

HUCHAPPA YELLAPPA RADDER AND ANR.

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v.

NINGAPPA BHEEMAPPA TALAWAR

[KULDIP SINGH, B.P. JEEVAN REDDY AND N. VENKATACHALA,
JJ.]

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MAY 14, 1993

Transfer of Property Act 1882—S.III(d)—Karnataka (Prevention of Fragmentation & Consolidation of Holdings) Act 1966—S. 39(3)—Karnataka land Reforms Act 1961, Ss. 141 and 143—Sale of land to tenants in possession found void in a suit for partition of joint family properties, whether right of tenancy disturbed by the sale deed—Held, since sale deed void because the undivided interest of the brother could not have been sold, there was no merger of interest within S. 111 (d) T.P. Act—Tenancy rights not affected or disturbed by sale deed—Bombay Hereditary offices Act 1874—Bombay Paraganā and Kulkarni Watans (Abolition) Act 1950—Bombay Tenancy and Agricultural Lands Act 1948.

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Basappa Bheemappa was the Watandar of the disputed agricultural lands admeasuring 4 acres, and 6 acres 26 guntas, in Kubihal Village in Kundgol Taluk of Dhwarwad District which became a part of Karnataka State in 1956. In 1950, he leased the disputed lands to appellant 1 and the father of appellant 2 for their personal cultivation.

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With the coming into force of the Bombay paragana and Kulkarni Watans (Abolition) Act 1950, the lands were resumed by the State of Bombay, Bheemappa applied under this Act for regrant of the watan land, and the Dy. Commissioner of Dharwad District made the regrant in his favour on 30.11.1968. On 31.3.1969, he sold the land to appellant no. 1 and the father of appellant no. 2 under a registered sale deed. The land Tribunal under the Karnataka land Reforms Act 1961 found it unnecessary to register the occupancy rights of the appellants in view of the sale.

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In 1976, respondent filed a suit against Bheemappa and 2 other brothers for partition of the disputed property and separate possession. He impleaded appellants 1 and 2 as defendants in the suit since they were in possession of the disputed lands. He contended that Bheemappa had sold the lands without the prior consent of his brothers, and for nor legal necessity of the family, and the sale was void *ab initio*.

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A The Munsiff Court granted a decree in favour of the respondent on its finding that the disputed lands were Hindu joint family properties, that the sale was void *ab initio* for the reasons stated; and that the plea of the defendants—appellants that if the sale was void the tenancy revived, was unacceptable.

B The Munsiff Court, and in appeal, the Civil Judge concurrently held that the sale was void since sale of fragments was prohibited under the Karnataka Prevention of Fragmentation Act 1966.

A regular second appeal before the High Court was dismissed *in limine*.

C The appellants contended before this Court that if the sale was *ab-initio* void, the agricultural tenancy of the appellants revived. For the respondents it was submitted that the tenancy on lease hold rights in the disputed lands held by the appellants got merged in the sale effected in their favour. When that sale was found to be void it did not have the effect of reviving the merged tenancy of the appellants, as would restore their tenancy rights in the disputed lands.

Allowing the appeal, this Court,

E HELD : (1) The tenants being the persons deemed to be in possession of the disputed lands and entitled to continue in possession thereof, a partition decree could have been granted, in respect of such tenanted lands only if permissible by law. (784-G)

F (2) The courts below having found that the sale deed was void because Bheemappa could not have sold the undivided interest of his brother, only his 1/4 undivided interest, in the disputed lands had to be regarded as having been sold by him. (784-H)

G The lessors' entire interest or entire reversion in the disputed lands cannot therefore be regarded as having been sold under the sale deed of 31st March, 1969. From this, it follows that the lease-hold interests of the leases and the lessors entire reversion could not have merged in one and the same person, so as to constitute merger envisaged under section 111(d) of the Transfer of Property Act, 1982. For constituting merger under that provision, the interests of the lessee and the interests of the lessor *in the whole of the*

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property had to vest at the same time in one person in the same right. (785-B-C) A

The tenancy rights of the appellants in the disputed lands was not affected or disturbed by the sale deed of 31st March, 1969, and it is unnecessary to consider the question of revival of the right of tenancy of the appellants in the disputed lands. (785-D) B

3. Case remitted to the Court of Munsiff at Kundgol Dharwad District to decide the claim for partition if the disputed lands had continued as tenanted lands, as found by this Court. (785-E) C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2854 of 1993.

From the Judgment and Order dated 6.4.1992 of the Karnataka High Court in R.S.A. No. 534 of 1990.

S.D. Bajaj, and P. Mahale for the Appellants. D

Ms. Kiran Suri for the Respondent.

The Judgment of the Court was delivered by E

VENKATACHALA, J. We grant Special Leave. Since we heard learned counsel for parties on the merits of the appeal, we are finally deciding it.

