D.N. VENKATARAYAPPA AND ANR. A

v.

STATE OF KARNATAKA AND ORS.

JULY 9, 1997.

[K. RAMASWAMY AND D.P. WADHWA, JJ.] B

Karnataka Schedule Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 :

Scheduled Caste—Allotment of land to by Government—Restriction on transfer—Violation of—Effect—Land purchased by petitioners from original allottee—Prohibition of land transfer under the Act upto a particular period—Ejectment proceedings under the Act against petitioners—Concurrent finding by authorities that alienation in favour of petitioners was in Violation of the Act—Plea of adverse possession by petitioners—Plea not raised before Courts below except stating that after purchase of the lands they remained in possession and enjoyment of the lands—Petitioners were required to plead and prove that they disclaimed the title under which they came into possession, set up adverse possession with necessary animus of asserting open and hostile title to the knowledge of the true owner and the later allowed them without any let or hindrance, to remain in possession and enjoyment of the property adverse to the interest of the true owner until the expiry of the prescribed period—As the petitioners have not done so their plea of adverse possession was not proved—Held no interference was called for with impugned decision. C D E

Secretary of State **v.** *Debendra Lal Khan,* **AIR (1934) PC 23;** *State of West Bengal* **v.** *Dalhousie Institute Society,* **AIR (1970) SC 1778;** *Danappa Ravappa Kolli* **v.** *Gurupadappa Kallappa Pattana Shetti,* **ILR 1990 Karnataka 610;** *K.T. Hutchegowda* **v.** *Deputy Commissioner,* **ILR (1994) Kar. 1839 (SC) and** *R. Chandeveerappa and Ors.* **v.** *State of Karnataka and Ors.,* **(1995) 7 JT 93 SC, cited.** F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4616 of 1997.

From the Judgment and Order dated 21.2.97 of the Karnataka High Court in W.A. No. 7354 of 1996. H

A Naresh Kaushik, V. Bhadeppa, (Shanker Diwate) for Ms. Lalitha Kaushik for the Appellants.

E.C. Vidya Sagar, (NP) for the Respondents.

B The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the judgment of the Division Bench of the Karnataka High Court, made on February 21, 1997 in Writ C Appeal No. 7354/96.

The petitioners, admittedly, had purchased the property in the years 1962-63 and 1963-64 from the original allottees. The Government have allotted those lands as per Saguvali Chit containing prohibition of alienation of the land. Subsequently, the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 was enacted totally prohibiting the alienation up to a particular period. The proceedings were initiated against the petitioners for ejectment under the said Act. All the authorities have concurrently held that the alienation in favour of the petitioners was in violation of the above Rules and the said E Act and hence the sales are voidable. When the case had come up before this Court, this Court while upholding the constitutionality of the Act directed the authorities to go into the question of adverse possession raised by the petitioners. The learned Single Judge has extracted the pleadings on adverse possession of the petitioners. Therein, the High Court had F pointed out that there is no express plea of adverse possession except stating that after the purchase of the lands made by them, they remained in possession and enjoyment of the lands. What requires to be pleaded and proved is that the purchaser disclaimed his title under which he came into possession, set up adverse possession with necessary animus of asserting open and hostile title to the Knowledge of the true owner and the later G allowed the former, without any let or hindrance, to remain in possession and enjoyment of the property adverse to the interest of the true owner until the expiry of the prescribed period. The classical requirement of adverse possession is that it should be *nec vi, clam, aut precario.* After considering the entire case law in that behalf, the learned Single Judge has H held thus :

"The contention raised by the petitioners that they have perfected their title in respect of the lands in question by adverse possession, has to fail on two counts. Firstly, the crucial facts, which constitute adverse possession have not been pleaded. The pleadings extracted above, in my view, will not constitute the crucial facts necessary to claim title by adverse possession. It is not stated by the petitioners in their pleadings that the petitioners at any point of time claimed or asserted their title hostile or adverse to the title of the original grantees/their vendors. In my view, mere uninterrupted and continuous possession without the animus to continue in possession hostile to the rights of the real owner will not constitute adverse possession in law.

