

AGRICULTURAL PRODUCE MARKETING COMMITTEE

v.

BANNAMA (D) BY LRS.

(Civil Appeal No.3198 of 2007)

JULY 25, 2014

[**RANJAN GOGOI AND M.Y. EQBAL, JJ.**]

Suit - For declaration of title and possession - The suit property claimed to be 'Stridhan' of the plaintiff - It was sold by her son without her knowledge and consent, after getting the property mutated in his name - Suit decreed by trial court - First appellate court held that her son (vendor) had title in the property - High Court, in second appeal, decreed the suit - Held: Trial court as well as High Court have decreed the suit by elaborately discussing the evidence while the first appellate court failed to consider most relevant documents - Decree confirmed.

Transfer of Property Act, 1882 - s. 43 - Doctrine of feeding the grant by estoppel - Applicability of - Held: As per the doctrine, where the vendor sells without title and subsequently acquires title, right accrues to the purchaser to claim interest in the property - In the present case the doctrine is not applicable because the vendor did not acquire title in the property during his life-time, and consequently his children also did not acquire title through him.

Estoppel - Doctrine of feeding the grant by estoppel - Applicability of.

Respondent-Plaintiff filed a suit for declaration of title and possession of land and declaration regarding sale-deed. The case of the plaintiff was that the suit property was her 'Stridhan Property' standing in her name. She being in old age allowed her son (defendant No.2) who

A was also Vice President of the appellant-Society (defendant No.1) to take care of the property. Without the knowledge and consent of the plaintiff, respondent No.2 got the suit land mutated in his name and further sold the same to defendant No.1- Society. Trial court decreed the suit directing delivery of possession to her. The court also directed defendant No.2 to refund the purchase amount to defendant No.1. First appellate court held that defendant No.2 was the owner and thus had title to sell the property. In second appeal, High Court reversed the finding of first appellate court and decreed the suit.

In appeal to this court, the appellant-defendant inter alia contended that the plaintiff was not able to establish her title on the suit property and that after death of defendant No.2 at first appellate stage his children were substituted as legal representatives and on death of the plaintiff during pendency of the present appeal, children of defendant No.2 have been substituted as legal heirs of plaintiff being her grand-children; and in view of this fact, by applying the principle of feeding the grant by estoppel, the sale executed by defendant No.2 would become validated by virtue of death of plaintiff.

Dismissing the appeal, the Court

HELD: 1. The first appellate court, while reversing the finding of the trial court, has not considered most relevant documents which were relied upon by the trial court in coming to the conclusion that the suit property was owned by the plaintiff. The High Court elaborately discussed the evidence adduced by the parties, both oral and documentary, and affirmed the finding of facts recorded by the trial court. From perusal of the facts and evidence available on record, there is no perversity in the judgment passed by the High Court. [Para 9] [972-B-C]

2.1. The doctrine of feeding the grant by estoppel as

contemplated under Section 43 of the Transfer of Property Act is based on the principle of law of estoppel. It simply provides that when a person by fraudulent or erroneous representation transfers certain immovable property, claiming himself to be the owner of such property, then such transfer will subsequently operate on any interest which the transferor may acquire in such property during which the contract of transfer subsists. This doctrine known in English law has formed part of Roman Dutch law, according to which where a grantor has purported to grant an interest in the land which he did not at the time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the earlier grantee. In other words, where a vendor sells without title in the property, but subsequently acquires title then a right accrues to the purchaser to claim interest in the said property and it automatically goes in favour of the transferor. [Paras 13 and 14] [973-C, F-H; 974-A]

2.2. In the peculiar facts of the present case, the appellant would not be entitled to take the benefit of the doctrine of feeding the estoppel. The finding of facts recorded by the two courts based on the records is that the original plaintiff was the owner and title holder of the said property but by making false and fraudulent representation by her son that the property belonged to him, transferred the same in favour of the appellant. During the pendency of the first appeal before the district court, the vendor (son of the original plaintiff) died. Although on the death, his children did not inherit or succeeded any interest in the property, through their deceased father, but they were impleaded as legal representatives in the appeal. However, during the pendency of this appeal, the original plaintiff, died. After her death, the respondents being the grand children inherited and acquired interest in the suit property.

- A Admittedly, the deceased son of the original plaintiff, never acquired any interest in the suit property owned by his mother during his life time. In the aforesaid premises, the doctrine of feeding the estoppel would not come into operation as against the grand children of the original plaintiff. [Para 15] [974-B-E]
- B

- 2.3. Section 43 applies when the transferor having no interest in the property transfers the same but subsequently acquires interest in the said property, the purchaser may claim the benefit of such subsequent acquisition of the property by the transferor. Had it been a case where the son during his life time succeeded or inherited the property but- died subsequently, then to some extent it could have been argued that the heirs of defendant No. 2-vendor who inherited the property on the death of their father would be bound by the principle of estoppel. In a case where a transferor never acquired by succession, inheritance or otherwise any interest in the property during his life time then the provision of Section 43 will not come into operation as against the heirs who succeeded the stridhan property of their grandmother. [Para 15] [974-E-H; 975-A]
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- F From the Judgment and Order dated 17.10.2003 in R.S.A. No. 556 of 1997 of the High Court of Karnataka at Bangalore.

