

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Sri. S S Nakul, IAS,
Deputy Commissioner,
Uttar Kannada, Karwar

No. RB/LND-II/PTCL/CR-8/10-11



Between

Shridhar Narayan Daivajna
R/O. Hunagund Tq: Mundgod
(Represented through Advocate Sri J.M. Mirashi)

.... Appellant

V/s

1. Assistant commissioner Sirsi
 2. Tahsildar Mundgod
 3. Ramanna Timmanna Waddar
 4. Basavannappa Mahadevappa Yeliwal
 5. Virupaksha Mahadevappa Yeliwal
 6. Vijayalakshmi Yellapa Yeliwal
 7. Ashok Mahadevappa Yeliwal
 8. Nagappa Mahadevappa Yeliwal
 9. Pundlik Narayan Daivajna
- All are R/O. Hunagund Tq: Mundgod

.... Respondent

Sub: Appeal filed u/s 5(A) of Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978 against the order of Assistant Commissioner Sirsi in file No PTCL-CR-2/09-10 dated 20-09-2010.

Preamble:

The instant appeal has been filed against the order of Assistant Commissioner Sirsi in file No PTCL-CR-2/09-10 dated 20-09-2010. Notices were issued to both parties.

1. Appellant has submitted appeal memo on 20-11-200 and the same was admitted for hearing. The respondent side was served notices. The original records were called from Tahsildar, Mundgod and same has been received. Respondent side was given opportunity to file objections and thereafter argument of both sides heard. Perused the documents filed by both parties.
2. Appellant states that Sy. No. 16 land measuring an extent of 4-11-0(A-G-A) of Hunagund village in Mundgod Taluk was granted Giddappa Timmanna Waddar as per prant Hukum No. TRD 5975 dated 11-06-1951. The said Giddappa Timmanna Waddar died on 11-02-1962 and accordingly the name of his son Timmanna Giddappa Waddar was mutated as per Mutation entry No. 1554 of Hunagund village.
3. He executed sale deed in favour of Mahadevappa Vasappa Yeliwal on 12-02-1970 after the expiry of 15 years. Accordingly the name of Mahadevappa was mutated as per Mutation entry No. 2054 dated: 12-06-1970. After the death of Mahadevappa name of his legal heirs were brought on records Respondent No. 4 to 8.
4. In the year 2008, respondent No. 4 to 8 have executed sale deed in favour of appellant and his brother i.e respondent No. 9 on 17-01-2008 accordingly names of appellant and Respondent No.9 entered in the RTC.

5. Assistant Commissioner, Sirsi has issued a show cause notice to the appellant and his brothers regarding violation of PTCL Act.
6. Original grantee of the said property belonged to Hindu Wadar community at the time of grant of land i.e. in the year 1951 at that time Hindu Wadar community was not coming under Scheduled Caste and Scheduled Tribes.
7. As per Government of India Notification LAW 58 LCR-1977 dated: 27-07-1977 Hindu Wadar community was considered as Bhovi caste and same was considered as Scheduled Caste. Since, initial sale deed was executed on 25-02-1970 by Timmanna Giddappa Waddar was prior to declaration of Hindu Wadar or Bhovi caste as Scheduled Caste. The seller of the said property Mahadevappa Vasappa Yeliwal belongs to Hindu Lingayat caste. The seller of this land Mahadevappa Vasappa Yeliwal doesn't belong to SC/ST, so there was no violation of provisions of PTCL Act and therefore prayed for allow the appeal and to set aside the order of Assistant Commissioner, Sirsi order No. PTCL/CR-2/09-10 dated: 20-09-2010.
8. In support of his contentions counsel for the appellant has submitted the following documents:

a) Certified copy of the order of Assistant Commissioner, Sirsi.

Respondent has been served notice. In spite of that they remained absent.

The brief facts of the case are as follows:

An extent of 4-11-0(A-G-A) is in Sy. No. 16 of Hunagund village was granted to one Giddappa Timmanaa Waddar as per prant Hukum No. TRD 5975 dated 11-06-1951. As per Kubulayat vide ME. No. 1068 dated 30-08-1951 his name got mutated. The said Giddappa Timmanaa Waddar died on 11-02-1962. Accordingly the name of his son Timmanna Giddappa was mutated to the suit land. He sold the property to Mahadevappa Bassappa Yeliwal. After the death of Mahadevappa Basappa Yeliwal, the Respondents 4 to 8 became the legal heirs. They sold the suit land to the appellant and Respondent No. 9 through Registered sale deed dated 17-01-2008. Accordingly the name of appellant and Respondent No. 9 was entered in the RTC, Rammanaa Timmanaa Waddar made an application to Assistant Commissioner Sirsi on 03-08-2009 that the suit property of their grandfather was illegally without their knowledge sold to the Appellant Hence requested to take action to mutate their name to the suit property. After due enquiry, Tahsildar Mundgod reported that there was violation of PTCL Act. Hence Assistant Commissioner Sirsi conducted enquiry and by his order dated 20-09-2010 cancelled the impugned ME. So on perusal of the entire records and on hearing the arguments of both sides admittedly first sale transaction was taken place on 12-06-1970 as per Mutation entry No. 2054, whereas this PTCL Act came into force in the year 1978. On perusal of the provision of Section 4 (2) of PTCL Act which reads as **"No person shall, after commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government"**. Further the grant was made prior to the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act coming into force on 01-01-1978. Also the sale via registered sale deed was made as per Mutation entry No. 2054 dated: 12-06-1970 which is very prior to act coming into force. In the decision of Muniswamy v/s Deputy Commissioner (1993) by the Hon'ble High Court of Karnataka in Para 5 is mentioned below:
There is later decision of the Supreme Court, clarifying the earlier decision i.e, Sunkara Rajlakshmi, Supra. In Para 2 of that decision it has been laid down as under:

" We may also make it clear that so far as the second exception laid down by us in our judgment dated: 17-04-1984 is concerned namely, that the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 will not apply where, the transferees have perfected their title in the granted land by prescription of long and continuous enjoyment before the commencement of the Act, the period of limitation which has to be taken into account for the purpose of determining whether the title has been perfected by prescription is that which runs against the State Government and therefore it would be 30 years and not 12 years".

