

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC., AT
GOWRIBIDANUR**

Dated this 27th day of September 2021

:: PRESENT ::

SRI. SACHIN P.M.

B.A., L.L.B., (Hons)

**Prl. Civil Judge & J.M.F.C,
Gowribidanur**

ORIGINAL SUIT NO.147/2019

PLAINTIFF/S:

*Smt. Rathnamma
Wife of K.L.Thimmaiah,
Aged about 80 years,
Residing at Kuntachikkanahalli,
Thondebhavi Hobli,
Gowribidanur Taluk,
Chikkaballapur District*

**(Represented by Sri.
R.Ramachandrappa, Advocate)**

-VS-

DEFENDANT/S:

- 1.** *Sri. E.S.Sathish Kumar
Son of Late. Esturi Subbaiah Setty,
Aged about 62 years,*
- 2.** *Sri. E.S.Ramesh,
Son of Late. Esturi Subbaiah Setty,
Aged about 60 years,*
- 3.** *Sri. E.S.Sampangi Ram
Son of Late. Esturi Subbaiah Setty,
Aged about 58 years,*
- 4.** *Sri. E.S.Sridhar*

*Son of Late. Esturi Subbaiah Setty,
Aged about 56 years,*

*Defendant No.1 to 4 are residing at
Beside New Canara Bank,
M.G.Road, 'C' Division,
Gowribidanur Town,
Chikkaballapur District.*

5. *Smt. Anuradha
Daughter of Late Esturi Subbaiah
Setty,
Wife of Nagendra Kumar,
Residing at ATHENS, Street No.3,
Prestige Aero Police,
Hossur Road, Bengaluru.*

6. *Smt. Kavitha
Daughter of Late Esturi Subbaiah
Setty,
Wife of Venkateswar G.,
Residing at No.334/18,
1st Main Road, 7th Block,
Jayanagra, Bengaluru-82.*

**(Represented by
Sri. N.Venkatesh, Advocate)**

PARTIES ON I.A.No.III

**APPLICANT/S:
Defendants**

Sri. E.S.Sathish Kumar and others

-Vs-

**OPPONENT/S:
plaintiff**

Smt. Rathnamma

Order on I.A.No.III filed by defendants under Order VII RULE 11(d)
read with Section 151 of C.P.C.

The defendants have filed this application to reject the plaint as the suit is barred under the Karnataka Schedule Caste and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act 1978.

2.The defendant No.3 has sworn to an accompanying affidavit and has stated that the plaintiff has filed this suit for declaration and permanent injunction in respect of the suit schedule property. that that plaintiff has pleaded that one Kadirappa son of Sathyappa and his sons Gangappa and Sathyappa who are the vendors of the plaintiff acquired the land measuring 1 acre and 20 guntas in Sy.No.58 situated at Alakapura Village by grant. That the property bearing Sy.No.58 is a granted land. That the plaintiff has cleverly not mentioned the nature of the grant in her plaint. That the plaintiff has pleaded in her plaint that she had purchased 37 guntas in Sy.No.58 from Venkategowda son of Nanjegowda under a registered sale deed dated 11/05/1964 and that she has purchased 23 guntas from Sthyappa and Gangappa under a registered sale deed dated 11/05/1964. That the plaintiff has pleaded that she has purchased 01 acre and 20 guntas in total in Sy.No.58. That the plaintiff has not pleaded how her vendor Venkategowda son of Nanjegowda obtained his title. That the plaintiff has pleaded in her plaint that they have wrongly written as Sy.No.50 instead of Sy.No58 but the plaintiff has not mentioned the said Sy.No.50 in the schedule pf the plaint. That the plaintiff has not pleaded what steps were taken to rectify the mistake of writing the wrong survey number in the registered sale deed and that the plaintiff has also not pleaded when she gained knowledge of the said mistake. That it is not the case of the plaintiff that

her vendor was granted agricultural land bearing Sy.No.50 along with land bearing Sy.No.58.

3.It is further stated in the affidavit that the suit schedule property is land granted to the vendors of the plaintiff and that the grantee of a granted land does not derive any right, title and interest to alienate a granted land under any circumstance as per Karnataka Schedule Caste and Schedule Tribe (Prohibition of Transfer of Certain Lands) Act 1978. That the grant was made by the Government only to give a status to the depressed class of persons in the society and that the mere mention of a name in Column No.9 of the record of rights would not entitle a person to transfer or alienate the said land. That the plaintiff in this suit is relying upon the sale deed dated 11/05/1964 in order to prove her title and that the vendors of the plaintiff acquired title of the said land by virtue of the grant made by the Government. That there is a clear bar under the Karnataka Schedule Caste and Schedule Tribe (Prohibition of Transfer of Certain Lands) Act 1978 to execute any sale deed in favor of the plaintiff and the claim of the plaintiff is not admissible in law. That this Court has no jurisdiction to entertain this suit and that the title of the plaintiff is defective and barred under law. That no hardship will be caused to the other side if the application is allowed but the defendants will be put to great hardship if the application is not allowed.

