

Karnataka High Court Rudrappa vs Special Deputy Commissioner on 8 November, 1995 Equivalent citations: ILR 1995 KAR 3313, 1996 (5) KarLJ 59 Author: Pendse Bench: M Pendse, B Padmaraj JUDGMENT Pendse, C.J. 1. An area of 2 acres of agricultural land out of Survey No. 53/4 in the Village, Kamasagara in Channagiri Taluk of Shimoga District, was granted by the Competent Authority in favour of the late husband of respondent-3. The Saguvati Chit, which is in the nature of Grant Certificate, was issued in favour of the grantee on April 17, 1940, in accordance with the Mysore Land Grant Rules. The grant was subject to certain conditions and the principal condition was that the grantee shall not alienate the land at any time. The Government had a right to resume the land in case the grantee committed any breach of the conditions. In spite of the condition of non-alienability, the grantee sold the land to the appellant's father by registered Sale Deed dated May 31, 1957. It is not in dispute that the appellant's father and after his demise, the appellant, continued to remain in possession from the date of sale. 2. The Government of Karnataka enacted the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ("the Act"), to provide for the prohibition of transfer of certain lands granted by the Government to persons belonging to the Scheduled Castes and Scheduled Tribes in the State. The Act came into force from January 1, 1979. Section 4 of the Act, inter alia, provides that notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of the Act, in contravention of the terms of the grant of such land or the law providing for such grant, shall be null and void. The expression "granted land" is defined under Section 3(b) and means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes. Section 5 of the Act, inter alia, provides that the Assistant Commissioner, if satisfied that the transfer of any granted land is null and void under Section 4, may take possession of such land after evicting all persons in possession thereof and restore such land to the original grantee or his legal heir. In pursuance of the provisions of Sections 4 and 5 of the Act, respondent-3 approached the Assistant Commissioner for resumption of the land. The Assistant Commissioner, Shimoga Sub-Division, Shimoga, by order dated October 25, 1980, directed that the land should be resumed by the Government by dispossessing the appellant and possession should be restored to respondent-3. The appellant carried appeal before the Special Deputy Commissioner, Shimoga, but, the appeal ended in dismissal by order dated June 27, 1986. The appellant then preferred Writ Petition under Articles 226 and 227 of the Constitution before the learned Single Judge, but, the Petition ended in dismissal by the impugned Judgment dated September 3, 1991. The learned Single Judge held that the Rules prevalent on the date of the grant, that is, April 17, 1940, prohibited the grantee from alienating the land at any time and consequently, the Sale Deed in favour of the appellant's father was void as it is in breach of the terms of the grant. The Decision of the learned Single Judge is under challenge, 3. The learned Counsel for the appellant submitted that the permanent prohibition prescribed by Rules framed under the Mysore Land Revenue Code and prevalent on April 17, 1940, when the Grant