Anjana Chandrashekar for the Appellant.

- G Basava Prabhu S. Patil, B. Subrahmanya Prasad for the Respondent.

The Judgment of the Court was delivered by

- H M.Y. EQBAL, J. 1. This appeal by special leave is directed against the judgment and order dated 17.10.2003 passed by

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the High Court of Karnataka in R.S.A.No.556 of 1997, whereby the appeal preferred by plaintiff-respondent no.1 was allowed setting aside the judgment and decree of the appellate court in RA No.12 of 1994 and confirming the judgment and decree of the trial court.

2. The brief facts of the case of the plaintiff-respondent no.1, as set out in the trial court judgment, are that the plaintiff was an agriculturist and old lady residing at Saidapur village. Whereas, respondent no.2 (defendant no.2) was none other than the son of the plaintiff and was vice president of the appellant-first defendant society, which is a statutory body constituted and functioning under the Karnataka Agricultural Produce Marketing Committee (Regulation) Act. The suit land bearing Sy.No.58/1 measuring 7 acres 19 guntas situated at Saidapur village of Yadgir Taluk, for which Smt. Bannamma – plaintiff filed a suit for declaration of title claiming that the property was inherited by her from her father and it was her stridhan property, which is alleged to be standing in the name of the plaintiff since 1954-55. The land Sy.No.58-B has got two hissass as Hissa Nos.1 and 2, each measuring 7 acres 18 guntas and its khasra pahani numbers are 131 and 132 respectively. The property claimed by the plaintiff is Sy.No.58/A bearing Khasra No.131.

3. The plaintiff being an old lady, allowed her son second defendant to look after and manage the suit property on her behalf. It is pleaded that taking advantage of the same, second defendant, without the knowledge and consent of the plaintiff, got mutated the suit land in his name on the basis of the release deed. It is contended that second defendant sold the entire suit land to the appellant-first defendant, who purchased the same without verifying the title of second defendant and got a registered sale deed on 28.12.1978(Ex.P.24). The suit land has also been converted into non-agriculture land. The first defendant, thereafter, notified the plots in the property for sale by public auction on 22.12.1989 and 23.1.1990, which came

A to the information of the plaintiff and consequently she moved the court by filing suit for declaration of title and possession of land and declaration regarding the sale deed.

B 4. The trial court decreed the suit holding that the plaintiff-Bannamma was the owner and directed delivery of possession of the suit land.

C The trial court also directed second defendant to refund the purchase price to the appellant-first defendant, who, by preferring an appeal, challenged the decree granted in favour of plaintiff. The second defendant filed a separate appeal challenging the direction to refund the sale price. The appeals of the defendants were allowed and the judgment and decree passed by the trial court was set aside, holding that Nagi Reddy-second defendant was the owner of the suit property with title to sell the property. It is evident from the record that Nagi Reddy-second defendant died during the pendency of the appeal and his children, who are grandchildren of Bannamma-plaintiff were brought on record as Lrs. of Nagi Reddy.

E 5. Aggrieved by the decision of the Appellate Court, Bannamma-plaintiff preferred regular second appeal being RSA No.556 of 1997. The High Court reversed the finding recorded by the Appellate Court and allowed the regular second appeal decreeing the suit of plaintiff-Bannamma holding that plaintiff has title to the suit property and her son-defendant no.2 could not have sold the property. The second defendant remained absent before the High Court. The first defendant contended that second defendant in collusion with plaintiff brought the suit. The plea of limitation was also raised. In the impugned judgment, the High Court found that the sale deed was obtained by the first defendant in December, 1978 and the suit is filed during April, 1990 before the expiry of 12 years. Learned Single Judge of the High Court further observed that merely by the fact that the plaintiff came to know about the execution of sale deed cannot be inferred as an effective threat to the title. Even otherwise, in case of relief of possession based on title, a

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person can always maintain an action within 12 years from the date of the dispossession. In the present case, within 12 years from the date of Ex.P.24, the suit was filed. It is not really necessary for the plaintiff to seek a declaration that the sale deed is void. On the proof of title, the plaintiff is entitled to maintain an action for recovery of possession.

6. Learned Single Judge of the High Court in the impugned judgment further held that there is no evidence to show that the plaintiff had expressly or tacitly allowed the second defendant to execute the sale under Ex.P.24 in favour of first defendant. The fact that the first and second defendants were residing together is not sufficient by itself to infer a collusion or a fraud when the revenue records indicated that the property was standing in the name of the plaintiff. In that view of the matter, regular second appeal preferred by the plaintiff is allowed by the High Court.

7. Aggrieved by the impugned judgment of the High Court, defendant no.1 has preferred present appeal by special leave in which on 20.7.2007, leave was granted and interim order to maintain status quo with regard to possession was continued. During the pendency of the appeal, respondent no.1-plaintiff also died and her legal heirs namely Shailaja, Prabhavati and Prakash, who are also legal heirs of respondent no.2-second defendant Nagi Reddy, were brought on record by this Court on 17.10.2012.

