

SUPREME COURT OF INDIA

G.Krishnareddy

Vs.

Sajjappa

C.A.No.4255 of 2002

(Mukundakam Sharma and Anil R.Dave,JJ.,)

18.07.2011

JUDGMENT

Dr.Mukundakam Sharma,J.,

1. This appeal is directed against the judgment and order dated 20.10.1998 passed by the Division Bench of the Karnataka High Court in Writ Appeal No. 3269 of 1998 dismissing the Writ Appeal filed by the appellant.

2. Brief facts leading to the filing of the case are that the disputed land was allotted through a grant by the State of Karnataka to one Smt. Munemma on 08.01.1957 with a condition prohibiting any alienation of the land for a period of 15 years. Gopalappa, late father of the appellant herein, purchased the said land from Smt. Munemma under a registered sale deed dated 20.12.1968.

3. In view of the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes [Prohibition of Transfer of Certain Lands] Act, 1978 [for short "the Prohibition of Transfer Act"] Smt. Munemma made an application under the said Prohibition of Transfer Act for the resumption of the land in question on the ground that it was purchased by Gopalappa, late father of the appellant, in violation of the prohibition clause of the grant. By passing an order dated 07.06.1984 Assistant Commissioner allowed the application filed by Smt. Munemma which was also confirmed by the Deputy Commissioner in appeal. Against the said order of the Deputy Commissioner the predecessor-in-interest of the appellant filed a Writ Petition before the Karnataka High Court, which remanded back the matter to the appropriate authority for its disposal in accordance with law. Pursuant thereto the Assistant Commissioner after conducting an enquiry vide its order dated 10.10.1995 held that the purchaser is in possession of the land for more than 12 years which decision was further confirmed in appeal by the Deputy Commissioner. Against the aforesaid order a Writ Petition was filed by the heirs of the original grantee which was registered as Writ Petition No. 26848/1997.

4. Learned Single Judge who heard the aforesaid Writ Petition vide order dated 15.06.1998 held that the authorities below erred in law in applying the principles of adverse possession to the case in hand. The learned Single Judge held that since the purchaser had taken the stand that by purchasing the said land under a valid sale deed he had been enjoying the cultivation and possession in his own right as owner thereof, therefore, he is precluded from setting up the inconsistent plea of adverse possession either as against the State or the grantee. It was also held that the aforesaid allotted land through a grant was purchased by the purchaser in contravention of the prohibition clause of the grant in question. Consequently, the said Writ Petition filed by the heirs of the original grantee succeeded and the impugned orders were quashed and the Assistant Commissioner was directed to take action according to law to restore possession of the said land to the respondent.

5. Being aggrieved by the aforesaid order a Writ Appeal was filed by the appellant herein which was dismissed by order dated 20.10.1998 as against which the present appeal has been filed, on which we heard learned counsel appearing for the appellant, who during the course of his argument had taken us through the records also. The respondent despite service did not enter appearance.

6. The land involved in the present case is Sy No. 53 measuring 2 acres situated in Village-Hebbatta, Taluk- Srinivaspur, District-Kolar. While granting land in favour of the predecessor-in-interest of the respondent herein through a grant dated 8th January, 1957 it was clearly stipulated in the grant that the said land cannot be transferred for 15 years. Subsequently, however, on 20.12.1968 the said land was purchased by the late father of appellant. Earlier to the same an agreement to sale was also entered into between the parties on 25.12.1965.

7. However, after coming into force of the Karnataka Scheduled Castes and Scheduled Tribes [Prohibition of Transfer of Certain Lands] Act, 1978, w.e.f., 01.01.1979, the original grantee - Smt. Munemma made an application under Section 5 of the Prohibition of Transfer Act before the Assistant Commissioner seeking resumption of the land on the ground that it was purchased by the late father of the appellant in violation of the prohibition clause of the grant. The application of Smt. Munemma was allowed by the Assistant Commissioner which was also upheld by Deputy Commissioner in appeal. Against the said decision of the Deputy Commissioner a Writ Petition was filed by the appellant before the Karnataka High Court, which remanded back the matter to be decided by the appropriate authority in accordance with law.

8. Pursuant to the said order of the High Court an application was filed before the Assistant Commissioner. At this stage it would be appropriate to extract the provisions of Section 4 and 5 of the said Prohibition Act: - "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 not 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 provision 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 an award or order of any other authority.

