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R. CHANDEVARAPPA ETC. ETC.

v.

STATE OF KARNATAKA AND ORS. ETC. ETC.

SEPTEMBER 8, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978—Karnataka Revenue Code.

C

Ss.3(b) 4/r.43(5)—Persons belonging to Scheduled Castes and Scheduled Tribes—Allotment of Granted Lands—Alienation—Prohibition of—Granted land assigned in 1951—Heirs of original assignee sold granted land in 1968—Alienation challenged and set aside in 1987—Purchaser claiming to have purchased land after expiry of period of prohibition as well as adverse possession—Held, Cultivation chit prescribed that assignee should be in personal cultivatory of land and he should not alienate the same—Object of assignment is that assignee should remain in cultivating possession from generation to generation—Purchaser coming into possession by derivative title but not pleading his hostile claim to knowledge of State, not entitled to plead adverse possession.

E

Constitution of India :

Preamble, Articles, 14, 21, 38, 39, 46—Economic justice—Material resources of society—Distribution of—Persons belonging to Scheduled Castes and Scheduled Tribes—Allotment of "granted lands"—State having implemented policy of economic empowerment to do economic justice assigned lands to persons of weaker section so that they remain in possession thereof from generation to generation.

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India Contract Act, 1872 :

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S.23—Void contract—"Granted land"—Prohibition of transfer of under Karnataka Revenue Code and Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978—Held, alienation of assigned lands being prohibited under r.43(5) of Revenue Code and opposed to public policy is void.

H

The predecessor-in-title of the appellant was granted the land in

dispute by the Government in 1951. The appellant claimed to have purchased the said land from the sons and widow of the assignee in 1968. On the representation made by one of the sons of the assignee in 1987 that the alienation was in violation of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, the Assistant Commissioner set aside the sale holding the same as violative of rule 43(5) of the Karnataka Revenue Code. The order was confirmed by the appellate authority in the appeal as also by the High Court in the writ petition filed by the appellant. Aggrieved, the appellant filed the appeal by special leave. Some other transferees also filed the appeal in similar circumstances.

It was contended on behalf of the appellants that under the grants initially made to the assignees, the prohibition on alienation was only for ten years and as such by necessary implication the grantees thereafter were free to alienate the lands; and, even otherwise, the appellants having remained in uninterrupted possession for more than 12 years, had perfected their title by adverse possession.

Dismissing the appeal, this Court

HELD : 1.1. The cultivation chit under which the assignee had come into possession prescribes that the assignee should be in personal cultivation of the land and that it should not be alienated. It is also stated that he is empowered to encumber the land to secure loan to improve the assigned lands either from the Government or from the Co-operative Society for bona fide purpose of improving the land or for buying cattle or agricultural implements for better cultivation of the land. That would clearly indicate the object of assignment, namely the assignee 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 to the Constitution and the Directive Principles. [464-E-G]

1.2. Scheduled Castes and Scheduled Tribes being the weaker sections of the society, the State with a view to render economic justice envisaged in the Preamble and Articles 38 and 46 of the Constitution distributed the material resources, namely, the land for self-cultivation. It is an economic empowerment of the poor. The State having implemented the policy of economic empowerment to do economic justice, assigned

A lands to them to see that they remain in possession and enjoy the property from generation to generation. 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 to the Constitution. Accordingly, refusal to permit alienation is to effectuate the constitutional policy. [462-E-F, 464-D]

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1.3. The alienation by the assignee in favour of the appellant obviously is opposed to public policy rendering the sale void under Section 23 of the Contract Act. Rule 43(5) of the Karnataka Revenue Code clearly prohibits alienation of assigned lands. Therefore, the prohibitory clause in Rule 43(5) of the Revenue Code is absolute in its terms and that alone will govern the rights of the parties. [464-H, 465-A]

C

Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr, JT (1995) 3 SC 563 and K.T. Huchegowda v. Deputy Commissioner & Ors., [1994] 3 SCC 536, relied on.

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2. The appellant came into possession by a derivative title from the original grantee, who had 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 claim to the knowledge of the State disclaim and that the State had not taken any action thereon within the prescribed period. No such stand was taken nor evidence has been adduced in this behalf. [465-C-D]

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F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8509 of 1995 Etc.

