

B.K. Muniraju vs State Of Karnataka & Ors on 15 February, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1438, 2008 (4) SCC 451, 2008 AIR SCW 1463, 2008 (3) AIR KANT HCR 133, 2008 (3) SRJ 197, 2008 (2) SCALE 515, (2008) 1 MAD LW 910, (2008) 3 KANT LJ 369, (2008) 2 MAD LJ 1181, (2008) 2 SCALE 515

Author: P. Sathasivam

Bench: Tarun Chatterjee, P. Sathasivam

CASE NO.:
Appeal (civil) 1320 of 2008

PETITIONER:
B.K. Muniraju

RESPONDENT:
State of Karnataka & Ors

DATE OF JUDGMENT: 15/02/2008

BENCH:
Tarun Chatterjee & P. Sathasivam

JUDGMENT:

JUDGMENT CIVIL APPEAL NO. 1320 OF 2008 (Arising out of SLP (C) No. 21914 OF 2004) P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the order dated 12.07.2004 in Writ Appeal No. 795 of 2002 of the High Court of Karnataka at Bangalore dismissing the appeal of the appellant confirming the order dated 07.12.2001 in Writ Petition No. 809 of 2000 of the learned single Judge.

3) Brief facts:

The land in question bearing Survey No. 72 of Bommanahalli Village, Begur Hobli, Bangalore South Taluk was allotted to the grand-father of the appellant, namely, Motappa, who belongs to the Bhovi Community under the Mysore Land Grant Rules. The total extent of mortgaged land was 2 acres 29 guntas. Later in 1956, Motappa mortgaged 1 acre of the said land to one Munichennamma. Subsequently in 1959, he mortgaged another portion of the land in favour of one Ramachandra Reddy, who was the father of respondent Nos. 4 & 5 herein by raising a loan of Rs. 1000/- to

discharge his previous mortgage amount.

4) After the demise of Motappa and Ramachandra Reddy, B.K. Muniraju, the appellant herein and one M. Gopal paid the mortgaged amount of Rs.1000/- to respondent Nos. 4 & 5 and requested them to discharge the mortgage. Respondent Nos. 4 & 5 refused to discharge the mortgage on the ground that it was not a mortgage deed but an absolute sale deed. On coming into force of The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "the Act"), in the year 1981, the appellant herein along with M.Gopal, who died during the pendency of writ appeal, and also a legal heir of deceased Motappa filed an application before the Assistant Commissioner for cancellation of the sale deed and restoration of the land under the provisions of the said Act.

The Assistant Commissioner dropped the proceedings on the ground that the alienation is after the expiry period of ten years of non-alienation clause and hence the sale transaction is not in violation of the condition governing grant and, therefore, it does not attract the provisions of Section 4(1) of the Act. Against the said order, the appellant preferred an appeal before the Deputy Commissioner which was also dismissed. Thereafter, the appellant approached the High Court by filing Writ Petition No. 11821 of 1987 and the High Court allowed the said petition and remanded the matter to the Assistant Commissioner for fresh disposal. The High Court, in its order, directed the Assistant Commissioner to examine the original Saguvali chit besides the original records relating to grant proceedings to the land in question and then decide whether or not the provisions of the Act are attracted to the facts of the case and whether the prohibition or alienation has been violated by the grantee. Based on the said direction of the High Court, the Assistant Commissioner heard the matter afresh. Finally, the Assistant Commissioner dismissed the matter holding that the land in question is not a "granted land" but was purchased by Motappa in public auction and hence, the Act is not applicable. It was also held that the auction purchaser does not come under the Rules relating to the grant and there is no violation of the conditions of the grant. Questioning the said order of the Assistant Commissioner, the appellant herein preferred an appeal before the Deputy Commissioner who also dismissed the appeal holding that the land granted at an upset price is alienated after a period of ten years of non-alienation condition period, that the land granted at an upset price, did not attract the provisions of Section 4(1) of the Act. The Deputy Commissioner also held that the Saguvali chit issued in Form No.1 indicates that the land was allotted to Motappa in public auction at an upset price of Rs.408.12.

