



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 02ND DAY OF FEBRUARY, 2026

R

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REGULAR SECOND APPEAL NO.5290 OF 2008 (DEC/INJ)

BETWEEN:

1. NARAYAN S/O. SHANIYAR MOGER,
AGE: 80 YEARS, OCC: AGRICULTURIST,
R/O. MATADAHITLU, AT. & POST. KAIKINI,
TQ. BHATKAL.
2. SHANIYAR S/O. NARAYAN MOGER,
AGE: 50 YEARS, OCC: AGRICULTURIST,
R/O. MATADAHITLU, AT. & POST. KAIKINI,
TQ. BHATKAL.
3. KUPPA S/O. NARAYAN MOGER,
AGE: 45 YEARS, OCC: AGRICULTURIST,
R/O. MATADAHITLU, AT. & POST. KAIKINI,
TQ. BHATKAL.
4. GOLIBERA S/O. NARAYAN MOGER,
AGE: 42 YEARS, OCC: AGRICULTURIST,
R/O. MATADAHITLU, AT. & POST. KAIKINI,
TQ. BHATKAL.
5. ISHWAR S/O. NARAYAN MOGER,
AGE: 40 YEARS, OCC: AGRICULTURIST,
R/O. MATADAHITLU, AT. & POST. KAIKINI,
TQ. BHATKAL.
6. JATTAKKA S/O. NARAYAN MOGER,
AGE: 38 YEARS, OCC: AGRICULTURIST,





R/O. MATADAHITLU, AT. & POST. KAIKINI,
TQ. BHATKAL.

...APPELLANTS

(BY SRI VIJAY HORATTI, ADVOCATE FOR
SRI RAVI G. SABHAHIT, ADVOCATE.)

AND:

1. MAHADEV S/O. DURGAPPA NAIK,
AGE: 60 YEARS, OCC: AGRICULTURE,
R/O. HOINGI HITLU, POST. KAIKANI,
TQ. BHATKAL, DIST. U.K.
2. NARAYAN S/O. DURGAPPA NAIK,
AGE: 58 YEARS, OCC: AGRICULTURE,
R/O. HOINGI HITLU, POST. KAIKANI,
TQ. BHATKAL, DIST. U.K.
3. MASTHAMMA NARAYAN NAIK,
AGE: 55 YEARS, OCC: AGRICULTURE,
R/O. DADIYANAMANE, MATADAHITLU,
POST. KAIKANI, TQ. BHATKAL, DIST. U.K.
4. LAXMI W/O. VENKATAPPA NAIK,
AGE: 45 YEARS, OCC: AGRICULTURE,
R/O. MALAKOOSANAMANE,
POST. KAIKANI, TQ. BHATKAL, DIST. U.K.
5. KRISHNAMMA W/O. NAGAPPA NAIK,
AGE: 42 YEARS,
R/O. KADUMANE, MAVALLI,
TQ. BHATKAL, DIST. U.K.

...RESPONDENTS

(BY SRI D.J.NAIK, ADVOCATE FOR R1;
NOTICE TO R2 HELD SUFFICIENT;
RESPONDENT NO.3 AND 4-APPEAL DISMISSED;
NOTICE TO R5 SERVED.)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION
100 OF THE CODE OF THE CIVIL PROCEDURE, 1908, PRAYING
TO SET ASIDE THE JUDGMENT AND DECREE DATED 21.08.2008,



PASSED IN R.A.NO.181/2001, BY THE CIVIL JUDGE (SR.DN.), HONNAVAR, AND THE JUDGMENT AND DECREE DATED 31.08.1998, PASSED IN O.S.NO.66/1997 BY THE CIVIL JUDGE (JR.DN.), BHATKAL AND TO DECREE THE SUIT WITH COST THROUGHOUT BY ALLOWING THIS APPEAL, IN THE INTEREST OF JUSTICE.

THIS APPEAL COMING ON FOR FURTHER ARGUMENTS THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR)

This Regular Second Appeal is filed by the plaintiffs questioning the judgment and decree dated 21.08.2008, passed in R.A.No.181/2001, by the Civil Judge (Sr.Dn.), Honnavar (First Appellate Court), thereby, reversed the judgment and decree dated 31.08.1998, passed in O.S.No.66/1977, by the Civil Judge (Jr.Dn.), Bhatkal (Trial Court).