Certificate was issued in favour of the husband of respondent-3, was violative of Article 19(1)(f) of the Constitution. It was contended that Article 19(1)(f) of the Constitution provided till its repeal, that all citizens shall have the right to acquire, hold and dispose of property. It was contended that, on the date of the sale in favour of the appellant's father, that is, on May 31, 1957, the Fundamental-Right guaranteed under Article 19(1)(f) was available and it was open for the grantee to not only hold the land, but also to dispose of the same and consequently, the prohibition to alienate prescribed under the Rules framed under the Mysore Land Revenue Code was unenforceable. The learned Counsel referred to the provisions of Article 13 of the Constitution to urge that all laws in force in the territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with the provisions of Part-III, shall, to the extent of such inconsistency, be void. The submission is that the Rule, which prescribed that the land granted cannot be alienated at any time in future, deprives to the grantee of the Fundamental Right to dispose of the property. It is not possible to accede to the submission of the learned Counsel. The grant in favour of the member of a Scheduled Caste was made by the Government with an object that the grantee himself would enjoy the land. Experience had shown that persons belonging to Scheduled Castes and Scheduled Tribes, to whom the lands were granted, were, because of their poverty, lack of education and general backwardness, exploited by various persons who could and would take advantage of the sad plight of these persons for depriving them of their lands. The Rules were framed under the Mysore Land Revenue Code with the object that the grantees will not transfer the lands and are not exploited by persons having better financial position. The imposition of the condition of prohibition on transfer could not, therefore, be considered to constitute any unreasonable restriction on the right of the grantees to dispose of the granted lands. The imposition of such a condition in the very nature of the grant was perfectly valid and legal. The grant cannot be equated to the sale of the property by the Government and the grant was made with a particular object that the grantee would personally cultivate that land and enjoy the fruits to come up in life. The object of the grant cannot be defeated by permitting transfers and therefore, in our judgment, it is futile to suggest that the condition prescribed for prohibition from alienation was in breach of the Fundamental Right guaranteed under Article 19(1)(f) of the Constitution. The contention of the learned Counsel that the condition should be declared as void in view of the provisions of Article 13(1) of the Constitution, therefore, cannot be accepted. 4. It was then contended by the learned Counsel that by Notification-dated August 4, 1953, issued in exercise of powers conferred by Section 233 of the Mysore Land Revenue Code, the Government of Mysore amended the Rules and prescribed that the lands granted shall not be alienated for a period of 20 years from the date of the grant. The Rules were further amended on January 18, 1956, and the period was reduced from 20 years to 15 years' and 10 years depending upon the nature of the grant. Relying on this Notification, it was contended that the initial Rule prescribing total inalienability of the granted lands was watered down to the period of 15 years and 10 years and therefore the transfer effected

by the grantee on May 31, 1957, should be treated as valid and legal. It is not possible to accede to the submission of the learned Counsel. It has been repeatedly held by this Court that the Notifications of the years 1953 and 1956 are prospective in nature and would apply only to those grants which were issued after the date of the Notification and not to the grants which were made prior to the amendment of the Rules. It is, therefore, futile to suggest that the prohibition from alienation for a duration of 15 years or 10 years, as the case may be, would be also applicable to the grants made in the year 1940. The learned Counsel referred to the Decision of the Supreme Court in *MANCHE GOWDA v. STATE OF KARNATAKA* ILR 1984(2) KAR 1 : 1984(2) KLJ 13, and especially on the observations in Paragraph-17 of the Judgment, to contend that the Supreme Court upheld the validity of the Rule by holding that the Rule does not offend the provisions of Article 19(1)(f) of the Constitution as the prohibition on transfer was not for an indefinite period or perpetual, but only for a certain duration. It was urged that the Decision of the Supreme Court indicates that in case the prohibition was not for a particular period but for an indefinite period, then it might offend the Fundamental Right under Article 19(1)(f) of the Constitution. It is not possible to accede to the submission of the learned Counsel. The question as to whether the prohibition for an indefinite period or in perpetuity would attract the bar of Article 19(1)(f) of the Constitution, did not arise for consideration. Indeed, the question arose for determination of the Supreme Court in the later Decision in the case of *CHANDEVARAPPA ETC. v. STATE OF KARNATAKA* Judgments Today 1995(7) SC 93. The Supreme Court observed that the prohibition from alienation is to effectuate the Constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. The refusal to permit alienation is to effectuate the Constitutional policy. The Supreme Court then observed that the object of issuing the grant was that the grantee should remain in possession and cultivate the land personally from generation to generation to augment economic status so as to secure economic Justice envisaged under the Preamble of the Constitution and the Directive Principles. In view of the Decision of the Supreme Court, it is not possible to accede to the contention that the prohibition to alienate in perpetuity cannot be held to be valid and offends the Fundamental Right under Article 19(1)(f) of the Constitution. There is another aspect of the matter which cannot be overlooked. The grantee accepted the possession of the land with conditions under which the grant was issued. It is not open for the grantee to challenge the validity of the condition and which is the basis of the grant. The learned Counsel for the appellant submitted that it is always open for the grantee to claim that though the grant is valid, the condition is invalid as it violates the Fundamental Right. It was contended that it is open for the Court to uphold the grant and strike off the condition which is offending the provisions of the Constitution. In our judgment, it is not possible to split up the condition of prohibition to alienate from the grant as the condition was a indivisible condition and which was prescribed by the Rules framed under the Mysore Land Revenue Code. The grantee having accepted the grant subject to the condition, cannot complain about the validity of the condition. 5. The