An extent of 4 acres and another extent of 6 acres 26 guntas are agricultural lands comprised in Survey No. 24/2A and Survey No. 34/2B of Kubihal Village in Kundgol Taluk of Dharwad District. They are the disputed lands in this appeal. The disputed lands were Watans appertaining to hereditary village offices under the Bombay Hereditary Offices Act, 1874 known as Watan Act. Basappa Bheemappa, who was the Watandar of the disputed lands, leased them in the year 1950 in favour of appellant-1 and father of appellant-2, for their personal cultivation. With the coming into force on 25th January, 1951 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, known s the Watan (Abolition) Act, all the Watans were resumed by the State of Bombay resulting in extinguishment of all the rights held by Watandars in such Watans. But, there was a right conferred under the Watan Act on every Watandar—the holder of the F G H

A Watan land, to obtain its regrant subject to payment of occupancy price. After the resumption of the disputed lands by the State of Bombay under the Watan (Abolition) Act, Basappa Bheemappa, claiming to be their former holder applied for their regrant before the Assistant Commissioner, Savanur, as by then, Dharwad District where the disputed lands were located, had come to Karnataka State from

B Bombay State by reason of the reorganisation of States under the States Reorganisation Act 1956. Thereafter, by his Order dated 30th November, 1968, the Deputy Commissioner of Dharwad District made the regrant of disputed lands (resumed Watan lands) in favour of their former Watandar, Basappa Bheemappa. The tenancy of the disputed lands had since been regulated by the provisions of the

C Bombay Tenancy and Agricultural lands Act, 1948 (the BT & AL Act) from the time Basappa Bheemappa, as their Watandar, had leased them in favour of appellant-1 and father of appellant-2 in the year 1950, the regrant of the disputed lands in favour of Basappa Bheemappa under the Watan (Abolition) Act, did not entitle him to obtain possession of them except under the BT & AL Act. Although, the Karnataka Land Reforms Act, 1961 (the KLR Act) which came into force in

D Karnataka on 2.10.1965, repealed by its section 141 the Watan (Abolition) Act and by its section 143 the BT & AL Act, 1948, nothing thereunder adversely affected the rights of the appellants' tenancy in the disputed lands. However, the said Basappa Bheemappa sold the disputed lands in favour of their tenants (the appellant-1 and father of appellant-2) on 31st March, 1969 under a registered sale deed. The land Tribunal under the KLR Act, before which the appellants sought

E registration of their occupancy rights in the disputed lands, found it unnecessary to so register them because of its view that the disputed lands had been sold to them by the landlord-regrantee, Basappa Bheemappa.

F But, on 8th December, 1976, the respondent filed a suit in the Court of Munsiff at Kundgol, against his eldest brother, Basappa Beemappa (the seller of the disputed lands) and two other brothers arraying them as defendants-1 to 3. That was a suit for partition of 1/4th share in the disputed lands and putting him in separate possession of that share. His claim for partition and separate possession of his share in the disputed lands was based on the plea that the sale deed dated 31st

G March, 1969 by which defendant-1, his eldest brother, had sold the disputed lands (joint family lands) in favour of the tenants, without the prior consent of his brothers and for no legal necessity of the family, was void *ab initio*. He impleaded in that suit appellants-1 and 2 as defendants - 4 and 5, since they were in possession of the disputed lands. Defendants-1, 4 and 5, resisted the plaintiff's claim for

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partition and separate possession of his 1/4th share in the disputed lands urging, *inter alia*, that he had no right to get any share in them. After trial of the suit, the Munsiff Court granted a decree in favour of the respondent. That decree of the Munsiff Court was based on its findings (i) that the disputed lands were Hindu joint family properties of the plaintiff and defendants-1 to 3; (ii) that the sale of the disputed lands in favour of defendant-4 and father of defendant-5 had since been made by defendant-1 without the consent of his brothers, the plaintiff and defendants-2 and 3 and without legal necessity of the family, the same was void *ab initio*; (iii) that the plea of defendants-1, 4 and 5 that the tenancy revived, if the sale by defendant-1 in favour of defendant-4 and father of defendant-5 was found to be void, was unacceptable; and (iv) that the sale by defendant-1 in favour of defendant-4 and father of defendant-5 of the disputed lands was also void since sale of them (Fragments) was prohibited under the provisions of the Karnataka (Prevention of Fragmentation and Consolidation of Holdings) Act, 1966—the Karnataka Prevention of Fragmentation Act. However, defendants-4 and 5 challenged the correctness of the decree of the Munsiff Court, by filing an appeal before the Court of the Civil Judge at Hubli. In that appeal, the Court of the Civil Judge, held that the sale deed date 31st March, 1969 by which defendants-1 had sold the disputed lands, was void because of the provisions of the Karnataka Prevention of Fragmentation Act, prohibiting such sale and this situation itself enabled the plaintiff to ignore the sale effected by defendant-1 and claim his share in the disputed lands. Accordingly, it dismissed the appeal. A Regular Second Appeal filed by defendants-4 and 5 before the High Court of Karnataka against the decree of the Civil Judge's Court affirming the decree of the Munsiff's Court, was dismissed *in limine*. It is those decrees which are impugned by defendants-4 and 5 in the present appeal by Special Leave.