2. For the purpose of convenience and easy reference, ranking of the parties is referred to as per their status before the trial Court.

3. The plaintiffs had filed suit for declaration and permanent injunction to declare that the plaintiffs have



become owners of the suit property by virtue of Will dated 07.05.1988 executed by father of defendants namely Durgappa Masti Naik. Therefore, the plaintiffs have filed suit for the relief of declaration and permanent injunction.

4. The defendants have filed the written statement and denied the plaint averments and contended that their father Durgappa had not executed Will dated 07.05.1988. Further pleaded that, admittedly the land is tenancy land as the Land Tribunal granted occupancy rights in favour of Durgappa, the said Durgappa did not have competency to bequeath the property through Will in favour of plaintiffs. Therefore, prayed to dismiss the suit.

5. The Trial Court based on the evidence on record has held that the plaintiffs have proved execution of Will as executed by Durgappa by placing reliance on Ex.P.9 Will and appreciating the evidence of PW.2 who is the attesting witness and PW.3 who is scribe of the Will. Therefore, the



Trial Court held that the plaintiffs have proved Durgappa had executed Will dated 07.05.1988 in favour of plaintiffs.

6. Being aggrieved by the judgment and decree passed by the Trial Court in decreeing the suit for declaration, the defendants have preferred Regular Appeal before the First Appellate Court and the First Appellate Court has reversed the judgment and decree passed by the Trial Court holding that though the Trial Court is correct in holding that Durgappa had executed Will in favour of plaintiffs, but in view of prohibition clause under Section 21 and Section 61 of the Karnataka Land Reforms Act, 1961 (for short, 'the Act') there is prohibition of assignment by tenant who has been granted occupancy rights, to strangers other than the family members. Therefore, the First Appellate Court has held that the Will stated to have been executed by Durgappa is tenancy land and Durgappa ought not have executed the Will as it is prohibited under Section 21 and Section 61 of the Act.



7. Assigning these reasons, the First Appellate Court reversed the judgment and decree passed by the Trial Court and dismissed the suit.

8. This Court, on 20.09.2013 while admitting the appeal has framed the following substantial question of law for consideration in this appeal.

“When defendants 1 and 2 are confirming witnesses to Ex.P.9, whether the lower appellate Court was justified in reversing the finding of the Trial Court regarding declaration of title to plaintiff over the suit property?”

9. Considering the factual matrix involved in the case and the legal provisions of Section 21 and Section 61 of the Act, the appeal is to be considered. The plaintiffs asserting that Durgappa has executed the Will in favour of plaintiffs. Admittedly the plaintiffs are strangers to Durgappa Masti Naik. The defendants are children of Durgappa. During the course of cross-examination of PW.1, he has admitted that the caste of plaintiffs and caste of



defendants are different and there is no relationship by blood existed between the plaintiffs and defendants as both are belonging to different communities. The fact is proved that the plaintiffs are belonging to Mogera community and defendants are belonging to Namadhari community. Therefore, it is proved in the case that both the plaintiffs and defendants are belonging to different communities having no blood relationship between the parties.

10. When it is proved that the plaintiffs are strangers and in no way related to Durgappa, whether bequeathing the suit property in favour of plaintiffs by Durgappa is valid under law is a question to be considered in this appeal.

11. Section 21 of the Karnataka Land Reforms Act, 1961, reads as follows:

21. Sub-division, sub-letting and assignment prohibited.—(1) No sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid:

Provided that nothing in this sub-section shall affect the rights, if any, of a permanent tenant:



Provided further that if the tenant dies,—

- (i) if he is a member of a joint family, the surviving members of the said family, and*
- (ii) if he is not a member of a joint family, his heirs, shall be entitled to partition and sub-divide the land leased, subject to the following conditions:—*
 - (a) each sharer shall hold his share as a separate tenant;*
 - (b) the rent payable in respect of the land leased shall be apportioned among the sharers, as the case may be, according to the share allotted to them;*
 - (c) the area allotted to each sharer shall not be less than a fragment;*
 - (d) if such area is less than a fragment the sharers shall be entitled to enjoy the income jointly, but the land shall not be divided by metes and bounds;*
 - (e) if any question arises regarding the apportionment of the rent payable by the sharer it shall be decided by the Tahsildar:*

Provided that if any question of law is involved the Tahsildar shall refer it to the Court. On receipt of such reference the Court shall, after giving notice to the parties concerned, try the question as expeditiously as possible and record finding thereon and send the same to the



Tahsildar. The Tahsildar shall then give the decision in accordance with the said finding.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for a tenant who is a soldier in service in the Armed Forces of the Union or a seaman to sub-let the land held by him as a tenant.

