A SHIVAPPA TAMMANNAPPA KARABAN

v.

PARASAPPA HANAMMAPPA KURABAN AND ORS.

SEPTEMBER 22, 1994

B [K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Karnataka Village Offices Abolition Act, 1961—Sections 4 and 5—Holder of village office as Walikarki—Abolition of village office—Consequences—Regrant made in name of holder of office—Property continued to be joint
C *family property for benefit of Hindu joint family—Grant of ryotwari patta—Property became partible subject to conditions u/s 5(3).*

The appellant was recorded as an holder of an village office as Walikarki. On abolition of the village office under the provisions of the Karnataka Village Offices Abolition Act, on regrant, the properties were
D **assigned to the village office held by the appellant. However on partition the appellant was granted 1/5th share in the properties while the respondents, the other members of the joint family have been granted 4/5th towards their respective shares. Civil suit was filed challenging the allocation of shares. The Courts below held that though regrant was made in the**
E **name of the appellant as a Watandar the property continued to be joint family property for the benefit of the Hindu Joint Family. This appeal by special leave has been filed against the decree for partition granted by the courts below.**

It was contended by the appellant that the respondents have no right
F **to a share in the property after regrant. The properties were assigned to the village office held by the appellant and consequent to the abolition of the village office the right which the appellant had u/s 5 made the properties his exclusive properties and his family and other members of the family have no right in them.**

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Dismissing the appeal, this Court

HELD : 1.1. Under the provisions of the Karnataka Village Offices Abolition Act, though regrant was made in the name of the holder of the village office as Watandar, the Watan lands continued to be the hereditary
H **properly of the family although according to the custom, the Watan was**

only in the name of the senior member of the family and the succession according to the custom was in accordance with the rule of primogeniture. But on account of abolition of the office and grant of ryotwari patt, they became partible subject to the condition u/s 5(3). [769-B, C, G]

1.2. The right given to appellant while making the regrant was only a pre-existing right namely, the property attached to the office and shall continue to be enjoyed and belonged to the Hindu Joint family as joint family property. [769-F]

Nagesh Bisto Desai etc. etc. **v.** *Khandu Tirmal Desai etc. etc.*, **[1982] 3 SCR 341 and** *Kalgonda Babgonda Patil* **v.** *Balgonda Kalgonda and Ors.*, **[1989] Suppl. 1 SCC 246, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 195 of 1989.

From the Judgment and Order dated 27.1.88 of the Karnataka High Court in R.S.A. No. 998 of 1977.

C. Sitaramiah and Mr. P. Mahale for the Appellant.

S.K. Kulkarni and Surya Kant for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the High Court of Karnataka in R.S.A. No. 998 of 1977 dated January 27, 1988 affirming the judgments and decrees of the District Judge, Bijapur in Regular Appeal No. 11/73 and of Munsif, Bagalkot in O.S. No. 23/68 dated April 3, 1973 under Karnataka Village Offices Abolition Act, 1961(Act No. 14/1961), for short the Act. The appellant who was unsuccessful throughout is recorded as an holder of an office as Walikarki but he is granted 1/5th share in the plaint schedule properties while the respondents have been granted 4/5th towards their respective shares. His grievance is that he had to get the entire plaint schedule properties. Section 2(b) defines,

> "authorised holder" means a person in whose favour a land granted or continued in respect of, or annexed to, a village office by the State or a part thereof has been validly alienated permanently

A whether by sale, gift, partition or otherwise, under the existing law relating to such village officers."

Holder of a village office as defined in Cl. (g) means a person having an interest in a village office under an existing law relating to such office provided that where any village office has been entered in a register or B record under an existing law relating to such village office, as held by the whole body of persons having interest in the village office, the whole of such body shall be deemed to be the holder.

"Un authorised holder" as defined in Cl. (m) means,

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"a person in possession of a land granted or continued in respect of or annexed to a village office by the State without any right, or under any lease, mortgage, sale, gift or any other kind of alienation thereof, which is null and void under the existing law, relating to such village office."

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"Village office" is defined in cl. (n), the relevance of which is not material for the purpose of this case. Section 3 gives the power of Deputy Commissioner to decide certain questions and appeals arising therefrom. Sub-section (1) says,

E "If any question arises -

(a) whether any land was granted or continued in respect of or annexed to a village office by the State or

F (b) whether any person is a holder of a village office, or

(c) whether any person is an authorised holder, or

G (d) whether any person is an authorised holder, the Deputy Commissioner shall, after giving the party affected an opportunity to be heard and after holding an enquiry in the prescribed manner decide the question."

