

PETITIONER:
TAIBAI (DEAD) BY LRS.

Vs.

RESPONDENT:
ANNASAHEB GOUDAPPA PATIL

DATE OF JUDGMENT 16/11/1995

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
PUNCHHI, M.M.

CITATION:
1996 SCC (1) 585

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Mrs. Sujata V. Manohar, J.

The appellants in this appeal are the heirs of the original plaintiff. The suit land being Survey No.133 admeasuring 20 acres 37 guntas is situated in Amtur Village in Bailahongal Taluk in the State of Karnataka. It is Vatan Land. On the coming into force of the Karnataka Village Offices Abolition Act, 1961 on 1st of February, 1963 the said land was resumed by the State on abolition of all village offices. Section 5(1) of the said Act provides for re-grant of land resumed under Section 4(3) to the holder of the village office. Accordingly, the land was re-granted to the original plaintiff on 7.4.1978.

Prior, however, to the re-grant of the land in favour of the plaintiff, the plaintiff had entered into an agreement dated 5.8.77 with the defendant i.e. the present respondent under which she had agreed to sell this land to the defendant for a sum of Rs.60,000/-. The agreement recited that an amount of Rs.40,000/- was paid by the defendant to the plaintiff as earnest money. Possession of the land was also given to the defendant. Accordingly the defendant was in possession of the land since 5.8.1977. The present suit was filed by the plaintiff for possession of the suit land on the ground that the agreement of sale entered into by her was null and void in view of the provisions of the Karnataka Village Offices Abolition Act, 1961 and the Karnataka Act 13 of 1978 substantially amending the said Act which came into effect on 7.8.1978.

Under the Karnataka Village Offices Abolition Act, 1961 Section 5(1) Provides for a land resumed under Section 4(3) being granted to the person who was the holder of the village office immediately prior to the appointed date on payment of the occupancy price as specified therein.

Under Section 5(3), as it stood before its amendment on 7.8.78, the occupancy or the ryotwari patta of the land, as the case may be, re-granted under sub-section (1) shall

not be transferable otherwise than by partition among members of the Hindu Joint Family, without the previous sanction of the Deputy Commissioner; and such sanction will be granted only on a payment of an amount equal to 15 times the amount of full assessment of the land. By the amending Act, sub-section 5(3) was substantially amended. The amended Section 5(3) provides that occupancy or the ryotwari patta of the land, as the case may be, re-granted under sub-section (1) shall not be transferable otherwise than by partition among members of the Hindu Joint Family for a period of fifteen years from the date of commencement of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978. In other words, all transfers of re-granted land are prohibited for a period of fifteen years after 7.8.78 which is the date of commencement of Section 1 of the amending Act.

In the present case Section 5(3) is not attracted because there is no transfer of the occupancy or the ryotwari patta of the land re-granted under sub-section (1). In the present case there is only an agreement of sale which was entered into prior to the re-grant.

Under Section 5(6) which was introduced with effect from 7.8.78 by virtue of the amending Act, it is provided as follows:-

"Notwithstanding anything contained in any law for the time being in force any agreement for transfer of land resumed under clause (3) of Section 4, entered into prior to re-grant thereof under sub-section (1), shall be null and void and any person in possession thereof in furtherance of such agreement shall be summarily evicted therefrom by the Deputy Commissioner."

There is, therefore, a clear bar on any agreement for transfer of land being made by the prospective Patta holder prior to re-grant. Section 5(6) provides that if any such agreement is entered into, it shall be null and void and any person in possession in pursuance of such an agreement is liable to be summarily evicted as provided therein. The agreement of sale, therefore, which was entered into at the time when the seller did not have any title to the land, will have no legal effect nor the provisions of Section 53A of the Transfer of Property Act be attracted in such a case.

In the case of Lakshmana Gowda v. State of Karnataka & Ors. (1981 [1] K.L.J. 1) the Karnataka High Court had considered some of the provisions of the Principal Act before its amendment, particularly Section 5(3) and some provisions of the Amending Act of 1978. It has not dealt with the amended Section 5(6). Since this decision is relied upon by the Division Bench we would like to refer to the relevant observations made in the said judgment in so far as they pertain to an agreement to sell entered into prior to re-grant. The Court considered, inter alia, the case of an agreement for sale entered into by the holder of the service Inam prior to the coming into force of the Principal Act. Since the lands granted under a service Inam were inalienable, the court has observed at page 14 (paragraph 68) that an agreement to alienate Service Inam Land entered into prior to the coming into force of the Principal Act, was wholly void and not merely voidable. "Even if the proposed alienee under such an agreement was put in possession of such land in pursuance of such agreement, he could not derive the benefit of the doctrine of part performance embodied in Section 53A of the Transfer of

Property Act. As stated in Mulla's Commentary on the Transfer of Property Act (6th Edn.) at page 295, Section 53A is applicable to a case where a transfer had not been completed in the manner required by law and not to a case where an agreement to so transfer was void under the law. Therefore, neither that section nor the doctrine of equity on which it is founded, would validate that which the law said was invalid." In dealing with transfers made after coming into force of the Principal Act, but before its amendment, the Court said that since Section 5(3) before its amendment permitted transfers of re-granted land with the sanction of the Deputy Commissioner, the transfer made prior to the re-grant which was imperfect as the seller had no right over the land, would be perfected on the seller acquiring such a right on re-grant. This reasoning cannot apply to a case where the transaction prior to re-grant is wholly null and void; nor can it apply to a case where transfer after re-grant is prohibited, as under the amended Section 5(3).

Section 5(6) of the said Act which is introduced under the Amending Act 1978, clearly provides that an agreement to transfer which is entered into prior to re-grant is null and void. Nor can a transfer be effected pursuant to such an agreement after 7.8.78. In view thereof the respondent i.e. defendant, has no right, title or interest in the suit land under the agreement which is null and void. Nor can he get a transfer of land pursuant to such an agreement in his favour after re-grant since such transfers are prohibited for 15 years from 7.8.78 under the amended Section 5(3). The defendant has, therefore, no right, title or interest in the suit land. Since the land has been re-granted to the plaintiff, she is entitled to succeed in the suit.

In the premisses, we allow the appeal and set aside the judgment and order of the Division Bench of the Karnataka High Court and restore the judgment and decree of the trial court. The respondent shall pay to the appellants costs of the appeal.