4. The plaintiff has filed objections to the above application and contended that the application is not maintainable as the Karnataka Schedule Caste and Schedule Tribe (Prohibition of Transfer of Certain Lands) Act 1978 was not in force on the date of purchase of the suit schedule property by the plaintiff. That the vendors have not questioned the sale till today and hence the PTCL Act is not attracted in the case at

hand. That the suit is not barred under any law. On these grounds, the plaintiff has prayed that the application may be dismissed.

5. On considering, rival contentions of the parties, the points that arise for my consideration are as under:

POINTS

Point No.1:- Whether the application filed by the defendants U/o VII Rule 11(d) of C.P.C. deserves to be allowed and whether the plaint is liable to be rejected ?

Point No.2:- What Order ?

6. My answer to the above points is as under:

Point No.1:- In the **NEGATIVE**

Point No.2:- As per the final order for the following

REASONS

7. **Point No. 1** : Admittedly this is a suit filed by the plaintiff for the relief of declaration and permanent injunction in respect of the suit schedule property. The suit schedule property is land bearing old Sy.No.58 and new Sy.No.368 measuring 01 acre and 20 guntas out of 01 acre and 30 guntas situated at Alakapura Village, Thondebhavi Hobli, Gowribidanur Taluk. The defendants have contended that as the suit schedule property was granted in favor of the vendors of the plaintiff, the suit schedule property is granted land and that the plaint has to be rejected as the suit of the plaintiff before the Civil Court is expressly barred under the provisions of the Karnataka Schedule Caste and Schedule Tribe (Prohibition of Transfer of Certain Lands) Act 1978. It is a well settled principle of law that the Court must only look at the

plaint while dealing with an application under Order VII Rule 11 of C.P.C and before proceeding any further, it is apt to refer to the relevant provision of law. The relevant provisions of the Karnataka Schedule Caste and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act 1978 reads as thus:

Section 4: Prohibition of transfer of granted lands.-

(1) Notwithstanding anything in any law, any agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this 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.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections (1) and (2) shall apply also 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.

5. Resumption and restitution of granted lands.- *(1) Where, on application by any interested person or on information given in writing by any person or suo-motu, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under sub-section (1) of section 4, he may,-*

(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

(b) restore such land to the original grantee or his legal heir. Where it is not reasonably practicable to restore the land to such grantee or legal heir; such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

(1A) After an enquiry referred to in sub-section (1) the Assistant Commissioner may, if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.

(2) Subject to the orders of the Deputy Commissioner under section 5A, any order passed under 2 [sub-section (1) and (1A)] shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.

(3) For the purposes of this section, where any granted land is in the 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.

Section 6: Prohibition of registration of transfer of granted

lands-Notwithstanding anything in the Registration Act, 1908 on or after the commencement of this Act, no registering officer shall accept for registration any document relating to the transfer of, or to the creation of any interest in, any granted land included in a list of granted lands furnished to the registering officer except where such transfer is in accordance with this Act or the terms of the grant of such land or the law providing for such grant.

Section 9: Protection of action taken in good faith.- (1) No

suit, prosecution or other legal proceedings shall lie against any person or officer for anything which is, in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused or for any injury suffered or likely to be suffered by virtue of any provision of this Act or for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Section 11: Act to override other laws.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a court, tribunal or other authority.

8. In the plaint, the plaintiff has pleaded that she purchased the land bearing Sy.No.58 measuring 37 guntas from one Venkategowda son of Nanjegowda under a registered sale deed dated

11/05/1964 and that the plaintiff also purchased 23 guntas in the same Sy.No.58 from Sathyappa son of Kadirappa and Gangappa son of Kadirappa under a registered sale deed also dated 11/05/1964. That the plaintiff in total purchased 01 acre and 20 guntas in Sy.No.58 and that the said land is now phoded and renumbered as Sy.No.368. That the plaintiff has been in peaceful possession and enjoyment of the suit schedule from the date of its purchase.

9. The plaintiff has further pleaded in her plaint that the father of her vendors had acquired the land in Sy.No.58 by way of grant and that the said land was subjected to 'durasthi' and given a new number as Sy.No.368. That the vendors of the plaintiff were unaware of this fact and that the survey number has been wrongly mentioned as Sy.No.50 instead of Sy.No.58 in the sale deeds. It is further averred that the boundaries mentioned in both the sale deeds relate to the property bearing old Sy.No.58 and new Sy.No.368 and that her vendors delivered possession of the property confined within the boundaries mentioned in the two sale deeds. That even though the Tahashilar has failed to mutate the name of the plaintiff in the revenue records inspite of the plaintiff has purchased the suit schedule property under two registered sale deeds, the plaintiff has been in peaceful possession and enjoyment of the suit schedule property since the date of its purchase.

10. It is further averred that the defendants are trying to alienate and interfere with her possession and enjoyment of the suit schedule property by stating that the R.T.Cs in respect of the schedule property are standing in the name of their father. That upon enquiry, the plaintiff has learnt that the name of the father of the defendants has been mutated in the revenue documents pertaining to the suit schedule

property even though the plaintiff has not alienated the suit schedule property in favor of anyone. This is stated to be the reasons for filing this suit.

