

**IN THE COURT OF THE ADDL. CIVIL JUDGE &
JMFC, BANGARPET.**

Present:- DEEPU B.C., B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Bangarpet.

Dated this the 6th day of July, 2019.

OS 266/2011

Plaintiff:- 1. Sri. Arun Balamani, 35 years,
S/o S. Balamani,
2. Sri. B. Ramu, 30 years,
S/o S. Balamani,
3. Sri. B. Lakshmanan,
30 years, S/o S. Balamani,

No. 1 to 3 are R/at # 6003,
Ariana Anriya Green Berg
Apartments, Judicial Lay-out,
G.K.V.K. Lay-out, Yelahanka,
Bangalore.

(By Sri. MVJ Adv.)

V/s

Defendants:- 1. Mr. V. Ramanjenaya, 42 years,
S/o Late Venkateshappa, R/at
Ramaiah Building,
Opp: Venkateshwara Talkies
Road, Nethravathi Lay-out,
Krishnarajapura, Bengaluru.
2. Mr. V. Krishnamurthy, 38 years,
S/o Late Venkateshappa,
R/at J.C. Lay-out, Devasandra,

K.R. Puram, Bengaluru.

3. Mr. V. Sriram, 32 years,
S/o Late Venkateshappa,
R/at No. 77, 7th Cross,
Devasandra, Bengaluru.

(By Sri. LNS Adv)

PARTIES TO IA NO. 10

Applicant : Mr. V. Ramanjenaya and others
(Defendants)

V/s

Opponent : Sri. Arun Balamani and others
(Plaintiffs)

ORDERS ON I.A. NO. 10

The present application is filed by defendants U/o 7 rule 11(d) R/w Sec. 151 of C.P.C praying to rejection of plaint.

2. In support of the application, affidavit is filed wherein, stated that the suit schedule property is a granted land, which is granted to the defendants's mother late Durgamma W/o Late Venkateshappa by the Tahsildar, Bangarpet Taluk under LNDUO 99/94 dated: 18-01-1995. Further the suit schedule property

is granted land and attracts the Karnataka schedule caste and schedule tribes (Provision of transfer of certain lands act 1978). The plaintiffs have not obtained previous permission from the Government under this act for the sale of properties. No such permission has been obtained before entering into the agreement. Hence such agreement is void and not enforceable in the court of law, On these grounds and such other grounds they prayed to reject the plaint as it barred by law.

3. Per contra the learned counsel for the plaintiffs filed objection by denying all the averments made in the application and submitted that as per the agreement of sale, the defendants have bound to execute the sale deed in favour of the plaintiff in respect of suit schedule property. But they have shown their true caller and void terms of sale agreement. Hence the present suit is filed and further stated that the plaintiffs have adduced evidence and got marked the documents as exhibits. Only with an intention to protract the proceedings the defendants have filed this

false application. On these grounds and such other grounds he prayed to dismiss the said application.

4. Heard on both side and perused the materials on record.

5. The points that arise for consideration of this court are as under :

(1) Whether the defendants have made out valid grounds to reject the plaint ?

(2) What order ?

6. On perusal of the entire records this court answers the above points are as under :

Point No. 1 : In the Negative

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

REASONS

7. **Point No. 1** :- On perusal of the entire records, it appears that the above suit is filed for the relief specific performance of contract, for execution of sale deed in respect of suit schedule property on the basis

of agreement of sale dated: 07-04-2011. Now the case has been posted for defendant evidence. At this stage the present application has filed for seeking rejection of plaint.

8. The learned counsel for the defendants vehemently argued that the suit is not maintainable as its barred by law and further argued that the suit schedule property is granted land, without getting the previous permission from the Government, the plaintiffs have entered in to said alleged agreement. Hence the agreement of sale itself is void ab-intio. Hence the plaint shall be rejected as barred by law. In support of his contention the learned counsel for the defendants has relied on the decision of ***Hon'ble High Court of Karnataka in Writ Petition No. 12971/2012 dated: 10-07-2012.*** Per contra the learned counsel for the plaintiffs has filed his written arguments wherein he reiterated the averments made in the objection.

