

Sri L Raju vs the District Technical Assistant

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Court : Karnataka

Decided On : Jul-23-2024

Judge : E.S.Indires

Appeal No. : WP/57998/2017

Appellant : Sri L Raju

Respondent : The District Technical Assistant

Judgement :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JULY, 2024 BEFORE THE HON'BLE MR. JUSTICE E.S. INDIRESH WRIT PETITION NO.57998 OF 2017 (KLR-RES) BETWEEN: SRI. L. RAJU S/O LATE G.M. JOOVAIAH, AGED ABOUT 46 YEARS, R/O KALALE VILLAGE, KASABA HOBLI, NANJANAGUDU TALUK, MYSURU - 571 300. PETITIONER (BY SRI. SHARATH S. GOWDA, ADVOCATE) AND:

1. THE DISTRICT TECHNICAL ASSISTANT AN DDEPUTY DIRECTOR OF LAND RECORDS, D.C. OFFICE, MYSURU DISTRICT, MYSURU -

570 001. Digitally signed by

ARUNKUMAR M S

2. THE ASSISTANT DIRECTOR OF LAND RECO

MYSURU - 570 001.

3. THE TAHASILDAR NANJANAGUDU TALUK, MYSURU - 571 301.

4. G.M. NAGARAJA SHETTY

S/O LATE JOOVAIAH MUDASHETTY, AGED ABOUT 68 YEARS, R/O KALALE VILLAGE, KASABA HOBLI, -2- NANJANAGUDU TALUK, MYSURU - 571 300. RESPONDENTS (BY SRI. HARISHA A.S., AGA FOR R1 TO R3; SRI. VIJAYA KUMAR K., ADVOCATE FOR C/R4) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 26TH SEPTEMBER, 2017 PASSED BY KARNATAKA APPELLATE TRIBUNAL IN APPEAL NO.366/2016 VIDE ANNEXURE-A; AND ETC. THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER: CORAM: THE HON'BLE MR. JUSTICE E.S. INDIRESH

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE E.S. INDIRESH)

In this writ petition, the petitioner is assailing order

dated 26th September, 2017 (Annexure-A) passed by the Karnataka Appellate Tribunal in Appeal No.366/2016 (Revenue).

2. The relevant facts for adjudication of this writ petition are that, originally the land bearing Survey No.148/2 of Kalale Village, Nanjangud Taluk consisting of 2 acre 18

guntas excluding 6 guntas of Kharab land. The said land stood in the name of the Joovaiahanamada Shetty and as per the partition deed dated 29th February, 1960

(Annexure-B), -3- the land measuring 2 acre 18 guntas in Survey No.148/2 of Kalale Village was equally divided between the children of said

Joovaiahnamada Shetty viz. G.M. Joovaiah and G.

terms of partition deed dated 29th February, 1960 (Annexure- B), had sold 4 guntas out of 1 acre 9 guntas of land in favour of his brother G.M. Joovaiah (father of the petitioner herein) as per registered Sale Deed dated 27th December, 1963 (Annexure-C) and as such, the father of the petitioner became absolute owner of 1 acre 13 guntas of land in Survey No.148/2 of the Kalale Village, Nanjangud Taluk.

3. It is also stated in the petition that, the said G.M.

Ramashetty, having sold 4 guntas of land, had retained 1 acre 5 guntas and the said retained extent of 1 acre 5 guntas was sold by the said G.M. Ramashetty in favour of one Venkataramanashetty under the registered Sale Deed. Thereafter, the said Venkataramanashetty started claiming right over the land to an extent of 1 acre 13 guntas and therefore, the father of the petitioner had filed original Suit No.74 of 2006 before the Additional Civil Judge (Jr.Dn.), -4- Nanjangud, seeking relief of declaration and mandatory