In case of *Lakshmi Reddy* (supra) relied upon by Sri Narayana Rao at Paragraph 7 of the judgment, the Supreme Court, following the decision of the Privy Council in Secretary of *State for India* v. *Debendra Lal Khan,* AIR (1934) PC 23, has observed that the ordinary classical requirement of adverse possession is that it should be *nec vi nec clam nec precario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

In the case of *State of West Bengal* v. *Dalhousie Institute Society,* AIR (1970) SC 1778, the Supreme Court, on the basis of the materials on record, which were referred to by the High Court, took the view that in the said case, the respondent had established his title to the site in question by adverse possession. Further, the said decision proceeds on the basis that the grant made by the Government was invalid in law. That is not the position in the present case. The alienation in question was only voidable. The petitioners came into possession of the lands in question by virtue of the sale deeds which are only voidable in law. Therefore, they have come into possession by virtue of the derivative title as observed by the Supreme Court in the case of Chandevarappa (supra). Further, in the case of Kshitish Chandra (supra), the observation made by the Supreme Court at paragraph 8 of the judgment relied upon by Sri Narayana Rao in support of his contention that the only requirement of law to claim title by adverse possession is that the possession must be open and without

A any attempt at concealment and it is not necessary that the possession must be so effective so as to bring it to the specific Knowledge of the owner is concerned, I am of the view that the said observation must be understood with reference to the observation made in Paragraph-7 of the judgment. At paragraph-7 of the Judgment, the Supreme Court has observed thus :

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"7... For instance, one of the most important facts which clearly proved adverse possession was that the plaintiff had let out the land for cultivatory purposes and used it himself from time to time without any protest from the defendant. During the period of 45 C years, no serious attempt was made by the municipality to evict the plaintiff knowing full well that he was asserting hostile title against the municipality in respect of the land."

Further, this Court, in the case of *Danappa Revappa Kolli* v. *Gurupadappa Kallappa Pattana Shetti,* ILR (1990) Karnataka 610, D while referring to the decision of the Supreme Court in Kshitish Chandra's case (supra), relied upon by Sri Narayana Rao in support of the plea of adverse possession, has observed that apart from the actual and continuous possession which are among other ingredients of adverse possession, there should be necessary E animus on the part of the person who intends to perfect his title by adverse possession. The observations made in the said decision reads thus :

"5. ... Apart from actual and continuous possession which are among other ingredients of adverse possession, there should be F necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all be adverse possession because it lack necessary animus for perfecting title by G adverse possession."

Therefore, it is clear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner. Therefore, I am of the view that none of the decisions relied upon H by Sri Narayana Rao in support of the plea of adverse possession

set up by the petitioners, is of any assistance to the petitioners. A

Further, admittedly, there is not even a whisper in the evidence of the first petitioner with regard to the claim of adverse possession set up by the petitioners. It is not stated by the petitioners that they have been in continuous and uninterrupted possession of the lands in question. What is stated by the petitioners, in substance, is that they came into possession of the lands in question by virtue of the sale deeds executed by the original grantees. The Supreme Court, in paragraph 11 of the decision in Chandevarappa's case (supra), has observed thus : B

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"11. The question then is whether the appellant has perfected his title by adverse possession. It is seen that this contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But, the crucial facts to constitute adverse possession have not been pleaded. Admittedly, the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant." D E F

Therefore, in the absense of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiminng right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession and, therefore, the Act does not apply as laid down by the Supreme Court in *Manchegowda's* case (supra). The law laid down by the Supreme Court in Chandevarappa's case G H