11. It is not in dispute that this is a suit for declaration of title and permanent injunction and that the plaintiff has acquired the suit schedule property through registered sale deeds executed by her vendors on 11/05/1964. It is also not in dispute that the father of Gangappa and Sathyappa, who are the vendors of the plaintiff, had acquired the property bearing Sy.No.58 by way of a grant by the Government.

12. The defendants have filed this application for rejection of plaint on the ground that this suit is barred under the provisions of the Karnataka Schedule Caste and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act 1978. The Act hereinbefore mentioned is a social legislation enacted to prevent the alienation or transfer of any land granted by the Government in favor of the Scheduled Castes and Scheduled Tribes. Under the said Act, a remedy is provided to a grantee who is a member of either the Scheduled Castes or Schedules Tribes to approach the Assistant Commissioner seeking a declaration that a transfer of the grant land is null and void and seek for resumption of and restoration of the granted land. But, if a transferee or an alienee intends to seek a remedy in respect of a granted land, the only forum available to him is to file a suit in light of Section 9 of the Code of Civil Procedure, 1908. It is to be noted that a bar under the PTCL Act applies to a suit filed before the Civil Court by a grantee in respect of a granted land as a forum has been clearly provided under the said Act, namely the Assistant Commissioner and thereafter the Deputy Commissioner.

13. The plaintiff in this case is not questioning the legality or validity of the transfer of land made by her vendors in her favor nor have the defendants questioned the transfer of the said land in favor of the plaintiff by her vendors. The question in this suit is only with regard to the error, if any, in the description of the property in the sale deeds executed in favor of the plaintiff and interference with her peaceful possession and enjoyment of the suit schedule property by the defendants. It is for the plaintiff to prove that she, in-fact, acquired the suit schedule property through her vendors and that the boundaries mentioned in the sale deeds relate to the suit schedule property as claimed by her in her plaint. Whether the plaintiff is entitled to the relief of declaration of title and permanent injunction is a question which can be answered only after a full-fledged trial. Also, whether the vendors of the plaintiff had a valid title to alienate the property in the first place is also a question which also requires elaborate evidence in that regard. The appropriate forum to answer these questions is a Civil Court in light of Section 9 of C.P.C and not the Assistant Commissioner or the Deputy Commissioner under the P.T.C.L Act.

14. At this juncture it is useful to refer a decision reported in **AIR 2008 Supreme Court 3174** between **Kamala and Others Vs K.T.Eshwara Sa and Others** where in the Hon'ble Supreme Court was pleased to hold that the rejection of plaint under Order VII Rule 11 of C.P.C has a limited scope. It is further held that for invoking Order VII Rule 11 of C.P.C, no amount of evidence can be looked into. At this stage, issues on merits of matter is not within realm of Court. The Hon'ble Supreme Court while dealing with provisions of Order VII Rule 11 of C.P.C, was pleased to hold that while adjudicating an application

under Order VII Rule 11 of C.P.C. the Court cannot go through the contents and pleadings of the written statement but the Court has to go through plaint averments and therefore the court has to satisfy itself that the suit appears from statements in the plaint to be barred by law. If from the statements in the plaint it appears that suit of the plaintiff is barred by any law or lacks cause of action, then the Court has to reject the plaint. The above-mentioned decision is applicable to the present case in hand.

15. *The defendants have raised various contentions regarding the discrepancies in the documents produced by the plaintiff but the question of its relevancy or whether they prove the title of the plaintiff over the suit schedule property are questions which cannot be answered at this stage without a full-fledged trial in that regard. It is to be noted that the case at hand has been filed seeking the relief of declaration of title and permanent injunction. Whether the plaintiff is entitled to the relief of declaration of title and permanent injunction is a question which can be answered only after a full-fledged trial. Also, whether the vendors of the plaintiff had a valid title to alienate the property in the first place is also a question which also requires elaborate evidence in that regard and there is no provision in the Karnataka Schedule Caste and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act 1978 which bars the jurisdiction of a Civil Court to entertain a suit for declaration of title by any person who is not a grantee of the said granted land. Under such circumstances, the contention of the defendants that this suit is barred by law and that the plaint is liable to be rejected under the purview of the Karnataka Schedule Caste and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act is*

unfounded. Hence, for the above said reasons, I am of the considered view that the application of the defendants is liable to be dismissed as devoid of merits and I have answered **Point No.1 in the Negative.**

16. **Point No. 2:** For the reasons stated above, I proceed to pass the following:

ORDER

I.A filed by defendants under Order VII
Rule 11 (d) read with section 151 of C.P.C. is
hereby dismissed on cost of Rs.200/-.

(Typed by me, corrected and then pronounced by me in the Open
Court on this 27th day of September 2021).

Sd/-
(SACHIN.P.M)
Prl. Civil Judge and JMFC,
Gowribidanur.