5. RESUMPTION AND RESTITUTION OF GRANTED LANDS- (1) Where an application by any interested person or on information given in writing by any person or suo motu, and after such enquiry as he deems necessary the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under sub-section (1) of section 4, he may -

“a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed; provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

b) restore such land to the original grantee or his legal heir. Where it is not reasonably practicable to restore the land in such grantee or legal heir such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of lands.

(1A) After an enquiry referred to in sub-section(1) the Assistant Commissioner may if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.

(2) Subject to the orders of the Deputy Commissioner under Section 5A, any order passed under sub-section (1) and (1A) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.

(3) For the purposes of this section where any granted land is in the possession of a person other than the original grantee or his legal heir it shall be presumed until the contrary is proved that such person has acquired the land by a transfer which is null and void under the provisions of sub-section (1) of section 4." The Assistant Commissioner after hearing the parties, however, rejected the application holding that the late father of the appellant is protected from dispossession by way of application of the plea of adverse possession which decision was also confirmed in appeal by the Deputy Commissioner. But in a Writ Petition filed by the respondent the learned Single Judge of the High Court set aside the said findings of the authorities below and directed for the restoration of possession of the land in favour of the respondent. Learned Single Judge further held that no transfer could have been made by the predecessor-in-interest of respondent, i.e., Smt. Munemma and, therefore, alienation

made in favour of the late father of the appellant was contrary to the prohibition clause of the said grant as also to the provisions of law.

9. It is clear from the aforesaid position that in order to overcome the aforesaid difficulties the appellant took up the plea of adverse possession by way of defence. The predecessor-in-interest of the appellant claimed title over the said land by virtue of purchase and at no stage he had put up any hostile claim to the property. The plea was of ownership by right of purchase and therefore a lawful right to enjoy the property. The learned Single Judge while allowing the writ petition filed by the respondent has made reference to the aforesaid position and held that the plea of adverse possession was not available to the predecessor-in-interest of the appellant in law and in view of such legal position the authorities below erred in accepting the plea of adverse possession in respect of the granted land. There appears to be justification in the findings of the High Court.

10. Even otherwise, we may refer to the decision of this Court in *K.T. Buchegowda v. Deputy Commissioner and Others reported in'* where at paragraph 8 of the said judgment this Court has held thus: -

"8. On a plain reading, granted land will mean, any land granted by the Government to a person, who is a member of the Scheduled Castes or Scheduled Tribes which includes land allotted to such persons. Grant may be of different types; it may be by absolute transfer of the interest of the State Government to the person concerned; it may be only by transfer of the possession of the land, by way of allotment, without conveying the title over such land of the State Government. 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 citizens 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. Incidentally, it may be mentioned that some of the States in order to protect the members of the Scheduled Tribes from being dispossessed from the lands which belong to them and of which they are absolute owners, for purpose of extinguishment of their title by adverse possession, have prescribed special period of limitation, saying that it shall be 30 years. In Bihar, vide Regulation No. 1 of 1969, in Article 65 of the Limitation Act, it has been prescribed that it would be 30 years in respect of immovable property belonging to a member of the Scheduled Tribes as specified in Part III to the Schedule to the Constitution (Scheduled Tribes) Order, 1950."

11. Therefore, so as to ascertain whether in the present case the period of limitation would be 12 years or 30 years, we have perused the grant given to the predecessor-in-interest of the Respondent, a copy of which was placed on record by the appellant. A bare perusal of the aforesaid grant would indicate that nowhere in the said grant it has been clearly and

specifically stated that it has been an absolute transfer of the right in title and possession by the State Government to the concerned person. A bare perusal of the document would also indicate that it was only a transfer of the possession of the land by way of allotment and in none of the clauses of the grant it is stated that it is a conveyance of the title over such land by the State Government. Clause 1 of the grant gives authority to the grantee to clear the land and to bring it to cultivable stage. It further provides that the grantee can enjoy the property for 15 years. Not only the grant was only for a limited period but it was also for cultivation. Therefore, it was a grant for possession by way of cultivation for a limited period and it cannot be said that by the aforesaid grant the transferee had acquired absolute title to the land in question from the State Government. Therefore, the period of limitation which would have been applicable in the present case would be 30 years, in the light of the ratio laid down by the said decision.

12. In any case the appellant has failed to make out any case for interference. We find no merit in this appeal, which stands dismissed, leaving the parties to bear their own costs.

Judgment Referred.

¹(1994) 3 SCC 0536