(supra) fully applies to the facts of the present case. In the said case, while considering the claim of adverse possession the purchaser of a granted land from the original grantee, the Supreme Court has observed that the person, who comes into possession under colour of title from the original grantee if he intends to claim adverse possession as against State, must disclaim his title and plead his hostile claim to the knowledge of the State and the State had not taken any action thereon within the prescribed period. It is also relevant to point out that sub-section (3) of Section 5 of the Act provides that where a granted land is in possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer, which is null and void under the provisions of sub-section (1) of Section 4. Since I have negatived the contention of Sri Narayana Rao that the original grantees are not Scheduled Castes, it follows that the lands in question are granted lands within the meaning of clause (b) of sub-section (1) of Section 3 of the Act therefore, the burden is on the petitioners, who had admittedly come into possession of the lands in question, to establish that they have acquired title to the lands in question by a transfer, which is not null and void under the provisions of sub-section (21) of section 4 of the Act. In the instant case, the petitioners have failed to discharge the said burden. On this ground also, the petition should fail. Secondly, the grants made in favour of the original grantees are admittedly free grants. The Rule governing the grant prohibited alienation of the lands in question permanently. The lands in question were granted to Scheduled Caste person taking into account their social backgrounds, poverty, illiteracy and their inherent weakness for being exploited by the affluent section of the society. Under these circumstances, the conditions were imposed that the grantees should not alienate the lands granted to them, Sections 66A and 66B of the Land Revenue Code authorise the State to resume the land for violation of the terms of the grant. Therefore, if the terms of the grants, which are hedged with conditions, and the class of persons to whom the lands are granted, are taken into account and considered, it is not possible to accept the contention of the learned Counsel for the

petitioners that the title in the lands had passed absolutely to the grantees. I am of the view that the title to the lands continued to remain in the State and what has been transferred to the grantees is the right to continue to be in possession of the lands granted to them and enjoy the same in perpetuity subject to the condition that they do not violate the conditions of the grant. This view of mine is supported by the Division Bench decision of this Court in the case of *Rudrappa* v. *Special Deputy Commissioner* (Writ Appeal No. 1210/1987 decided on 17.6.1996), wherein in Paragraph-3 of the judgment, the Division Bench of this Court, while considering similar grants, has taken the view that the grantee was not given absolute title in respect of the land granted. The relevant portion of the judgment at Paragraph-8, reads as follows :

> "8. ...It is clear from the terms of the grant that the appellant's predecessor in title, the grantee could not alienate the land for certain period and if the land was alienated, it was open to the Government to cancel the grant and resume the land in question. If the grant was hedged in with several conditions of this nature, the same cannot be said to be absolute moreover, it must be noticed that the grant was made at an upset price. In the circumstances, proceeding initiated by the respondents cannot be stated to be barred by limitation or is it possible to sustain the plea of adverse possession raised on behalf of the appellant."

In that view, it was held that the title of the land in question has not been absolutely granted to the petitioners. Their title by adverse possession against State was for a period over 30 years prior to the date of coming into force of the Act. The petitioners failed to prove their claim for adverse possession. This finding was upheld by the Division Bench in paragraph 3 of its judgment thus :

> "It is no doubt true that when the grant of land is made, depending on the term thereof, the land may vest in the grantee with full right, but if the terms of the grant itself spells out certain conditions which restrict the rights that are available in respect of the land which had been granted, the fine-tuned arguments addressed by the learned counsel for the appellants would pale into in significance for admittedly the title is clogged with the resumption of

land in the event of violation of the terms of grant and would necessarily mean that the grantee cannot give a better title than what he had to be purchase and that title has the burden of non-alienation either for a particular period or for all period to come. If any sale is effected contrary to those provisions, the same would enable the authorities to resume the lands in question. Thus, the terms of grant itself cannot be understood to be absolute right. Such title necessarily cuts down the capacity or the power to alienate the lands. Therefore, it is unnecessary to refer to the various decisions relied upon by the learned counsel for the appellants in this regard for this aspect did not arise for consideration much less considered in the aforesaid decisions. The context in which those provisions were interpreted were only cases of simple grants unhindered by the enactment like the one with which we are concerned presently. In such cases what rights would flow or arise are entirely different. The Act clearly sets out that any transfer or grant of land made either before or the commencement of the Act in contravention of the terms of grant of such land, would be null and void and no right, title or interest in such land shall be conveyed nor deemed to have ever been conveyed by such transfer. When the provisions of the Act clearly spell out to destroy such transactions to argue that the parties concerned had clear title fully in respect of the same would not stand to reason.