8. We have heard learned counsel appearing for the appellant. Mrs. Anjana Chandrashekhar, learned advocate appearing for the appellant, assailed the findings of the High Court on various grounds which were taken before the first appellate court including that the plaintiff in her evidence admitted that she along with her son-defendant No.2 were living in the same house, but nowhere she stated in her evidence as to in which year she acquired the suit land as stridhan. Learned counsel put reliance on exhibit P-20, P-21 and P-22

A to establish that defendant No.2 Nagi Reddy, was shown as owner of the property.

B 9. We do not find much force in the submissions made by the counsel. The first appellate court, while reversing the finding of the trial court, has not considered most relevant documents which were relied upon by the trial court in coming to the conclusion that the suit property was owned by the plaintiff. The High Court elaborately discussed the evidence adduced by the parties, both oral and documentary, and affirmed the finding of facts recorded by the trial court. From perusal of the facts and evidence available on record, we do not find any perversity in the judgment passed by the High Court.

D 10. Mrs. Anjana Chandrashekhar, learned counsel appearing for the appellant, however, raised an additional ground which is interesting and needs to be discussed.

E 11. As noticed above, during the pendency of the first appeal before the District Court the son of the plaintiff (defendant No.2), died and his legal representatives were substituted in his place. Thereafter, during the pendency of this appeal the original plaintiff-respondent No.1 also died on 17.5.2010 leaving behind the children of her son Nagi Reddy as legal representatives, who have been brought on record in different capacity.

F 12. In these backgrounds, Mrs. Anjana Chandrashekhar, learned counsel for the appellant submitted that assuming for a moment, Nagi Reddy had no title to the property as his mother-original plaintiff was the absolute owner, as held by the High Court, the grand children being the legal representatives of Nagi Reddy would step into the shoes of plaintiff as title holders. Since Nagi Reddy having no title to sell the property, his children got the title on account of death of grandmother through her son Nagi Reddy. In this regard, learned counsel referred Section 15 of the Hindu Succession Act and submitted that on the death of the original plaintiff the grand children

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having been claimed through their father Nagi Reddy, the principle of feeding the grant by estoppel would come into operation and the sale executed by Nagi Reddy in favour of the appellant would become validated by virtue of the death of the plaintiff's mother. Learned counsel in this regard referred Section 43 of the Transfer of Property Act. A B

13. We do not find any substance in the contention made by the learned counsel appearing for the appellant. The doctrine of feeding the grant by estoppel as contemplated under Section 43 of the Transfer of Property Act reads as under:- C

"43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. D

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option." E

14. The doctrine is based on the principle of law of estoppel. It simply provides that when a person by fraudulent or erroneous representation transfers certain immovable property, claiming himself to be the owner of such property, then such transfer will subsequently operate on any interest which the transferor may acquire in such property during which the contract of transfer subsists. This doctrine known in English law has form part of Roman Dutch law, according to which where a granter has purported to grant an interest in the land which he did not at the time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the earlier grantee. In other words, where a vendor sells without title in the property, but subsequently acquires title then a right F G H

- A accrues to the purchaser to claim interest in the said property and it automatically goes in favour of the transferor.

15. In the peculiar facts of the instant case, in our considered opinion, the appellant would not be entitled to take the benefit of the doctrine of feeding the estoppel. The finding of facts recorded by the two courts based on the records that the original plaintiff was the owner and title holder of the said property but by making false and fraudulent representation by her son that the property belonged to him, transferred the same in favour of the appellant. During the pendency of the first appeal before the district court, the vendor (son of the original plaintiff) died. Although on the death, his children did not inherit or succeeded any interest in the property, through their deceased father, but they were impleaded as legal representatives in the appeal. However, during the pendency of this appeal, the original plaintiff, namely, Bannamma died. After her death, the respondents being the grand children inherited and acquired interest in the suit property. Admittedly, the deceased son of the original plaintiff, namely Nagi Reddy never acquired any interest in the suit property owned by his mother during his life time. In the aforesaid premises, the doctrine of feeding the estoppel would not come into operation as against the grand children of the original plaintiff. Section 43 in our considered opinion applies when the transferor having no interest in the property transfers the same but subsequently acquires interest in the said property, the purchaser may claim the benefit of such subsequent acquisition of the property by the transferor. Had it been a case where the son Nagi Reddy during his life time succeeded or inherited the property but- died subsequently, then to some extent it could have been argued that the heirs of Nagi Reddy who inherited the property on the death of their father would be bound by the principle of estoppel. We have, therefore, no doubt in our mind that in a case where a transferor never acquired by succession, inheritance or otherwise any interest in the property during his life time then

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the provision of Section 43 will not come into operation as A
against the heirs who succeeded the stridhan property of their
grandmother.

16. For all these reasons, we do not find any merit in this
appeal, which is accordingly dismissed.

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Kalpana K. Tripathy

Appeal dismissed.