(3) Notwithstanding anything contained in sub-section (1), it shall be lawful for a tenant to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government, a financial institution, a co-operative land development bank, a co-operative society, a company as defined in section 3 of the Companies Act, 1956 in which not less than fifty one per cent of the paid up share capital is held by the State Government or a Corporation owned or controlled by the Central Government or the State Government or both, for development of land or improvement of agricultural practices; and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in payment of such loan.

12. Further, Section 61 of the Karnataka Land Reforms Act, 1961, reads as follows:



61. Restriction on transfer of land of which tenant has become occupant.—(1) *Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall, within fifteen years from the date of the final order passed by the Tribunal under sub-section (4) or sub-section (5) or sub-section (5A) of section 48A] be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family.*

(2) *Notwithstanding anything contained in sub-section (1), it shall be lawful for the occupant registered as such or his successor-in-title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government, a financial institution, a co-operative land development bank, a co-operative society or a company as defined in section 3 of the Companies Act, 1956 in which not less than fifty one per cent of the paid-up share capital is held by the State Government or a Corporation owned or controlled by the Central Government or the State Government or both for development of land or improvement of agricultural practices; or for raising educational loan to prosecute the higher studies of the children of such person and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan.*



Explanation.- For the purpose of this sub-section, "Higher studies" means the further studies after Pre-university Examination or 12th Standard Examination conducted by CBSE or ICSE or any Diploma courses.

(3) Any transfer or partition of land in contravention of sub-section (1) shall be invalid and such land shall vest in the State Government free from all encumbrances and shall be disposed in accordance with the provisions of section 77.

13. Therefore, as per sub-section (1) of section 61 of the Act, no transfer can be effected of the land of which occupancy rights have been granted to tenant to any person within 15 years from the date of order passed by the Land Tribunal under the provisions of Section 48A of the Act by sale, gift, exchange, mortgage, lease or assignment. The word assignment used in Section 21 and Section 61 of the Act is interpreted by the judgment of this Court in the case of ***Timmakka Kom Venkanna Naik vs. Land Tribunal***, reported in ***ILR 1987 KAR 3336***. It is worthwhile to refer the observations made in ***Timmakka's case*** at paragraph No.12, which reads as under:



12. We are inclined to agree with this proposition. It is clear that, under Section 21(1) there is a bar against subdivision or sub-letting of the land held by a tenant or assignment of any interest thereunder. Any assignment contrary to the said bar is invalid. (Of course, there is an exception in the case of a permanent tenant.) This bar cannot be overcome by a tenant by creating a Will. What he cannot do during his life time cannot be held to be capable of being done immediately after his death. Second proviso to Section 21(1) highlights this aspect by conferring certain rights only on the surviving members of the family or on his heirs. If a tenant can Will away his interest or a portion thereof, then the second proviso also will be nullified by enabling the legatee to have the land partitioned in his favour. Section 24 of the Act states that "where a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death". This statutory provision is also against the concept of bequeathing the tenant's interest by will, statute has peremptorily provided the succession which cannot be defeated by the tenant by bequeathing his interest.

14. Further, the Hon'ble Supreme Court in the case of **Sangappa Kalyanappa Bangi vs. Land Tribunal Jamkhandi and others**, reported in **ILR 1999 KAR 863**, at paragraph No.5 and 6 has held as follows:



5. *This case gives rise to a difficult and doubtful question, whether a devise under a Will would amount to an assignment of interest in the lands and, therefore, would be invalid under the provisions of Section 21 of the Land Reforms Act. What is prohibited under Section 21 of the Act is that there cannot be any sub-division or sub-letting of the land held by a tenant or assignment of any interest thereunder. Exceptions thereto are when the tenant dies, the surviving members of the joint family and if he is not a member of the joint family, his heirs shall be entitled to partition and subdivide the land leased subject to certain conditions. Section 24 of the Act declares that when a tenant dies, the landlord is deemed to continue the tenancy to the heirs of such tenant on the same terms and conditions on which the tenant was holding at the time of his death. We have to read Section 21 with Section 24 to understand the full purport of the provisions. Section 24 is enacted only for the purpose of making it clear that the tenancy continues notwithstanding the death of the tenant and such tenancy is held by the heirs of such tenant on the same terms and conditions on which he had held prior to his death. The heirs who can take the property are those Who are referable to in Section 21. If he is member of the joint family then the surviving members of the joint family and if he is not such a member of a joint family, his heirs would be entitled to partition, Again as to who his heirs are will have to be determined not with references to the Act, but with reference to the personal law on the matter. The assignment of any interest in the tenanted land will not be valid. A devise or a bequest under a Will cannot be stated to fall*