5. The learned counsel, submitted that in view of the decision in ILR (1994) Kar. [1839] SC *K.T. Hutchegowda* v. *Deputy Commissioner* for the purpose of determining whether the period of limitation is 12 years or 30 years, each case has to be examined on its merits and if the grant had been made in absolute terms, the land would vest in the transferee and he would have perfected his title by principles of adverse possession. But, subsequently, the Supreme Court in a later decision in *R. Chandeveerappa and others* v. *State of Karnataka and others,* (1995) 7 JT 93 SC - have explained that in claiming adverse possession certain pleas have to be made such as when there is a derivative title as in the present case, if the appellants intend to plead adverse possession as against the State, they must disclaim their title and plead this hostile claim to the knowledge of the State and that the State had not taken any action within the prescribed period. It is only in those circumstan-

ces the appellants' possession would become adverse. There is no material to that effect in the present case. Therefore, we are of the view that there is no substance in any of the contentions advanced on behalf of the appellants." A

Here, in the present case, when alienation is altogether prohibited, question of obtaining permission for alienation is not at all contemplated. When under the law alienation cannot be effected at all during the relevant period, it was impossible for the alienor to alienate the same. Thus the alienee will not derive any title. If at all be holds the lands, he holds the same adverse to the alienor and not with reference to the State. That was the position considered by the Supreme Court in Chandeveerappa's case as well as in Civil Appeal No. 11933/1996 - *Papaiah* v. *State of Karnataka and Others.* The Supreme Court in Papaiah's case noticed the scope of the enactment and found that the same has been enacted in terms of the preamble of the Constitution to provide economic justice to the Scheduled Castes/Scheduled Tribes and other weaker sections of the society and to prevent their exploitation in terms of Articles 46 of the Constitution. It is also noticed that under Article 39 (b) of the Constitution, the State is enjoined to distribute its largesee - in the present case the land - to sub-serve the public good. The assignment of land having been made in furtherance of this objective, any alienation in its contravention would not only be inviolation of a Constitutional Policy but also opposed to public policy under Section 23 of the Contract Act. Therefore, the Supreme Court pointed out that any alienation made in violation of the terms of grant is void and the alieness do not get any valid title or interest thereunder. In Papaiah's case the contention was that the alienee had obtained the land by way of sale in 1958 long prior to the Act coming into force and thereby he had perfected his title by adverse possession. The Supreme Court noticing the decision in *Chandeveerappa's* case to which we have already adverted, has held that such a contention cannot be countenanced at all. A distinction was also sought to be made in the light of the ratio laid down in *K.T. Huchegowda's* case in which neither this question was raised nor considered and this Court was directed to examine the question of adverse possession as against the seller, but not as against the State. If the purchaser remained to be in B C D E F G H

A possession in his own right *de horse* the title, necessarily he has to plead and prove the date from which he disclaimed the title and asserted possessory title as against the State and perfected his possession to the Knowledge of the real owner viz., the State. Such a plea not having been taken or argued nor any evidence adduced in that regard, the plea of adverse possession against the State B cannot be accepted at all at this stage. The question of adverse possession, therefore, does not arise and examining whether he has been in possession for 30 years or 12 years will not be of any relevant in this case. In that view of the matter, we find no force in the said contention."

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The plea of adverse possession is not proved. In view of the concurrent finding after elaborate consideration of the law laid down by this Court on the factual aspects, in our opinion, no substantive question of law arises warranting interference with the impugned decision.

D The Civil Appeal is accordingly dismissed.

T.N.A. Appeal dismissed.