Shri Padmanabha Mahale, the learned counsel for the appellants, contended that the Courts below ought to have held that the agricultural tenancy of the appellants in respect of the disputed lands revived when, according to them, sale of the disputed lands by defendant-1 in favour of defendants-4 and 5 (appellants-1 and 2) was *ab initio* void either (i) because the sale was of the joint family lands effected by the eldest brother in the family without the consent of the other brothers and for no legal necessity, or (ii) because the sale was effected when such a sale was prohibited under the provisions of the Karnataka Prevention of Fragmentation Act. Had it been so held, it was argued, there would not have been scope for the

A Munsiff Court to have made a decree in favour of the respondent for partition of his 1/4th share in the disputed lands and putting him in possession thereof to the extent of such share and granting him mesne profits, and that decree to have been affirmed by the Appellate Court. On the other hand, Mrs, Kiran Suri, the learned counsel for the respondent, submitted that the tenancy or lease-hold rights in the

B disputed lands held by the appellants got merged in the sale effected in their favour by defendant-1 on 31st March, 1969. That sale, when was found to be void by the Courts below, such finding did not have the effect of reviving the marged tenancy of the appellants, as would restore their tenancy rights in the disputed lands. This appeal was, therefore, liable to be dismissed.

C The Court of Munsiff-the Trial Court and the Court of Civil Judge-the First Appellant Court, have recorded a concurrent finding that the sale by defendant-1 in favour of defendant-4 and father of defendant-5 of the disputed lands by registered sale deed dated 31st March, 1969, was void *ab initio*-that being a sale prohibited under the provisions of the Karnataka Prevention of Fragmentation Act.

D Besides, the Trial Court has recorded a finding that the said sale deed was void, on its view that the 3/4th share of the plaintiff and defendants-2 and 3 in the disputed lands belonging to their joint family, had been sold by their eldest brother-defendant-1 without their consent and when there was no legal necessity of the family for such sale. The Trial Court has, accordingly, made the decree in the suit

E in favour of the plaintiff and that decree is affirmed by the Appellate Court, because of the said findings recorded by them. The Second Appeal filed before the High Court by defendants-4 and 5, has been dismissed *in limine*.

F That the sale deed dated 31st March, 1969, if is void, being a prohibited sale under the provisions of the Karnataka Prevention of Fragmentation Act, as is held by the Court of Munsiff and also the Court of Civil Judge, the consequence contained in sub-section (3) of section 39 of that Act should have followed, that is—

G “Any person unauthorisedly occupying or wrongfully in possession of any land, the transfer or partition of which is void under the provisions of this Act, may be summarily evicted by the Deputy Commissioner, and after such eviction such land shall be deemed to

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be in the possession of the person lawfully entitled to such possession.” A

In the instant case, the tenants on the lands (defendants-4 and 5) being the persons deemed to be in possession of the disputed lands and entitled to continue in possession thereof, the Court below ought to have seen that the partition decree sought for by the plaintiff (respondent here) could have been granted in respect of such tenanted lands, only if the same was permissible in law, and not otherwise. B

The other finding of the Courts below is, that the sale deed dated 31st March, 1969 was void because defendant-1 could not have sold the undivided interest of his brothers-the plaintiff (respondent here) and defendants-2 and 3 in the disputed lands, being their joint family properties, without their consent and without the legal necessity of the family. If that be so, defendant-1 had to be regarded as having sold in favour of defendant-4 and father of defendant-5 under sale deed dated 31st March, 1969 only his 1/4th undivided interest in the disputed lands and not, 3/4th of the undivided interest of the plaintiff and defendants-2 and 3. That means that the lessors' entire interest or entire reversion in the disputed lands cannot be regarded as having been sold under the sale deed of 31st March, 1969. From this, it follows that the lease-hold interests of defendant-4 and father of defendant-5 in the disputed lands and lessors' entire reversion could not have merged in one and some person, so as to constitute merger envisaged under section 111(d) of the Transfer of Property Act, 1882, in that, for constituting merger under that provision, the interests of the lessee and the interests of the lessor in the whole of the property had to vest at the same time in one person in the same right. Thus, on the basis of the finding of the Courts below, if it has to be held that defendant-1 had not sold the undivided interest of the plaintiff and defendants-2 and 3 in the disputed lands to the extent of their 3/4th share-there could not have been any merger of tenancy rights of defendant-4 and father of defendant-5 in the disputed lands with that of lessors (landlords) whole rights. If so, tenancy rights of the appellants in the disputed lands ought to be regarded as not affected or disturbed by the sale deed of 31st March, 1969. Hence, consideration of the question whether there arose revival of the right of tenancy of the appellants in the disputed lands, is unnecessary. C D E F G

In the result, we allow this appeal, set aside the judgments and decrees of the Courts below and remit the case to the Court of Munsiff at Kundgol, Dharwad H

- A** District of Karnataka State with a direction to it to take back the suit on to its file and decide after affording the parties an opportunity of hearing, the question whether the plaintiff would be entitled to the decree sought for in the suit, if the disputed lands had continued as tenanted lands, as found by us. No costs.

U.R.

Appeal allowed.