Consequences of the abolition of village offices have been enumerated together with incidents thereof in section 4. Section 5 deals with regrant of land resumed under Section 4 to the holder of the village office which reads H thus :

"15. Re-grant of land resumed under section 4 to the holder of the village office (1) A land resumed under clause (3) of section 4 shall, in cases not falling under section 6 and section 7, be granted to the person who was the holder of the village office immediately prior to the appointed date (hereinafter referred to as the holder) on payment, by or on behalf of such holder to the State Government, of the occupancy price equal to three times in the case of holders of inferior village offices and six times in the case of holders of other village offices, the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the holder shall be deemed to be an occupant or holder of a ryotwari patta within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government from the appointed date in accordance with the provisions of the Code and the rules and orders made thereunder; and all the provisions of the Code and the rules and orders relating to unalienated land or ryotwari land shall, subject to the provisions of this Act, apply to the said land:

Provided that in respect of land which was not assigned under an existing law relating to a village office as the remuneration of the village office, an occupancy price equal to the amount of the full assessment of such land in the case of holders of inferior village officer and three times such amount in the case of holders of other village offices, shall be paid by or on behalf of the holder for its regrant.

(2) If, there is a failure to pay the occupancy price under sub-section (1) within the prescribed period and in the prescribed manner, the holder shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily evicted there from by the Deputy Commissioner, in accordance with the provisions of the Code.

(3) The occupancy or the ryotwari patta of the land, as the case may be, re-granted under sub-section(1) shall not be transferable otherwise than by partition among members of Hindu Joint Family for a period of fifteen years from the date of commencement of section 1 of the Karnataka Village Offices Abolition (Amendment)

A Act, 1978."

It is contended by Shri Sitaramaih, learned senior counsel that the respondents claimed the registration of the plaint properties as a holder of the office before the Assistant Commissioner, Bijapur who in his proceed-
B ings dated June 29, 1968 rejected their claims under Section 5. Having the order allowed to become final, the respondents have no right to a share in the property after re-grant. The properties were assigned to the village office held by the appellant. Consequent to the abolition of the village office the right which the appellant had under section 5, made the properties his exclusive properties and his family and other members of the family
C has no right in them. Therefore, the decree of the courts below is illegal. We find no force in the contention. This Court had elaborately considered similar provisions in *Nagesh Bisto Desai etc. etc.* v. *Khando Tirmal Desai etc. etc.*, [1982] 3 SCR 341 and, therefore, there is no need to traverse the ground once over. This Court specifically posed the question therein at
D page 350 whether the watan lands lost the character of being joint family property with the resumption of the watan under section 3 of the Act No. 60 of 1950 or section 4 of the Act No. 22 of 1955 and regrants thereof were exclusive to the plaintiff under section 4 of the Act No. 22 of 1955, by reason of his status as the watandar and, therefore, they belonged to the plaintiff and were not capable of partition. Extensively considering all the
E definitions similar to the provisions under the Act, this Court held thus:

"There can be no doubt that the Watan Act was designed to preserve the pre-existing rights of the members of joint Hindu family. The word 'family' is defined in s.4 of the Watan Act to
F include 'each of the branches of the family descended from an original watandar' and the expression 'head of a family' is defined therein to include 'the chief representative of each branch of a family'. 'Representative watandar' defined in s.4 meant 'a watandar registered by the Collector under s.25 as having a right to perform the duties of a hereditary-office. Section 5 of the Watan Act
G prohibited alienations of watan and watan rights. Clause (a) of sub-section (1) of section 5 thereof, referred to a watandar in general and provided that it would not be competent to such a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof,
H or interest therein, to or for the benefit of any person who is not

a watandar of the same watan, without the requisite sanction. The expression 'Watandar of the same watan' occurs in many sections of the Act. As already indicated the term 'watandar' as defined in section 4 includes the members of a joint Hindu Family. It must follows as a necessary corollary that the expression 'watandar of the same watan' would include members of the family other than the watandar, who were entitled to remain in possession and enjoyment of the watan property"

"It is said that although co-ownership of the joint family may exist in impartible property, a distinction must be drawn between present rights and future rights of the members of a family. This is because of the peculiar character of the property. Thus, while the junior members have future or contingent rights such as right of survivorship, they have, apart from custom or relationship, no present rights, as for instance, a right to restrain alienation or to claim maintenance. It is upon this basis that the submission is that the courts below manifestly erred in passing a decree for partition of the watan property described in Schedules B and C appended to the plaint. We are afraid, these submissions based upon the alleged impartibility of the watan properties or the applicability of the rule of lineal primogeniture regulating succession to the estate cannot prevail, as these being nothing more than incidents of the watan, stand abrogated by sub-s.(4) of s. 3 Act No. 60 of 1950 and s.4 of Act No. 22 of 1955."