5) Aggrieved by the aforesaid order of the Deputy Commissioner, the appellant filed Writ Petition No. 809 of 2000 before the High Court. The main grievance of the appellant before the learned single Judge was that the land was granted under the Mysore Land Revenue Rules and not a land sold at public auction. It was contended that insofar as the "granted lands" are concerned, there was a total prohibition from alienating the land as per the Rules that were prevailing at the time of grant in question. However, the learned single Judge dismissed the writ petition and the writ appeal filed by the appellant herein was also dismissed by the Division Bench which is impugned in this appeal.

6) Heard Mr. Altaf Ahmed, learned senior counsel appearing for the appellant and Mr. S.N. Bhat, learned counsel appearing for respondent Nos. 4 & 5 and Mr. Amit Kumar Chawla, learned counsel appearing for respondent Nos. 1-3.

7) Mr. Altaf Ahmed, learned senior counsel appearing for the appellant, by taking us through the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 as well as the Rules under the Mysore Land Revenue Code, contended that the authorities as well as the High Court committed an error in rejecting the claim of the appellant inasmuch as it contravenes the said Act and the Rules. He further submitted that in view of the earlier order of the High Court directing the Assistant Commissioner to verify the original record and arrive a fresh conclusion, the contrary decision by the said officer is liable to be interfered with. On the other hand, Mr. S.N. Bhat, learned counsel appearing for the contesting respondents 4 & 5, submitted that in view of the specific factual finding by both the authorities namely, that Motappa purchased the land in question by offering "price" in a public auction and it was not a "granted land", and the same was duly considered and affirmed by the High Court, there is no valid ground for interference.

8) We have perused all the relevant materials, Annexures and considered the rival contentions. The only question to be considered in this appeal is whether the land in question was "granted land" or "purchased for a price" by Motappa? If it is found that the subject matter of a land was not a "granted land", it does not attract the vice of Section 4 of the Act.

9) The Statement of Objects and Reasons of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 shows that the non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation of grants where the land is alienated in contravention of the above said provision are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty have been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they have become the victims of circumstances. To fulfill the purposes of the grant, the land even if it has been alienated, should be restored to the original grantee or his heirs. It is clear that in order to provide for the prohibition of transfer of certain lands granted by Government to persons belonging to the Scheduled Castes and Scheduled Tribes in the State of Karnataka, the above said Act was enacted. In order to implement the provisions of the Act, the Rules were framed. Among the provisions, we are concerned with Section 4 which prohibits transfer of "granted land". It makes it clear 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, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer. Sub-section (2) makes it clear that no person shall, after the commencement of the Act, transfer or acquire by transfer any granted land without the previous permission of the Government. As per sub-section (3), the provisions of sub-sections (1) and (2) also apply to the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority.

10) Among the Rules, Rule 43 is relevant which speaks about the grant of occupancies. Sub-rule(1) of Rule 43 mandates that all the lands shall ordinarily be sold by public auction. Sub-rule (5) mandates Grant of occupancies to members of depressed classes. Sub-Rule (8) makes it clear that lands granted free or at upset price shall not be alienated but may be accepted as security for loans. The note appended to the above provisions makes it clear that depressed classes occurring in these rules will have to be constructed as equivalent to the words "Scheduled Caste and Scheduled Tribes" occurring in the Constitution of India.

11) From the materials, now we have to see whether the land purchased by Motappa was a "granted land" as claimed by the appellant herein and one M. Gopal or purchased by public auction for a price as claimed by contesting respondents 4 & 5 herein? In order to understand whether the land in question was a "granted land" or "land purchased for a price at a public auction", it is incumbent on the part of the authorities to look into the relevant records and decide the same. In view of the controversy in question, we verified the document and the orders passed by the Assistant and the Deputy Commissioner and the factual findings recorded by them. It reveals that the land in question was granted in 1948 and the Certificate of Grant/Saguvali Chit which was filed as Annexure R-1 before the High Court (Annexure P-3 before us) shows that the same was sold in public auction for a price. In other words, the land was purchased by Motappa at a public auction and it was not a "granted land" within the meaning of Rule 43(8) of the Rules. It was contended that the finding recorded by both the authorities is essentially a factual finding based on the relevant materials and the same cannot be interfered with by the writ court.