From the Judgment and Order dated 23.6.89 of the Karnataka High Court in W.A. No. 950 of 1989.

R.P. Wadhvani for the Appellants.

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M. Veerappa, Ms. Mridula Ray Bhardwaj and S. Bhardwaj, for the Respondents.

The following Order of the Court was delivered :

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Leave granted.

We have heard the counsel on both sides. The facts in the appeal No. 8507/95 arising out of SLP (C) No. 11571/89 are sufficient to dispose of all these appeals by a common judgment, since common question of law arises for decision.

The appellant's predecessor-in-title, Dasana Rangaiah Bin Dasaiah was granted on November 16, 1951 an extent of two acres of land in Government vacant land bearing Survey No. 6 of Beekannahalli village, Chikmangalur Taluk & District. The appellant claimed to have purchased the property from the sons and widow of the assignee on October 16, 1968. On a representation made by one of the sons on February 27, 1987 to the Assistant Commissioner contending that the alienation was in violation of Scheduled Castes and Scheduled Tribes Prohibition of Certain Lands Act, 1975. The sale was set aside as violative of the Revenue Code Rule 43(5). The appellant carried the matter in appeal. The appellate authority by its order dated November 17, 1987 confirmed the same under Rule 43(5) of the Revenue Code. In the writ petition and writ appeal, it was confirmed. Thus the appeal against the order of the Division Bench dated June 23, 1989 made in W.A. No. 950/89 by the High Court of Karnataka at Bangalore.

Shri Ravi P. Wadhawani, the learned counsel appearing for the appellant, has strenuously contended, after good preparation that under the grant initially made to Dasana Rangaiah Bin Dasaiah, the prohibition for alienation was only for ten years and, therefore, by necessary implication the grantee thereafter, was free to alienate the land. The alienation was made 17 years after the grant. Therefore, the Tribunals and the High Court were not justified in setting aside the alienation. It is also contended that the Act has no retrospective operation and the alienation made prior to the Act has come into force cannot be set aside under the Act. Further submission is that in any event the appellant having remained in uninterrupted possession for more than 12 years he had perfected his title by adverse possession. This contention was specifically raised before the Assistant Commissioner and the appellate authority. Therefore, the matter needs to be examined in the light of the law laid down by this Court in *K. T. Huchegowda v. Deputy Commissioner & Ors.*, [1994] 3 SCC 536.

Shri Veerappa, the learned counsel appearing for the State, contended that the cultivation chit given to the original assignee was only for

A personal cultivation subject to the condition that he will be eligible to encumber the land only to improve the assigned land. But the prohibition for alienation of assigned land always remained. The title always remained with the Government. Therefore, the limitation would not run against the Government when the land was sold. Since it is in contravention of Rule 43(5) of the Revenue Code, the appellant does not get any title to the land.

B The question of adverse possession does not arise as against the State since it was not pleaded that the appellant had asserted his title against the State adversely. Therefore, the ratio in the above case has no application and that the matter need not be remitted for consideration.

C Having given our anxious consideration to the respective contentions, the first question that arises for determination is what would be the nature of the right given to the assignee Dasana Rangaiah Bin Dasaiah. Article 39(b) of the Constitution of India envisages that the State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Admittedly, Scheduled Castes and Scheduled Tribes are the weaker sections of the society who have been deprived of their economic status by obnoxious practice of untouchability and the tribes living in the forest area far away from the civilised social life. To augment their economic status and to bring them on par into the main stream of the society, the State with a view to render economic justice envisaged in the Preamble and Articles 38 and 46 of the Constitution distributed the material resources, namely, the land for self cultivation. It is an economic empowerment of the poor. It is common knowledge that many a member of the deprived classes live upon the agriculture either by cultivation on lease hold basis or as agricultural labour. Under these circumstances, the State having implemented the policy of economic empowerment to do economic justice assigned lands to them to see that they remain in possession and enjoy the property from generation to generation.