learned Counsel for the appellant then submitted that even if the grant was on the condition of permanent non-alienation and even if the transfer in favour of the appellant's father was void, still the appellant can retain possession, by relying upon the claim that the transferee has perfected title by adverse possession. The learned Counsel submitted that as held by the Supreme Court in the case of *SUNKARA RAJYALAKSHMI v. STATE OF KARNATAKA* ILR 1987 KAR 2076, it is necessary for the transferee to raise such contention at the earliest and before the first Authority. It was urged that the Rules or proceedings before the Assistant Commissioner who is the initial Authority, did not permit Lawyers to represent parties and on many occasions, the parties were not permitted to put forward all their contentions. It was submitted that though the appellant raised the contention about the adverse possession before the Assistant Commissioner, the same was not referred to or considered in the order passed. The contention of the learned Counsel deserves acceptance because before the Special Deputy Commissioner where the appeal was carried by the appellant, it was specifically contended that the Assistant Commissioner did not give proper opportunity and failed to consider the contention that the appellant had perfected title by adverse possession. The Deputy Commissioner created mess of the matter by assuming that the suit land was granted in the year 1961 and referred to the Saguvali Chit issued in the year 1965-66. It is obvious that the Deputy Commissioner mixed up the facts of some other case with the facts of the case on hand and then recorded a finding that the appellant purchased the land on September 27, 1966, and the transaction was void. The learned Single Judge noticed the confusion created by the Deputy Commissioner, but did not address to the issue of adverse possession. In these circumstances, it was contended on behalf of the appellant that the appellant was deprived of an opportunity to establish the claim of adverse possession by all the Authorities and, therefore, the matter should be remitted to the Assistant Commissioner to record a finding as to whether the appellant had perfected title by adverse possession on the date when the Act came into force, that is, January 1, 1979. It is true as held by the Supreme Court in the Decisions in *Manche Gowda's case* (supra) and *Sunkara Rajalakshmi's case* (supra), that it is open for the transferee to establish adverse possession to come out of the clutches of Sections 4 and 5 of the Act. The Supreme Court held that the transferee must establish adverse possession for a duration of 12 years prior to the date of the Act coming into force, provided the grant was for an upset value or a market price. The transferee is required to establish adverse possession for a duration of 30 years prior to the date of the Act coming into force in case the grant was a free grant. It is, therefore, necessary for the Assistant Commissioner to ascertain what was the nature of the grant in favour of the late husband of respondent-3 and thereafter record a finding as to whether the appellant and his predecessor had perfected title by adverse possession. The Assistant Commissioner will examine only the issue of adverse possession and no other contention. It is made clear that all other contentions stand concluded and the matter is remitted back to determine only the issue of adverse possession. The Assistant Commissioner is directed to dispose of the matter on remand as early as possible. 6. Accordingly, the Appeal is

allowed, order dated October 25, 1980, passed by the Assistant Commissioner, Shimoga, in Case No. RRC.KR.808/79, decision dated June 27, 1986, by the Special Deputy Commissioner, Shimoga, in Case No. SC/ST/246/84-85 and Judgment dated September 3, 1991, by the learned Single Judge in Writ Petition No. 15536/1986 are set aside and the proceedings are remitted back to the Assistant Commissioner, Shimoga Sub-Division, Shimoga, for adjudication as directed hereinabove. The Assistant Commissioner shall dispose of the proceedings as early as possible. In the circumstances of the case, there will be no order as to costs.