

Dharappa and Others Vs. Assistant Commissioner, Yadgir, Gulbarga District and Others

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Court : Karnataka

Decided On : Mar-17-1999

Reported in : 2000(1)KarLJ326

Judge : Chidananda Ullal, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 25, 127(1) and 136(2)

Appeal No. : Writ Petition No. 13420 of 1998

Appellant : Dharappa and Others

Respondent : Assistant Commissioner, Yadgir, Gulbarga District and Others

Advocate for Def. : Sri R.S. Siddapurkar, Adv. and ;Sri M.N. Ramanjaneyagowda, Additional Government Pleader

Advocate for Pet/Ap. : Sri Ashok Patil, Adv.

Judgement :

ORDER

1. The petitioners herein have challenged the Order dated 6-11-1997 in case No. REV/ROR/8/69/96-97, in passing whereof, the respondent 1-As-sistant Commissioner while setting aside Mutation Order No. 19 dated 13-5-1997 passed

by the Tahsildar, Kodekal, Shorapur Taluk, had directed the Tahsildar, Shorapur to make the entries in the R.O.R. in respect of 16 acres 36 guntas in Sy. No. 43/1 in the name of the respondent 3 (since dead during the pendency of the writ petition before this Court) and further 9 acres 2 guntas in Sy. No. 42/2 in the name of the respondent 2.

2. By consent of parties, this writ petition is taken up for final disposal. Hence, rule is issued.

3. I heard the learned Counsel for the petitioners, Sri Ashok Patil and Sri R.S. Siddapurkar appearing for the contesting respondent 2. The respondent 1- Assistant Commissioner is represented by the learned Additional Government Advocate. The respondent 3 is the father of the petitioner and the grandfather of petitioners 2 and 3.

4. The learned Counsel for the petitioner had taken me through the facts of the case and further the impugned order under challenge. It is his submission that an extent of 25 acres 37 guntas of land in Sy. No. 43 of Uppaldinni Thanda of Shorapur Taluk is the ancestral property of the petitioners and that for the period from 1954-55 down to the year 1996-97, an extent of 24 acres 11 guntas was shown by way of revenue entries as that of the respondent 3, the father of the petitioner 1 and that the respondent 2 all of a sudden had resorted to an application under Section 25 of the [Karnataka Land Revenue Act, 1964](#) for getting the extent shown as 16 acres 36 guntas in the name of the respondent 3 and 9 acres 1 guntas in his own name i.e., in the name of respondent 2. According to him, such an application was totally impermissible in law. Hence, he submitted that the impugned order passed by the Assistant Commissioner be quashed.

5. The learned Counsel appearing for the contesting respondent 2-Sri Siddapurkar on the other hand submitted that the respondent 2 had sold only 16 acres 36 guntas of land prior to the year 1954 and that an extent of 9 acres 1 guntas was left by him under the care of his paternal uncle and that when he had returned to the village from Bombay in the year 1996, having found the entries made in respect of the entire extent in the name of the respondent 3, it was the lot of the respondent 2 to file an application under Section 25 of the Land Revenue Act

before the Assistant Commissioner to get the extent corrected in the R.O.Rs. Therefore, he submitted that the impugned order passed by the Assistant Commissioner was just and proper, particularly when the petitioner herein had not shown the reason as to how all of a sudden from the year 1967-68 the entire extent of 24 acres 11 guntas was shown as against the name of the respondent 2, the father of the petitioner 1 and grand father of petitioners 2 and 3, whereas earlier to that, the extent was shown clearly as 16 acres 36 guntas.

6. The learned Government Advocate appearing for the respondent 1 however supported the impugned order passed by the Assistant Commissioner.