outside the scope of the said provision inasmuch as such assignment disposes of or deals with the lease. When there is a disposition of rights under a Will though operates posthumously is nevertheless a recognition of the right of the legatee thereunder as to his rights of the tenanted land. In that event, there is an assignment of the tenanted land, but that right will come into effect after the death of the testator. Therefore, though it can be said in general terms that the devise simpliciter will not amount to an assignment, in a special case of this nature interpretation will have to be otherwise.

6. If we bear in mind the purpose behind Section 21, it becomes clear that the object of the law is not to allow strangers to the family of the tenant to come upon the land. The tenanted land is not allowed to be sub-let, i.e. to pass to the hands of a stranger nor any kind of assignment taking place in respect of the lease held. If the tenant could assign his interest, strangers can come upon the land, and therefore, the expression 'assignment' will have to be given such meaning as to promote the object of the enactment. Therefore, the deceased tenant can assign his rights only to the heirs noticed in the provision and such heirs could only be the spouse or any descendants or one who is related to the deceased tenant by legitimate kinship. We must take into consideration that when it is possible for the tenant to pass the property to those who may not necessarily be the heirs under the ordinary law and who become heirs only by reason of a bequest under a 'Will, in which event, he would be a stranger to the family and imported on the land thus to the detriment of the landlord. In that



event, it must be taken that a devise under a will also amount to an assignment and, therefore, not valid for the purpose of Section 21 of the Act. If section 24 is read along with Section 21, it would only mean that the land can pass by succession to the heirs of a deceased tenant, but subject to the conditions prescribed in Section 21 of the Act. Therefore, we are of the view that the broad statement made by the High Court in the two decisions in Shivanna reported in (1977) 1 Kant LJ 146 (Short Notes Item 160), and Dhareppa vs. State of Karnataka reported in (1979) 1 Kant LJ 18 would not promote the object and purpose of the law. Therefore, the better view appears to us is as stated by the High Court in Timmiakka Kom Venkanna Naik v. The Land Tribunal reported in (1987) 2 Kant LJ 337.

15. Learned counsel for appellant/plaintiffs places reliance on the judgment of this Court in the case of **Koragappa Gowda vs. Jinnappa Gowda and others**, reported in **ILR 1998 KAR 436** and in the case of **Sripad Ekanath Gaonkar vs. Assistant Commissioner**, reported in **ILR 2006 KAR 1895**.

16. This Court in **Sripad Ekanath Gaonkar case (supra)**, has not considered the principle of law laid down by the judgment of this Court in **Timmakka's case**



(supra) and **Sangappa Kalyanappa Bangi's case (supra)**. Therefore, the decision in **Sripad Ekanath Gaonkar's case (supra)** and **Koragappa Gowda's case (supra)** are *per incuriam*.

17. In the other judgment relied upon by the learned counsel for appellants in the case of **Smt.Sumathi and another vs. Vittala Kanchan**, reported in **ILR 2004 KAR 131**, it is held that bequeath by way of Will in favour of family members is not prohibited under Section 61(1) of the Act. In **Smt.Sumathi's case (supra)**, the facts are that the Will is made by the tenant in favour of whom occupancy rights were granted has executed Will and bequeathed property in favour of his family members but not strangers. Therefore, this judgment is also not helpful to the appellants herein.

