

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 21ST DAY OF AUGUST, 2019

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.23257/2019 (GM-CPC)

Sri. Narasimhamurthy

v/s.

Sri. Suresh Chandra Gupta

ORDER

Petitioners being the 2nd and 3rd judgment debtors in Execution Petition No.2/2017 are knocking at the doors of writ court for assailing the order dated 22.02.2019, a copy whereof is at Annexure-A, whereby the learned Principal Senior Civil Judge, Chikkaballapur has rejected their objection as to the maintainability of the Execution Petition. The contesting respondent decree holder having entered appearance through his counsel resist the writ petition.

2. Brief facts of the case:

(a) Petitioners mother was granted the subject land by the Government vide Grant Certificate bearing No.LND 2168/1972-73 on the ground that she belonged to Scheduled Caste/Scheduled Tribe; on her demise petitioners being the sons succeeded to her estate which includes the subject land;

(b) petitioners obtained the permission to alienate the subject land vide order dated 01.02.2007 made by the jurisdictional Tahsildar which stipulated a period of four months for alienation in favour of the contesting respondent, who had entered into an agreement dated 10.06.2005;

(c) the petitioners clandestinely had sold the property to the 2nd respondent herein vide Registered Sale Deed dated 19.04.2007 misusing the aforesaid permission which was buyer specific i.e., the property could have been sold only to the contesting respondent herein; therefore the contesting respondent filed a suit for specific performance in O.S.No.204/2007;

(d) the petitioners resisted the suit by filing the Written Statement; the learned Principal Senior Civil Judge, Chikkaballapur decreed the suit on 28.06.2016 directing the petitioners and the 2nd respondent herein to execute and register the Sale Deed in favour of the plaintiff i.e., the contesting respondent herein; it is a big judgment comprising of 73 pages; 50 documents were marked from the side of the plaintiff and 10 documents were marked from the side of the petitioners and the 2nd respondent herein;

(e) the learned trial Judge had specifically considered the issue as to alienability of the subject land

in view of the prohibition enacted in the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Land) Act, 1978 and held that the same does not bar the grant of decree in view of the permission granted for alienation. Petitioners appeal in R.A.No.69/2016 also came to be rejected on 16.10.2017 by a well considered order running into 28 pages;

(f) despite the decree of the trial Court and dismissal of appeal against the same, the petitioners and the 2nd respondent did not comply with the same and therefore the 1st respondent filed E.P.No.2/2017 for levying execution; petitioners filed objections to the execution contending that the judgment & decree granted by the Trial Court and affirmed by the Appellate Court are a nullity and therefore execution is incompetent. The said objections having been over-ruled by the impugned order, this writ petition is presented.

3. The learned counsel for the petitioners vehemently argues that the judgment & decrees of the Courts below are a nullity since the provisions of the Act prohibit alienation; the permission to alienate was in existence only for a period of four months and therefore the decree could not have been granted after the expiry of the said period; the impugned order rejecting the objection

to execution proceedings has an error apparent on its face warranting indulgence of this court; the learned counsel for the contesting respondent makes submission in justification of the impugned order.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter for the following reasons:

(i) the very issue as to the alienability of the 'granted land' having been finally heard and decided by the learned trial Judge, the suit came to be decreed; the decree having been put in challenge in appeal, came to be affirmed by dismissal of the appeal; thus the decree has attained finality, there being no further challenge;

(ii) where a particular issue has been heard and decided by the Court having competence, the same cannot be re-agitated in the execution proceedings; such a re-agitation not only is barred by *res judicata* but amounts to abuse of process of court;

(iii) where a decree has been passed after considering all the issues, the Executing Court cannot be called upon to reconsider the very same issues inasmuch as so doing amounts to going behind the decree which is legally impermissible;

(iv) admittedly the petitioners had obtained the permission to alienate the land on 01.02.2007; it had given a period of four months for alienation, which expired on 01.06.2007; the petitioners alienated the property within this period in favour of 2nd respondent although the permission was taken for the benefit of contesting respondent who had issued a legal notice dated 27.04.2007 for executing the Sale Deed; this is nothing but a blatant fraud on law, on Court and on the respondents; the case of the petitioners is hit by the maxim *ex dolo malo non oritur actio* that is a right of action or a defence does not arise from fraud;

(v) the contention that the permission to alienate the property having expired, the courts below could not have granted the decree, is legally untenable and factually incorrect; it is legally untenable because, this could have been urged as a ground for invalidating the decrees of the Court below in Regular Second Appeal which the petitioners did not do; it is factually incorrect because the suit is filed before the expiry of four months and rights of the parties need to be adjudged as on the date the suit is filed since the pendency of the litigation cannot cause prejudice to the litigant; this apart, nothing prevented the petitioners from executing the Sale Deed in favour of the

1st respondent instead of 2nd respondent; thus, accepting the contention of the petitioners amounts to granting them the benefit of the fraud committed by them to the prejudice of the contesting respondents;

(vi) petitioners had entered into agreement with the contesting respondent on 10.06.2005 having received huge sums of money; they have obtained the permission for alienating the subject property from the jurisdictional authority and that at this stage they had taken the 1st respondent in confidence; subsequently, the money being what it is, the petitioners sold the subject property to the 2nd respondent disregarding the legal notice; this act on the part of the petitioners amounts to fraud on the Government which granted the land, fraud on the authority which granted permission to alienate the same in favour of contesting respondent and fraud on the contesting respondent; may be, it amounts to fraud perpetrated against the 2nd respondent as well; and,

(vii) the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Land) Act, 1978 has been enacted for the benefit of depressed classes so that the lands honestly lost because of illiteracy and backwardness of the grantees are restored to them; it has been a settled position of law that a statute cannot be

abused as an instrument of fraud; the petitioners are not scrupulous litigants who deserve grant of remedy at the hands of this Court exercising the extraordinary jurisdiction under Article 227 of the Constitution of India; the conduct of the petitioners in the suit, in the appeal, in the execution and before this Court warrants imposition of exemplary costs.

In the above circumstances, this writ petition is dismissed with cost quantified at Rs.25,000/- payable by the petitioners to the 1st respondent within a period of eight weeks; if the cost is not paid, it is open to the 1st respondent to recover the same by invoking contempt jurisdiction, as well.