7. I have carefully considered the arguments of the learned Counsel appearing for both sides and further of the learned Government Advocate. I have also gone through the impugned order under challenge. Having gone through the impugned order under challenge, at the outset, it appears to me that the very application filed by the respondent 2 before the Assistant Commissioner was totally a misconceived application, for admittedly, the said application came to be filed under Section 25 of the K.L.R. Act. The said provision of law is only a saving provision of the inherent powers of the Revenue Court. To quote the said provision of law, the same reads as hereunder:

'25. Savings of Inherent powers of a Revenue Court.--Nothing in this Act, shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Revenue Court'.

8. From the above provision of law it is clear that the Revenue Court can make such orders as may be necessary in the ends of justice or to prevent the abuse of the process of the Revenue Court. Admittedly, in the instant case in hand, what the respondent 2 desired the respondent 1 to do was to correct the M.E. to show the extent as 16 acres 36 guntas in the name of the respondent 3 and further to show the rest of the extent i.e., 9 acres 1 guntas in his own name, the total extent being 25 acres 37 guntas.

9. In this context it is relevant to refer to Section 127 of the Land Revenue Act. That provision had occurred in Chapter XI of the Act. The same reads as hereunder:

'127. Record of Rights.--(1) A record of rights shall be prepared in the prescribed manner in respect of every village and such record shall include the following particulars.-

(a) the names of persons who are holders, occupants, owners, mortgagees, landlords or tenants of the land or assignees of the rent or revenue thereof;

(b) the nature and extent of the respective interest of such persons and the conditions or liabilities (if any) attaching thereto;

(c) the rent or revenue (if any) payable by or to any of such persons; and

(d) such other particulars as may be prescribed.

(2) The records of rights shall be maintained by such officers in such areas as may be prescribed and different officers may be prescribed for different areas.

(3) xxx . . . '.

10. Now if we fall back upon Section 127(1)(b), it is clear that the change of entry includes the nature and extent of the respective interest of such persons. Obviously, in the instant case in hand, it is the extent that the respondent 2 desired to be corrected and that exactly what the Assistant Commissioner did in passing the impugned order. If the order came to be passed as to the extent as contemplated under Section 127(1)(b), it is obvious that the respondent 2 had to resort to an appeal as contemplated under Section 136(2) of the Land Revenue Act. It is not what the respondent 2 did before the Assistant Commissioner to pass the impugned order. Per contra, what he had done was to invoke the inherent powers under Section 25 of the Land Revenue Act as if such an order had to be made by the Revenue Court in the ends of justice or to prevent the abuse of process of the Revenue Court.

11. In the facts and circumstances, it does not appear to me that is what the respondent 2 wanted the respondent 1-Assistant Commissioner to do. As pointed out above, what he wanted was to correct the extent as it appeared in the impugned order in the name of the respondent 2 on the one side and himself i.e., the respondent 2 on the other. That being the position, I am of the considered view that the very application filed by the respondent-2 before the Assistant Commissioner was totally misconceived one and that being the position, it was not at all open for the Assistant Commissioner to entertain such an application as if the same was filed under Section 136(2) of the Land Revenue Act.

12. In the facts and circumstances of the case, there may be a good reason for the respondent 2 to move the respondent 1 to get the revenue entries in the R.O.R. corrected; but that had to be only in the process known to law and not otherwise, or by circumventing the law for that matter as it appears to have been done in the instant case.

13. Therefore, without going into the merits of the case, I am of the view that the impugned order passed by the respondent 1-Assistant Commissioner is liable to be quashed as the same was without jurisdiction.

15. In that view of the matter, I feel that the instant petition merits every consideration at the hands of this Court. Therefore, I pass the following:

The impugned order dated REV/ROR/8/69/96-97 passed by the respondent 1-Assistant Commissioner, copy at Annexure-G to writ petition is quashed.

16. Incidentally, it is added that any observation herein made for the purpose of disposal of this writ petition will not come on the way of the parties in prosecuting their respective side of the case before the Civil Court in the above suit.

17. The writ petition is allowed. Rules issued made absolute. No cost.