

GURUSWAMY ...APPELLANT(s)

VERSUS

DY.COMMNR., SHIMOGA DISTT. & ORS ...RESPONDENT(s)

O R D E R

This appeal is directed against the judgment and order dated 31 st

July, 1998 passed by the Division Bench of the High Court of Karnataka in Writ appeal No.2722 of 1998.

Land measuring 3 acres 25 guntas in Survey No.40 situated in Sanda Village of Shakaripur Taluk, Shimoga District (Karnataka) was allegedly granted to one Basavanayappa (deceased) and now represented by his legal representatives Chowdamma and Guramma.

Basavanayappa sold the land in 1958 in favour of one Mruthyunjayappa who then sold the land to the appellant, i.e., Guruswamy on 31 st

January, 1984 under a registered sale deed.

The legal representatives of Basavanayappa then filed a petition for restoration of the land and for a declaration that the sale made by Mruthyunjayappa in favour of Guruswamy was void and contrary to Section 4(1) of the Karnataka Scheduled Castes and Scheduled Tribes

2

(Prohibition of Transfer of Certain Lands) Act, 1979 (for short â- Sthe Actâ- \235). An enquiry was conducted by the Assistant Commissioner on the basis of the application made by the legal representatives of Basavanayappa and he passed an order to the effect that the sale was in violation of the Act and, therefore, directed restoration of the land.

Feeling aggrieved, Guruswamy preferred an appeal and the Appellate Authority then remanded the matter to the Assistant Commissioner for fresh consideration. After the remand, the Assistant Commissioner passed an order on

9 th

October, 1991 in which it was held that the land was â- Sdarkhast harajâ- \235, which is to say that it was land sold by auction and it was not grantee land.

Feeling aggrieved, Basavanayappa preferred an appeal before the Deputy Commissioner, but that appeal came to be dismissed by an order dated 2 nd

January, 1997.

Against the orders passed by the Revenue Authorities, Basavanayappa preferred a writ petition which was allowed by the learned Single Judge by an order dated 8 th

June,

1998. Against this order passed by the learned Single Judge, a writ appeal was preferred by Guruswamy and that came to be dismissed by the impugned judgment and order.

We have heard learned counsel for the parties and note that the Revenue Authorities had recorded as a matter of fact that there was nothing to indicate that a grant had been made in favour of Basavanayappa and that on

3

the contrary the land was sold by public auction and was subsequently purchased by Mruthyunjayappa, who in turn sold it to Guruswamy in 1984.

The Division Bench of the High Court perused the original file and found that the grant certificate was not on record. What was on record was only a xerox copy

of the grant certificate and some portion of that xerox copy was struck off.

Notwithstanding this, the Division Bench relied upon the xerox copy and came to the conclusion that the land was originally allotted to Basavanayappa by way of a grant. On this basis and considering the provisions of the Act, it was held that the sale to Mruthyunjayappa was void and, consequently, further sale in favour of Guruswamy was void.

In our opinion, the High Court was in error in relying upon a photocopy of a document which had cuttings on it. The document could not be relied upon in that condition. The burden was on the legal representatives of Basavanayappa to produce the grant to substantiate their case, but they were unable to do so. On the other hand, the Revenue Authorities had come to a clear conclusion that the land was not grantee land. In view of this and in the absence of any conclusion that the findings of the Revenue Authorities were perverse or based on no material, the High Court was in error in setting aside the finding of fact recorded by the Revenue

4

Authorities.

That being the position, it is not possible for us to sustain the orders passed by the High Court. Accordingly, the orders passed by learned Single Judge and the Division Bench of the High Court are set aside. The appeal is allowed. No costs.

.....J.  
(MADAN B. LOKUR)

.....J.  
(ADARSH KUMAR GOEL)

NEW DELHI  
NOVEMBER 30, 2016

5

ITEM NO.101 COURT NO.6 SECTION IVA  
S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s).2530/2000  
GURUSWAMY

Appellant(s)

VERSUS

DY.COMMNR.,SHIMOGA DISTT. & ORS

Respondent(s)

Date : 30/11/2016 This appeal was called on for hearing today.

CORAM :

HON&#39;BLE MR. JUSTICE MADAN B. LOKUR  
HON&#39;BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. R.S. Hegde, Adv.

Mrs. Farhat Jahan Rehmani, Adv.

Mr. Chandra Prakash, Adv.

Mr. Rajeev Singh, AOR

For Respondent(s) Mr. V. N. Raghupathy, AOR

Mr. Parikshit P. Angadi, Adv.

Mr. S.K. Kulkarni, Adv.

Mr. M. Gireesh Kumar, Adv.

Mr. Ankur S. Kulkarni, Adv.

Ms. Sangeeta Kumar, AOR

UPON hearing the counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(SANJAY KUMAR-I)

(JASWINDER KAUR)

AR-CUM-PS

COURT MASTER

(Signed order is placed on the file)