadre Gowda and Others

Respondent : The Deputy Commissioner, Mysore District, Mysore and Others

Advocate for Pet/Ap. : For the Petitioners: T.A. Karumbaiah, Advocate. For the Respondents: R1 and R2 - B. Veerappa, Additional Government Advocate, R3 to R9 - H. Mohan Kumar, Advocate.

Judgement :

J.S.Khekar, C.J. (Oral)

1. An extent of 4 acres of land in Sy. No. 85 (Old No. 111) in the revenue estate of Bekya Village in Peryapatna Taluk, Mysore District was granted in favour of Cheluvaiah on 04.06.1955. The “Saguvali Chit” (possession / grant certificate) was issued in favour of Cheluvaiah on 29.06.1955. On 01.10.1962, the original grantee, Cheluvaiah sold the grant land to Narasimachari; Narasimhachari in turn,

sold it to Eregowda; and Eregowda, on 22,22,1973 sold the said grant land to Marideve Gowda.

2. The original grantee i.e. Cheluvaiah moved an application before the Assistant Commissioner, Hunsur Sub-Division under Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of certain lands) Act, 1978 (hereinafter refereed to as 'PTCL' Act) seeking annulment of the grant land sold by him. The Assistant Commissioner, annulment of the grant land sold him. The Assistant Commissioner, accepted the prayer made by Cheluvaiah vide an order dated 21.04.1982. The aforesaid order was passed keeping in view, the mandate contained in Section 4 of the PTCL Act. Section 4 aforementioned is being extracted hereunder:

"4. Prohibition of transfer of granted lands. - (1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority."

3. Dissatisfied with the order passed by the Assistant Commissioner, the concerned vendee preferred an appeal before the Deputy Commissioner, Mysore District. The Deputy Commissioner, Mysore District by his order dated 30.08.1985 upheld the order passed by the Assistant Commissioner, Hunsur Sub-Division. Dissatisfied with the orders dated 21,04,1982 and 30.08.1985 (referred to hereinabove), the vendee approached this Court by filing Writ Petition No. 16486.1985. The aforementioned writ petition came to be dismissed on 21.08.1987. The legal battle between the original grantee i.e. Cheluvaiah and the

concerned transferee came to an end with the disposal of Writ Petition No. 16486/1985. Thereupon, the grant land reverted back to the original grantee i.e., Cheluvaiah.

4. The original grantee i.e., Cheluvaiah again sold a part of the grant land measuring 3 acres guntas (out of the total grant land measuring 4 acres to) Somegowda on 03.02.1992. Yet again, the original grantee Cheluvaiah approached the Assistant commissioner. Hunsur Sub-Division, seeking to repudiate the instant sale in favour of Somegowda, again under section 5 of the PTCL Act. The Assistant Commissioner, Hunsur Sub-Division by order dated 25.05.1999 declared the sale dated 03.02.1992 made by Channegowda in favour of Somegowda as null and void i.e. in violation of the mandate contained under section 4 of the PTCL Act. Dissatisfied with the order passed by the Assistant Commissioner, Hunsur Sub-Division, the transfree assailed the order by preferring an appeal before the Deputy Commissioner, Mysore Division Bench. The said appeal was however, dismissed by an order dated 30.11.2010. The orders dated 25.05.1999 and 30.11.2010 (referred to hereinabove) were assailed by the transfree before this court by filing writ petition No. 41310/10. The said writ petition came to be dismissed on 10.01.2011. The instant writ appeal, has been preferred by the appellant so as to assail the order passed by the learned Single Judge dated 10.01.2011 whereby, the Writ Petition No. 413010/10 assailing the orders passed by the Assistant Commissioner, Hunsur Sub-Division and the Deputy Commissioner, Mysore District, dated 25.05.1999 and 30.11.2010 respectively came to be dismissed. For the same reasons, were recorded by this Court when the earlier sale made by the earlier sale made by the original grantee came to be challenged before this court in Writ Petition No.16486/1985, we find no infirmity in the order passed by the learned Single Judge while dismissing the Writ Petition No.41310/2010 vide order dated 10.01.2011, as the sale made by Cheluvaiah was impermissible, and as such, void under the mandate of Section 4 of the PTCL Act (extracted herein above).

5. Despite our aforesaid conclusion, it is imperative for us not to leave the matter without examining the further consequences which are liable to flow after the grantee succeeds in getting the sale made by him, set aside. It is essential for us

to travel a little further arid determine the matters arising out of violation of Section 4 of the PTCL Act, wherein, the original grantee repeatedly sells the grant land, and then seeks annulment of the sale. These are cases where the vendor successfully reaps the benefit of his own wrong. This case, like others dealt with by us, reveals the misuse of a legislative enactment for personal gains. In the first instance, the original grantee Cheluvaiah sold the grant land on 01.10.1962. Having succeeded in getting the aforesaid sale declared as void, the grant land came to be restored back to him. Fully aware of the fact that he could not have sold the grant land, he sold it yet again to Somegowda on 03.02.1992. Cheluvaiah again succeeded in getting the second sale made by him set aside, so as to retrieve the land. The question that we wish to determine is, whether having got the sale invoked, the original grantee is entitled to retain the consideration amount received by him?. We are satisfied, that repeated sales at the hand of the original grantee constitutes the offence of cheating under the section 420 of the Indian Penal Code 1860. A person who cheats, definitely not entitled to seek restoration of the grant land and retain the consideration received by him by sale thereof. It is therefore, that we desire the to hereby grant liberty to the appellants to recover the sale consideration paid by Somegowda to Cheluvaiah on 03.02.1992 as the grant land had been restored to Cheluvaiah (now his legal heirs). The other alternative, as we have concluded hereinabove, is not available to the appellants in view of the section 4 of the PTCL Act. Cheluvaiah (his legal heirs as is the position in this case) are certainly not entitled to retain the consideration received by them, based on a sale in violation of section 4 of the PTCL Act. Thus, it shall be open to the appellants herein to seek the refund of the sale consideration along with interest thereon, if they are so advised, by proceeding against the respondents through a civil litigation, if the amount is unilaterally not refunded.

6. It also needs to be recorded here, that when a grantee repeatedly sells the grant land, it is open to the vendee to initiate criminal prosecution against him. Such repeated sale is nothing but a process of cheating. Even though the instant determination at our hands may not be available to the appellants herein against Cheluvaiah, who has since died, but this determination shall certainly to the original grantees from misusing the legislative enactment under reference for personal monitory gains.

7. With the aforesaid observation, the instant writ appeal is disposed of.

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