injunction in respect of the land in question. The said suit came to be decreed in favour of the father of the petitioner on 09th October, 2007 (Annexure-D). It is further stated in the petition that the respondent No.4 herein had purchased 1 acre 5 guntas of land in Survey No.148/2 of the said Kalale Village from Venkataramanashetty as per registered Sale Deed dated 14th June, 2001. Therefore, it is the grievance of the petitioner that, though the dispute with regard to extent of ownership of the land has been concluded by the Civil Court as per

judgment and decree dated 09th October, 2007 (Annexure-D)

and appeal in terms of the Compromise entered into between the parties in Appeal No.8/2014-15 (Annexure-J) before the respondent No.1, the respondent No.4 has challenged the

order dated 08th February, 2016 (Annexure-F) passed in

Appeal No.116/2015-16 by the respondent No.1, in Appeal No.366/2016 (Revenue) before the Karnataka Appellate Tribunal. The Karnataka Appellate Tribunal, after considering the material on record, by order dated 26th September, 2017 (Annexure-A), allowed the appeal preferred by the respondent No.4 herein and as such, the remanded the matter to the -5- Assistant Director of Land Records to conduct fresh Phodi in respect of the land in question, after issuing notice to the petitioner herein. Being aggrieved by the same, the petitioner presented this writ petition.

4. Heard Sri. Sharath S. Gowda, learned counsel

appearing for the petitioner; Sri. Harisha A.S., learned Additional Government Advocate appearing for respondents 1 to 3 and Sri. Vijaya Kumar K., learned counsel appearing for the respondent No.4.

5. Sri. Sharath S. Gowda, learned counsel appearing for

the petitioner contended that, the petitioner had no notice about the proceedings conducted before the Mysuru Camp, thus, a fair opportunity of hearing has not been extended to the petitioner by the Karnataka Appellate Tribunal before

passing an impugned order. In addition to this, learned counsel appearing for the petitioner invited the attention of the Court to the schedule appended to the judgment and decree passed in Original Suit No.74 of 2006 on the file of the Additional Civil Judge (Jr.Dn), Nanjangud and contended that the extent of land stated in the schedule includes 4 guntas out

-6- of the remaining 1 acre 9 guntas, as being purchased by the

plaintiff thereunder. Accordingly, he submitted that, as the suit is one for declaration and mandatory injunction and the Civil dispute has been concluded and that apart, the appeal preferred by the respondent No.4 in Appeal No.8/2014-15 (Annexure-J) before the respondent No.1 has been dismissed as there is compromise entered into between the parties thereunder, the said aspect ought to have been consider ED by the Karnataka Appellate Tribunal, before remanding the

matter to the Assistant Director of Land Records for conducting fresh phodi in respect of the land in question. Accordingly, he sought for interference of this Court.

6. Per contra, Sri. Vijaya Kumar K., learned counsel

appearing for the respondent No.4 invited the attention of the Court to the Acknowledgment for having served the notice with regard to Mysuru Camp held by the Karnataka Appellate Tribunal (Annexure-R2) and contended that Karnataka Appellate Tribunal had remanded the matter to the Assistant Director of Land Records for conducting fresh Phodi, after bringing to the notice of the petitioner and therefore, there would not be much difference insofar as the completion of the -7- formality relating to the fresh Phodi to be conducted in respect

of the land in question. Accordingly, the learned counsel submits that, it is open for the parties to conclude the matter before the respondent-Authorities with regard to Phodi in terms of the remand order passed by the Karnataka Appellate Tribunal. Learned counsel appearing for the respondent No.4 also submits that the extent of land mentioned in the RTC extracts envisages that the petitioner is having 1 acre 13 guntas and the respondent No.4 is having 1 acre 5 guntas. Accordingly, he sought for dismissal of the writ petition.

7. Sri. Harisha A.S., learned Additional Government Advocate appearing for respondents 1 to 3 sought to justify the impugned order.

