

Chandra Naik Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Nov-10-2011

Judge : The Honourable Acting Chief Justice Mr. Vikramajit Sen & a.S. Bopanna

Appeal No. : Writ Appeal No. 16380 of 2011 (SC/ST)

Appellant : Chandra Naik

Respondent : State of Karnataka and Others

Advocate for Pet/Ap. : For the Petitioner: N.R. Naik, Advocate. For the Respondents: B. Veerappa, Additional Government Advocate.

Judgement :

VIKRAMAJI SEN, AG. CJ (Oral):

1. Mr. B. Veerappa, AGA accepts notice on behalf of Respondent Nos. 1 to 3. We have heard argument in complete detail and therefore proceed to pronounce Judgment.

2. The fact of the case are that certain land was granted in favour of Kariyappa on 31/05/1965 by means of Grant. One of the covenants in the Grant was that no alienation was permissible for a period of 15 years. However, Kariyappa sold the land in favour of Chandra Naik on 22/10/1974. Therefore the sale, having been executed within this period , would have been rendered *non est*. This is the

mandate of Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. The original Grantee approached the Assistant Commissioner observed that the transferee namely, Chandra Naik also belonged to a Scheduled Case, and therefore the transaction was valid. However, Rule 29-A of the Karnataka Land Grant Rules, 1969 clarifies that a conveyance/ alienation Inter vivos or between persons of Scheduled Cases/Scheduled Tribes would not be protected with effect from 27/09/1974. Therefore, the earlier law was of no avail in the circumstances of the case. Secondly, the Assistant Commissioner was of the opinion that the sum of Rs.25/- per acre was actually the upset price and this amount having been paid, there were no legal fetters on alienation which was not liable to be rendered null and void. He has sought to support his view on the decision in ILR 1998 Kar SN. No.47 at page 67, but the ratio of that decision does not apply.

3. In *P. Surya Prakash Vs the Deputy Commissioner*, 2003 (4) KCCR 3064. It has been opined that a sale made of land conveyed for the upset price but not the market price could not be conveyed to third parties by the Grantee. We affirm this ratio. We also affirm the reasoning in *N.D Ringappa Vs Deputy Commissioner Davanagere*, 1999 (5) Kar. L.J. 719.

4. It appears to us that the matter is no longer res integra in view of the pronouncement in *Chinde Gowda Vs Puttamma*, 2008 (2) Kar. L.J. 460 (SC). Their Lordships have observed that where a grant contains a covenant, such as one before us prohibiting alienation for a certain period of time, a subsequent purchaser must comply with and conform to the terms. In other words, if it is felt that an upset price has actually been paid in respect of the Grant, it is the Grantee who alone can advance that argument and thereby have the covenant pertaining to non-alienation deleted from the Grant. These observations apply on all fours to the case before us inasmuch as, it does not lie within the province of the subsequent purchaser to raise question of the upset price having been actually paid. The learned Single Judge has relied on *Siddegowda Vs Assistant Commissioner*, AIR 2003 SC 1290 in arriving at the conclusion that there was no error in the decision of the Deputy Commissioner, who had come to conclusion that there was a clear violation of Section 4 of the PTCL Act, 1978. That being the

position, he had directed the Sub-Division Officer, Triptur Sub-Division to consider the subject sale deed dated 22/10/1974 as null and void and restore physical possession of the land in question to the original Grantee viz., Kariyappa.

5. It is for these reasons that the Appeal fails and is dismissed.

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