"The Watan Act contemplated two classes of persons. One is a larger class of persons belonging to the watan families having a hereditary interest in the watan property as such and the other a smaller class of persons who were appointed as representative watandars and who were liable for the performance of duties connected with the office of such watandars. As already indicated, it would not be correct to limit the word 'watandar' only to this narrow class of persons who could claim to have a hereditary interest both in the watan property and in the hereditary office. Watan property had always been treated as property belonging to the family and all persons belonging to the watan family who had a hereditary interest in such watan property were entitled to be called "watandars of the same watan" within the Watan Act. That

A being so, the members of joint Hindu family must be regarded as holders of the watan land along with the watandar for the time being and therefore the regrant of the lands to the watandar under sub-s.(1) of s.4 of Act No. 60 of 1950 and under s.3 of Act No. 22 of 1955 must ensure to the benefit of the entire joint Hindu family."

B "It still remains to ascertain the impact of sub- s. (2) of s. 4 of Act No.60 of 1950 and sub-s. (3) of s.7 of Act No. 22 of 1955, and the question is whether the occupancy of the land regranted under Sub-s.(1) of s.4 of the former Act and sub-s.(2) of s.7 of the latter Act is still impressed with the character of being impartible proper- C ty. All that these provisions lay down is that the occupancy of the land regranted under sub-s.(1) of s.4 of the former Act shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may, by general or special order, D determine. It is quite plain upon the terms of these provisions that they impose restrictions in the matter of making alienations. On regrant of the land, the holder is deemed to be an occupant and therefore the holding changes its intrinsic character and becomes Ryotwari and is like any other property which is capable of being transferred or partitioned by metes and bounds subject, of course, E to the sanction of the Collector and on payment of the requisite amount."

"It is policy of the law to prevent the land- working classes being driven into the state of landless proletariates so far as may be, and F accordingly it is provided by these provisions that alienations of such holdings or partition thereof shall be ineffective unless the sanction of the Collector has first been obtained. It is of the utmost importance that this important safeguard should be maintained in full force and effect so that the parties must exactly know what they have bargained for. The condition for the grant of sanction G by the Collector as a pre-requisite for a valid transfer of a holding or the making of a partition by metes and bounds, is to ensure that the actual tiller of the soil is not deprived of his land except for valid consideration or that the partition effected between the members of a family is not unfair or unequal. These provisions H therefore do not create a statutory bar to a transfer or a partition

once the conditions mentioned therein are fulfilled." A

This was reiterated in *Kalgonda Babgonda Patil* v. *Balgonda Kalgonda Patil & Ors.*, [1989] Suppl. 1 SCC 246, a similar contention was raised in that case in paragraph 10 of the judgment and repelling the contention in paragraph 13, this Court held that these watan lands continued to be the hereditary property of the family although according to the custom, the B watan was only in the name of the senior member of the family and the succession according to the custom was in accordance with rule of primogeniture. For the first time under that Act, these watans were abolished and the lands were converted into ryotwari lands and, therefore, they became partible. C

Accordingly, the courts below have rightly concluded that though regrant was made in the name of the appellant as a watandar the property continued to be joint family property for the benefit of the Hindu Joint Family. In fact while recording such claim as the Watandar, the Assistant Commissioner, Bagalkot has recorded thus, D

> "I therefore hereby order that S. Nos. 82, 88 and 122 of Parvati Village should be regranted to the applicant subject to the conditions that they shall not be transferrable otherwise than by partition among the members of the Hindu Joint family without the previous E sanction of Deputy Commissioner and such sanction shall be granted only on payment of an amount equal to 15 times the full assessment of the lands."

This order is consistent with section 5(3). Therefore, the right given to the F appellant while making the regrant was only a pre-existing right namely, the property attached to the office and shall continue to be enjoyed and belonged to the family and it is impartible by rule of primogeniture. But on account of abolition of the officer and grant of ryotwari patta, they became partible subject to the conditions under section 5(3). We hold that the appellant has no exclusive right to the property and accordingly, we do G not find any illegality in the decree for partition granted by the court below.

The appeal is accordingly dismissed, but in the circumstances without costs.

A.G. Appeal dismissed.