8. Having heard the learned counsel appearing for the

parties, there is no dispute with regard to the fact that, originally, land bearing Survey No.148/2 of Kalale Village, Nanjangud Taluk consisting of 2 acre 18 guntas excluding 6 guntas of Kharab land; and in terms of the partition deed dated 29th February, 1960 effected between G.M. Joovaiah and G.M. Ramashetty, 1 acre 9 guntas of land was allotted in

favour of G.M. Joovaiah (father of the petitioner). Further, perusal of the writ petition would indicate that the father of the petitioner had purchased 4 guntas of the land from his brother G.M. Ramashetty. Therefore, having purchased 4 guntas of land from G.M. Ramashetty in terms of Sale Deed dated 27th December, 1963 (Annexure-C), the father of the petitioner become owner to an extent of 1 acre 13 guntas in Survey No.148/2 of Kalale Village, Nanjangud Taluk. It is also forthcoming from the writ petition that the father of the petitioner had filed Original Suit No.74 of 2006 before the competent Civil Court, seeking relief of declaration and

mandatory injunction. The schedule appended to the

judgment and decree passed in Original Suit No.74 of 2006

read as under:

"Agricultural Lands situated at kalale Village, Kasaba Hobli, Nanjangud Taluk, bearing Sy. No.148/2, measuing 1 acre 18 guntas, out of this, 1 acre 9 guntas belongs to the plaintiff and 4 guntas out of the remaining 1 acre 9 guntas is also purchased by the plaintiff. As such, 1 Acre 13 guntas of lands. Now plaintiff's land is being given a separate phode No. i.e., Sy. No.148/3." -9-

9. It is also forthcoming from the writ petition that the

Appeal No.8/2014-15 was filed before the respondent No.1 and the said appeal came to be dismissed, by order dated 11th March, 2015 (Annexure-J) in terms of compromise entered into between the parties. Thereafter, the respondent No.4 has filed application to recall the order dated 11th March, 2015 (Annexure-J) before the respondent No.1 and same was renumbered as Appeal No.116/2015-16 and the respondent No.1, by order dated 08th February, 2016 (Annexure-F), dismissed the appeal preferred by the respondent No.4. Being aggrieved by the same, the respondent No.4 has filed appeal

before the Karnataka Appellate Tribunal in Appeal No.366/2016 (Revenue). Perusal of the writ papers including the Annexure-R2 to the statement of objections filed by the respondent No.4 would indicate that the notice with regard to holding proceedings at Mysuru camp has been addressed to the counsel representing the petitioner before the Land Tribunal and not to the petitioner. Having taken note of the factual aspects on record, as the petitioner has acceded before the Trial Court in Original Suit No.74 of 2006, wherein, undoubtedly the suit is one for declaration and mandatory

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injunction, and as the appeal preferred by the respondent No.4 in Appeal No.116/2015-16 (Annexure-F) is dismissed, I am of the view that, fair opportunity to be extended to the petitioner to bring to the notice of the Karnataka Appellate Tribunal the aforementioned facts. In that view of the matter, as the fair opportunity has not been extended to the petitioner and perusal of the finding recorded by the Karnataka Appellate Tribunal would indicate that, these aspects have to be re-looked on merits, I am of the view that, it is a fit case to remand the matter to the Karnataka Appellate Tribunal for fresh consideration. Hence, I pass the following:

ORDER

1) Writ Petition is allowed; 2) Order dated 26th September, 2017 (Annexure- A) passed by the Karnataka Appellate Tribunal in Appeal No.366/2016 (Revenue) is hereby set-aside and matter is remanded to the Karnataka Appellate Tribunal for fresh consideration, after affording an opportunity of hearing to the parties; 3) As the parties are represented by their respective learned counsels, in order to avoid -
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further delay in the matter, parties are directed to appear before the Karnataka Appellate Tribunal on 20th August, 2024 at 3.00 p.m. and on their appearance, Karnataka Appellate Tribunal shall conclude the proceedings within an outer limit of six months from thereafter; 4) It is made clear that the interim order said to have been granted by the

Karnataka Appellate Tribunal, shall continue till the conclusion of the proceedings before the Karnataka Appellate Tribunal.

SD/- (E.S. INDIRESH) JUDGE ARK

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