Read in conjunction with Muniswamy v/s Deputy Commissioner case, Supreme Court has made it abundantly clear that if a transferee of land covered by the sweep of the Act had completed adverse possession for the period of 30 years prior to the date of coming into force of the Act then only he would not be touched. All other transfers, otherwise voidable, but falling within Section 4(1) of the Act would be liable to be proceeded with under the Act. To elucidate further, it is held that only those transfers of lands by Scheduled Castes persons which have taken place on or before 1-1-1949, i.e, when transferee have completed adverse possessions prior to 1-1-1949 would be saved from the sweep of the Act. All other transaction would be liable to answer the requirements of the Act and would fall through on the anvil of the Act, on the condition precedent to Section 4 being attracted.

The Advocate for the Appellant argued that.


1. The order passed by Assistant Commissioner is contrary the law and facts of the case.
2. The suit land in Sy. No. 16 of Hunagunda village was granted to Guddappa Waddar in the year 1961 as per prant Hukum. Accordingly ME No. 1068 was mutated in his name. The said Guddappa Waddar died on 11-02-1962 after his death as per ME No. 1564 the name of his son Timmanna Waddar was mutated.
3. Timmanna Waddar sold the property to Mahadevappa Yeliwal through Registered sale deed. After the death of Mahadevappa the respondents 4 to 8 become the legal heirs. They sold the suit land to the appellant and Respondent No. 9 through registered sale deed.
4. The original owner of the suit property Giddappa Waddar was belonging to Hindu Waddar Community, at the time of grant of land in 1951 Hindu Waddar Community was not coming under SC/St Category.

As per the Govt notification dated 27-07-1977 the Hindu Waddar community was considered as Bhoi and the same was considered as scheduled caste. The initial sale deed was executed on 25-02-1970 by the Tippanna Waddar son of Giddappa Waddar Before the declaration of the caste notification the land was transferred to Mahadevappa Yallwal unless the original grantee is recognized as scheduled caste by the parliamentary enactment it is no possible to pass such order as reported in 1983 (1 KLJ 53) It is not considered by Assistant Commissioner.

Hence he requested to allow the appeal.

The case was taken up for hearing on 24-01-2011. In spite of several opportunities given to the respondents they remained absent. So it is decided to dispose the case as per the record available in the case.

After perusal of the lower court records and written argument of the Appellant it reveals that the suit land was granted to one Giddappa Timmanna Waddar as per



Prant Hukum No. TRD/595 dated: 11-06-1951. As per Kabulayat vide Mutation entry No. 1068 dated: 30-08-1951 his name got mutated. After his death on 11-02-1962 the name of his son Timmanna Giddappa Waddar got mutated. As per the grant condition the land should not be alienated for a period of 15 years. But Timmanna Waddar sold the land to Mahadevappa Yeliwal and vide Mutation entry No. 2054 dated: 12-06-1970 his name got mutated. The contention of the Appellant is that at the time of grant Timmanna waddar not belonged to Schedule Caste or Schedule Tribe. In this regard he has produced the copy of the Government of India Notification No. LAW/58/LCR/1977 dated: 27-7-1977 and Government Order No. SWL-285-SAD-78 dated: 27-03-1980. As per this order the Hindu waddar were soncidered as Bhovi and they are registered as subScheduled caste.

Issues to be answered:

1. Whether the original grantee in this case belongs to the scheduled caste?

Ans: Original grantee of the said property belonged to Hindu Wadar community at the time of grant of land i.e. in the year 1951 at that time Hindu Wadar community was not coming under Scheduled Caste and Scheduled Tribes. Government of India Notification LAW 58 LCR-1977 dated: 27-07-1977 Hindu Wadar community was considered as Bhovi caste and same was considered as Scheduled Caste. At the time of grant, grantee was not belonging to scheduled caste. The intention of granting land was to landless people. Hence, negative.

2. Does the appellant prove that the land is 'granted land' as per Sec 3(b) of the Act?

Ans: On perusal entire records it shows said land has been granted to Gidappa Timmanna Waddar as only land less person. Absolutely there is no reliable documents it was granted to him as he belonged to Scheduled Caste/ Scheduled Tribe. At the time of grant, grantee was not belonging to scheduled caste. Hence, negative.

3. Does the appellant prove that there have been sale/transfers of the granted land in violation of Sec 4 of the Act?

Ans: Admittedly this grant was made in the year 1951. As discussed on the above points first of all absolutely there is no evidence to show grantee belongs to Scheduled Caste/ Scheduled Tribe. At the time of grant, grantee was not belonging to scheduled caste. PTCL Act does not attract in this case. Hence, negative.

Hence, I proceed to order as follows:

No.RB/LND-II/PTCL/CR-8/10-11

Date: 19-09-2016

Order

Appeal is allowed.

The Assistant Commissioner, Sirsi order No. PTCL/CR-2/09-10 dated: 20-09-2010 quashed.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 19-09-2016)



S. S. S. S.
19/9
Deputy Commissioner,
Uttara Kannada, Karwar