12) The document in question which is filed as Annexure P-3, has been styled or titled as "Certificate of Grant". In order to know the real nature of the document, one has to look into the recitals of the document and not the title of the document. The intention is to be gathered from the recitals in the deed, the conduct of the parties and the evidence on record. It is settled law that the question of construction of a document is to be decided by finding out the intention of the executant, firstly, from a comprehensive reading of the terms of the document itself, and then, by looking into to the extent permissible the prevailing circumstances which persuaded the author of the document to execute it. With a view to ascertain the nature of a transaction, the document has to be read as a whole. A sentence or term used may not be determinative of the real nature of transaction. Reference in this regard can be made to the following cases i.e. Vidhyadhar vs. Manikrao & Anr., (1999) 3 SCC 573, Subbegowda (Dead) by LR. vs. Thimmegowda (Dead) by LR., (2004) 9 SCC 734 and Bishwanath Prasad Singh vs. Rajendra Prasad & Anr., (2006) 4 SCC 432.

13) The above principles make it clear that we have to see terms and conditions and recitals in the document and not the title alone. Though the document, according to the appellant, "Certificate of Grant", perusal of the clauses therein, clearly shows that the land was sold on 04.03.1948 in a public auction and Motappa purchased the same for a price of Rs.408.12. In addition to the recitals, the "darkhast register extract" produced as Annexure "C" before the High Court also shows that the land in question was sold for a "price". Form I also indicates that the land in question was purchased and what was paid by the purchaser under the said document was the purchase price. In the light of the principles mentioned above and the terms and conditions in the recital clearly show that the land was purchased by Motappa in a public auction for a price. Merely because the document has been

styled or titled as "Certificate of Grant", it cannot be construed that the land was a "granted land"

attracting the provisions of the Act and the Rules. The Assistant and the Deputy Commissioner, the authorized authorities under the Act and Rules, on verification of the contents of the document coupled with Revenue extract rightly concluded that the land was purchased by Motappa in a public auction for a price even in the year 1948.

14) Now let us consider the jurisdiction of the High Court for interference in a factual decision arrived at by the authorities. It is relevant to point out that the appellant and Mr. Gopal filed Writ Petition No. 809 of 2000 before the High Court praying to quash the orders dated 11.03.1999 and 20.09.1999 issued by the Assistant and Deputy Commissioner respondent Nos. 2 and 3 herein, by issuance of Certiorari. It is settled law that a writ of Certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction.

The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave mis-carriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of Certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ. It is useful to refer the decision of this Court in *Surya Dev Rai vs. Ram Chander Rai and Others*, (2003) 6 SCC 675 wherein, in para 38, held as under:

" (3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice."

15) It is clear that whether it is a writ of Certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. It is also clear that the High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. As observed in *Surya Dev Rai vs. Ram Chander Rai* (supra), the exercise of jurisdiction under article 226 or 227 of the Constitution cannot be tied down in a straight jacket

formula or rigid rules. To put it clear though the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

16) In the light of the above principles, let us consider whether the High Court committed any error in dismissing the writ petition. We have already referred to the recitals in the document produced before the High Court which though titled as certificate of grant/Saguvali chit, various terms and conditions make it clear that the land was purchased by Motappa in a public auction on payment of a price for Rs.408.12. In addition, the two authorities as well as the High Court adverted to the revenue extract and concluded that it was not a "granted land" and it was purchased in a public auction on payment of a price. In the light of the factual conclusion, we are satisfied that the High Court has rightly refused to quash the orders of the said authorities and dismissed the writ petition. If the factual finding that the subject-matter of the land was a "granted land" undoubtedly it attracts bar under Section 4 of the Act and follow the conditions as stated in Rule 43 (1) (5) and (8).

17) In the light of the above conclusion, though Mr. Altaf Ahmed, learned senior counsel heavily relied on the decisions of this Court, namely, Manchegowda and Others vs. State of Karnataka and Others, (1984) 3 SCC 301, Siddegowda vs. Assistant Commissioner and Others, (2003) 10 SCC 675, Guntaiah and Others vs. Hambamma and Others, (2005) 6 SCC 228 and T. Mohd. Haneef vs. Dy. Commissioner and Others, (2004) 13 SCC 90, in our opinion, it would be of no help to the stand taken by him. Hence, we refrain from elaborating the ratio laid down therein.

18) In the result, there is no merit in the appeal and the same is dismissed. However, in the facts and circumstances of the case, there is no order as to costs.