9. After hearing on both sides, it appears the learned counsel for the defendants solely relied on the decision rendered by our Hon'ble High court of Karnataka **in Writ Petition No. 12971/2012 dated: 10-07-2012**. Hence let us see what the Hon'ble High court held in aforesaid decision, on perusal of the aforesaid decision, the gist of ratio is that

“as per section 4(2) of PTCL act, without previous permission of the Govt., no one has alienate or transfer the land, which is granted by the Government. If any alienation or transfer is made for violating the aforesaid provision of the act, the agreement or transfer itself is void Ab-intio and that agreement or transfer which cannot be enforceable in the court of law”.

On perusal of aforesaid ratio lied down by the Hon'ble High court its very clear that as per section 4(2) of PTCL act without previous permission from the government, if any alienation or transfer in respect of

granted land, granted by the government its void, it can't be enforceable in the court of law.

10. Before going to decide said application, it is necessary to find out whether said decision is applicable to facts and circumstances of this case on hand, no doubt the suit schedule property is granted land and the defendants are also belongs to schedule caste. As per the recent decision of our Hon'ble High court of Katakana **in RFA No. 1766/2013 dated 30.10.2015 in K.C.Vijayaragava Reddy vs Gopalappa and others**" the aforesaid decision relied by the defendants, with great respect, said decision is not applicable to the facts and circumstances of this case on hand.

11. let us see what the Hon'ble High court held in recent decision in *RFA No.1766/2013 dated 30.10.2015 in K.C.Vijayaragava Reddy vs Gopalappa and others*, wherein the Hon'ble High court held that:

When there is specific recital in the agreement of sale that the sale has to be completed after obtaining permission, a requisite

permission was to be obtained before alienation of the property. What is prohibited under law is to sell the property without permission. The permission is to be obtained before the sale deed is executed. If the decree is passed and the property is to be conveyed, it is only for such execution of sale deed, permission is required.

On careful reading of the aforesaid ratio it is very clear that if any specific recital in the agreement of sale that the sale has to be completed after obtaining permission, then obtaining the previous permission from the government for entering into agreement of sale in respect to granted land is not necessary and the permission is necessary only at time of execution of the sale deed.

12. Here in this case on hand on doubt the suit schedule property was granted to the mother of the defendant. On careful perusal of condition No.11 in Ex.P1 agreement to sale, it read thus:

“11. The vendor will arrange to obtain new survey no for the schedule land without

*‘P’-No for the same and **obtain sale permission from the competent authorities for the schedule land**, all at the vendors own expense”.*

On careful reading of the said condition it clearly shows that there is specific recital in the Ex.P1 with regard to the obtaining sale permission from competent authorities for the schedule land, hence the aforesaid decision is applicable in facts and circumstances of this case on hand. It is well settle principals of law that if any decisions rendered on same issue by the Hon’ble High court, the recent decision will prevails, here the learned counsel for defendants is relied on the decision rendered by the Hon’ble singal bench on dated 10-07-2012, but this court is relied on the recent decision rendered by the Hon’ble double bench on dated 30-10-2015.

13. In the aforesaid application, the defendants have also taken contentions that the Ex.P1 is unregistered document and stamp duty has not paid and it is fabricated, but this objections can not be

consider at this stage, without going to full pledge trail, it is proper to reject the plaint. Hence in view of the ratio laid down by the Hon'ble court of Karnataka in the aforesaid case, this court is of opinion that the present application is liable to be rejected, In light of foregoing discussions **this court is answered the point No. 1 in the Negative.**

14. **Point No.2** : From the findings given above, this court proceed to pass the following:

ORDER

IA No. 10 U/o 7 rule 11(d) R/w Sec. 151 of CPC filed by the defendants for rejection of plaint is hereby rejected

No order as to costs.

(Dictated to the stenographer directly on computer typed by her, corrected and then pronounced by me in open court on this the 6th day of July, 2019.)

(DEEPU B.C)
Addl. Civil Judge and JMFC,
Bangarpet.