

PETITIONER:
SHARANAPPA BASAPPA DINDAWAR

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS

DATE OF JUDGMENT: 28/08/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATASWAMI K. (J)

CITATION:
JT 1996 (8) 247

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the judgment and order of the Karnataka High Court made on November 17, 1989 in Writ Appeal No.1830/84. The admitted position is that under Section 66 of the Karnataka Land Reforms Act, 1961, as amended by 1974 Amendment Act [for short, the 'Act'] The ceiling area has been determined as 54 acres. The appellant had in his possession 15 acres 6 gunthas in Survey No.102 and 28 acres 10 gunthas in Survey No.28/2 in Ankalagi Village in Bijapur taluk. By a registered exchange deed dated August 18, 1971, the appellant had exchanged 28 acres 10 gunthas of land with Gurappa Bhimaraya Birdar's 30 acres 24 gunthas of land in Survey No.175 of the same village. Earlier, he had total extent of 43 acres 16 gunthas and by virtue of the exchange deed, he had 45 acres 30 gunthas. Thus, he remained within the ceiling limit of rural land.

The question that arises is: whether the 30 acres 24 gunthas of land obtained by the appellant in exchange of 28 acres 10 gunthas could be included in his total holding of 43 acres 16 gunthas? The High Court relying upon the explanation to sub-section (10) of Section 63 construed that since the appellant had 30 acres 24 gunthas by exchange after January 24, 1971, the said land should also be included in his holding in addition to 15 acres 6 gunthas and 28 acres 10 gunthas situated in the aforestated Survey no. Thereby, the appellant was found in excess of the ceiling limit. Accordingly, the surplus land was directed to be surrendered. Thus, this appeal by special leave.

The Act had come into force on March 15, 1962. The Amendment Act came into force on March 1, 1974. Section 2 (7) defines 'ceiling area' to mean an extent of land which a person or family is entitled to hold under Section 63. The Act does not define the word "exchange". Section 118 of the Transfer of Property Act, 1882 defines exchanger and provides that where two persons mutually transfer the ownership of one thing for ownership of another, neither

thing or both things being money only, the transaction is called an 'exchange'. It would thus be clear that transfer of the property is complete between two persons in the manner provided under the transfer of the property by way of exchange duly registered under the Registration Act. The exchange deed having been duly registered between the two persons by operation of Section 17 of the Registration Act, the right, title and interest of the land held by the two persons stood mutually transferred to each other. Consequently, 28 acres 6 gunthas of land held by the appellant in Survey No.28/2 stood exchanged with 30 acres 24 gunthas of the land in Survey No.175 belonging to Gurappa Bhimaraya Birdar; thereby, the appellant got 30 acres 24 gunthas while Gurappa Bhimaraya Birdar had 28 acres 10 gunthas of the land. The appellant by virtue of exchange came to possess land to the extent of 45 acres 30 gunthas.

The question then emerges: whether the appellant has come to possess land in excess of the ceiling limit? It is true that by virtue of exchange, on and after January 24, 1971, if the land which was found to be in excess of the ceiling limit but stood transferred, necessarily, by operation of the explanation to sub-section (10) of Section 63 has to be ignored and the same should be included in the holding of the owner disregarding such an exchange. Section 63 sub-section (10) reads as under:

"Notwithstanding anything in the preceding subsection, if any person has:

(i) after the 18th November 1961 and before the 24th January, 1971 transferred any land the extent of which if added to the other land remained by him could have been deemed to be surplus land before the date of commencement of the Amendment Act; or

(ii) after the 24th January, 1971 transferred any land, otherwise than by partition or by donation to the Karnataka Bhoodan Yagna Board established under the Karnataka Bhoodan Yagna Act, 1963 (Karnataka Act 34 of 1963) or by sale to the tenant of such land in conformity with any law for the time being in force, then in calculating the ceiling area which that person is entitled to hold, the area so transferred shall be taken into account and the land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area notwithstanding that the land remaining with him may not in fact be in excess of the ceiling area.

If by reason of such transfer the person's holding is less than the area so calculated to be in excess of the ceiling area, then all his lands shall be deemed to be surplus land and the provisions of Sections 66 and 76 shall as far as may be, apply to the surrender to and vesting in the State Government of

such excess land.

Explanation:- For purposes of this subsection the land shall be deemed to have been transferred if it has been transferred by act of parties whether by sale, gift, mortgage with possession, exchange, lease or any other kind of disposition made inter vivos)".

A reading of it would clearly indicate that notwithstanding anything in sub-section (9) of Section 63, on and after January 24, 1971, on transfer of land the extent of which, if added to the other land retained by him, could have been deemed to be surplus before the commencement of the Act, in calculating the ceiling area which that person is entitled to hold the area so transferred shall be taken into account and the land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area notwithstanding that the land remaining with him may not in fact be in excess of the ceiling area. If by reason of such transfer, the person's holding is less than the area so calculated to be in excess of the ceiling area, then all his lands shall be deemed to be surplus land and the provisions of Sections 66 and 76 shall as far as may be, apply to The surrender to and vesting in the State Government of such excess land. For the purpose of computation of the excess land, the Explanation envisages that if exchange or transfer of any kind took place disposing of the land inter vivos then necessarily such an exchange shall be excluded and ignored while computing the excess land. The legislative intention and purpose is that the land held by a holder should stay where it lay prior to January 24, 1971 and the offending transfer would be treated as tainted with the fraudulent intention to defeat the object. The reason is that the person who had the land by offending transfer does not acquire legal and valid title and the transferor does not denude him of his right, title and interest. Take, for instance, a transfer by way of sale or gift etc. the transferee or donee does not get title since he acquires title for the first time, through the offending transfer. This Court has held in various decisions that it should be included in the holding of both transferor and transferee. Such situation, in case of exchange, would be different. Both had pre-existing right and title. But if it would have the effect of reducing the ceiling area to the extent of exchanged land, the exchange should be ignored and computation should be made as if the land did not get transferred so as to be included in the holding of both parties to the extent of excess so that the object of avoidance is nailed fathom deep.

In this case, the appellant did not intend to defeat the provisions of the Act nor he alienated the holding he had prior to the exchange. On the other hand, he enlarged his holding by 2 acres 12 gunthas of land by way of exchange. In either case, he 55 within the ceiling limit. It cannot be said that by exchange, he intended to defeat the provisions of the Act. On the other hand, if the other person reduces his holding, it should be ignored. Consequently, the land had by the appellant by exchange cannot be included in his holding in addition to his holding of an extent of 28 acres 10 gunthas in Survey No.28/2 possession of which he had 31 ready parted with and obtained, by way of exchange, possession of 30 acres 24 gunthas. The High Court, therefore, was in error in directing inclusion of both the land holdings in his holding

and treating him to be holding the land in excess of the ceiling area.

The appeal is accordingly allowed. It is declared that the appellant is not in excess of the ceiling limit. No costs.

JUDIS