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G In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr.*, JT (1995) 3 SC 563, the question was whether permission for alienation under Bombay Revenue Code of the lands belonging to the Scheduled Tribes could be granted and, if so, what circumstances should be taken into consideration by the competent authority to grant or refuse to grant permission. The authorities had refused to grant permission for alienation

H by the scheduled tribes to the non-tribal. It was challenged in the writ

petition which was dismissed by the High Court. When the matter came up to this court, it was held that the right to development is an inalienable human right by virtue of which every human person is entitled to participate in contribution to, and to enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised. All human rights derive from dignity and worth in man, Democracy blossoms the person's full freedom to achieve excellence. The socio-economic content in directive principles is all pervasive to make the right to life meaningful to the Indian citizens. For national unity, equality of status and dignity of persons envisaged in the Constitution, social and economic reforms in a democracy are necessary. Welfare is a form of liberty inasmuch as it liberates men from social conditions which narrow their choices and brighten their self development. Article 46 of the Constitution mandates the state to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Political democracy must be made a social democracy as a way of life. It recognises and affords to realise liberty, equality and fraternity as the principles of life. Economic empowerment, thereby, is the foundation to make equality of status, dignity of person and equal opportunity a truism. Social revolution through rule of law lies in effectuation of the fundamental rights and directive principles a supplementary and complementary to each other. Political democracy would stabilize socio-economic democracy to make it a way of life.

It was, therefore, held that the State is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and tribes and to distribute material resources of the community to them for common welfare etc. Therefore, civil, political, social, economic and cultural rights are necessary to the individual to protect and preserve human dignity, social and economic rights are *sine qua non* concomitant to assimilate the poor, the depressed and deprived, i.e., the dalits and tribes in the national main stream for ultimate equitable society and democratic way of life to create unity, fraternity among people in an integrated Bharat. Property is a legal institution the essence of which is the creation and protection of certain private rights in wealth of any kind. Liberty, independence, self-respect, have their roots in property. To denigrate the institution of property is to shut one's eyes to the stark reality evidenced by the innate instinct and the steady object of pursuit of the vast majority

A of people. The economic rights provide man with freedom from fear and freedom from want, and that they are as important if not more, in the scale of values. The effect of social and economic legislation was held thus : "In fact, the cumulative effect of social and economic legislation is to specify the basic structure. Moreover, the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes." 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. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy. The alienation was declared to be void under section 23 of the Contract Act being violative of the constitutional scheme of economic empowerment to accord equality of status, dignity of persons and economic empowerment.

E It is seen that the cultivation chit under which the assignee had come into possession prescribes that the assignee should be in personal cultivation of the land and that it should not be alienated. It is also stated that he is empowered to encumber the land to secure loan to improve the assigned lands either from the Government or from the Cooperative Society for *bona fide* purpose of improving the land or for buying cattle or agricultural implements for better cultivation of the land. That would clearly indicate the object of assignment, namely, the assignee 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.

G The question, therefore, is whether the alienation by the assignee in favour of the appellant is valid in law. Such alienation obviously is opposed to public policy rendering the sale void under Section 23 of the Contract Act. It is seen that Rule 43(5) of the Revenue Code clearly prohibits alienation of assigned lands. The Division Bench of the High Court in W.A.

No. 807 of 1987 titled *Smt. Ammanamma v. Venkataiah & Ors.* had considered the effect of Rule 43(5) and held that once relevant rules prohibit alienation of the property granted to depressed class for all times to come, it cannot be got over by a grant made contrary to the statutory rules. Therefore, prohibitory clause is absolute in its terms and that alone will govern the rights of the parties. We are in agreement with the view taken by the High Court.

The question then is whether the appellant has perfected his title by adverse possession. It is seen that a 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 claim to the knowledge of the State and 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.

This Court has held that any alienation made contrary to the Act and the public policy is not valid. In that behalf, this Court had adverted in paragraphs 8, 9 and 10 of the judgment as to when adverse possession of purchasers arises against the depressed classes. In this case we are not concerned with the situation as it had arisen in that case. Under those circumstances, the need to remit the matter for reconsideration by the High Court does not arise.

The appeals are accordingly dismissed. But in the circumstances, without costs.

R.P.

Appeals dismissed.