18. Further, this Court in the judgment of **K.Achutha Pai vs. Joseph Tauro and others**, reported in **ILR 2003 KAR 3268** has dealt with elaborately making



interpretation of Section 61 of the Act by following various judgments of the Hon'ble Supreme Court and this Court as at paragraph No.25, 26 and 27, as under:

25. In fact, in the case of MOHD. ALIAS HODIYA BEARY vs ASST. COMMISSIONER, PUTTUR AND OTHERS, 1993 (3) K.L.J. 331, while considering a deed of power of attorney, a Division Bench of this Court has held that a power of attorney deed can be construed as one assigning the rights attracting Section 61 of the Act. So also, in the case of ABDUL HAMEED AND OTHERS vs STATE OF KARNATAKA AND OTHERS, reported in 1993(3) KLJ 331, a learned Single Judge of this Court has held that an agreement of sale made within the prohibited period of 15 years is also attracted by Section 61 of the Act, though agreement of sale is not mentioned in it. The ratio decidendi in both the said decisions is that "what one cannot do directly (on account of prohibition in law), cannot be done indirectly." For that, it can be added that what one cannot do during his lifetime, can't do after his death. Further, what is prohibited under Section 61(1) of the Act is transfer or assignment of land (registered in favour of a tenant under the Act) for a period of 15 years. It has nothing to do with life or death of tenant in whose favour land is registered. To interpret in any other way will defeat the purpose, for which such prohibition is imposed under said provision of law. However, neither the said aspects of the matter nor any of the said decisions has been considered by the three learned Single Judges in the three



judgments relied on for the plaintiff and as such, they are judgments per incuriam.

26. So, when kept in mind the period of 15 years during which transfer or assignment is prohibited under Section 61(1) of the Act besides the object behind said provision of law, it can be said that "will" is also attracted by Section 61(1) of the Act, if it is made within the prohibited period. To hold so, the observations made by the Supreme Court in the case of Sangappa Bangi (supra) and also in the case of Bhavarlal (supra) besides the decision in the case of Dr. Anant Trimbak Sabnis (supra) referred to already lend support.

27. If not held so and a restrictive meaning is given to the words "transfer" and "assignment" found in Section 61(1) of the Act, then a clever tenant or a person, who wants to have the land of a tenant granted with occupancy rights and registered as occupant, can by will or some such other document defeat the object, with which the said provision Section 61(1) has been enacted.

19. Therefore, the word 'assignment' as described in Section 21 and as well as Section 61 of the Act amounts to the Will. The purpose and object behind Section 21 and Section 61 of the Act that the tenant and his family members alone will have right and interest over the fruits of



the land granted by granting occupancy rights. But the strangers to the family cannot receive fruits of tenancy land of which occupancy rights are granted. Therefore, the purpose and object of enacting Section 21 and Section 61 of the Act, whereby prohibitory clause of transferring of the land by sale, gift, lease, assignment, etc., is to preserve the land in favour of family members of tenants only for their livelihood which is completely in consonance with the object of constitutional principle of 'socialist' achieving equal distribution of wealth/land, making the Land Reforms in the country. Therefore, the prohibitory clause made in the above said provisions also attracts the document as Will. Therefore, irrespective of whether Will is proved or not proved or execution of Will is proved or not proved, but such prohibition shall continue. Even if the Will is proved, as submitted by the learned counsel for appellants, but proof of such Will cannot extinguish the right of defendants as the tenancy is heritable and the fruit of tenanted land can be enjoyed only by the family members but not by strangers.



Therefore, with this object prohibitory clause is made in the Land Reforms Act.

20. Therefore, considering the principle of law laid down by the Hon'ble Supreme Court and this Court as above discussed, the word 'assignment' also covers 'Will'. Therefore, in the present case the plaintiffs are not family members of Durgappa, whereas the defendants are children of Durgappa. Therefore, execution of Will by Durgappa in favour of plaintiffs who are strangers does not recognize as valid 'assignment' in favour of plaintiffs. Therefore, there is no merit found in the arguments of learned counsel for appellants/plaintiff that the defendants have consented for execution of the Will by their father Durgappa and hence the Will though by consent of parties in the document cannot become valid. Therefore, the prohibitory clause is applicable whether execution of Will is proved or not proved where the Will is executed in favour of strangers. Accordingly, I answer substantial question of law in the



affirmative, holding that the First Appellate Court is justified in dismissing the suit.

21. Therefore, there is no merit found in the judgment and decree passed by the Trial Court. Hence, the appeal is liable to be dismissed. Hence, I proceed to pass the following:

ORDER

- i) The appeal is dismissed.
- ii) The judgment and decree dated 21.08.2008, passed in R.A.No.181/2001, by the Civil Judge (Sr.Dn.), Honnavar reversing the judgment and decree dated 31.08.1998, passed in O.S.No.66/1977, by the Civil Judge (Jr.Dn.), Bhatkal, is confirmed.
- iii) No order as to costs.

**Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE**