

Sidagireppa Vs. the Assistant Commissioner, Belgaum District, Belgaum and Others

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Court : Karnataka

Decided On : Feb-06-1998

Reported in : ILR1998KAR2232; 1998(3)KarLJ145

Judge : A.J. Sadashiva, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 128 to 136(2); [Specific Relief Act, 1963](#) - Sections 26; [Hindu Succession Act, 1956](#) - Sections 14(1) and (2)

Appeal No. : Writ Petition No. 12525 of 1994

Appellant : Sidagireppa

Respondent : The Assistant Commissioner, Belgaum District, Belgaum and Others

Advocate for Def. : Sri K. Nagaraja, High Court Government Pleader, ;Sri George Joseph and ;Sri S.B. Adi, Adv.

Advocate for Pet/Ap. : Sri Anant Mandgi, Adv.

Judgement :

ORDER

1. Sri K. Nagaraja, the learned High Court Government Pleader, is directed to take notice for respondents 1 and 2.
2. Even though this petition is listed for preliminary hearing, the same is heard on merits and disposed of by this order, with the consent of the learned Counsel appearing on both the sides.
3. Of late a disturbing trend is being noticed in the proceedings before the Prescribed Officer and the Assistant Commissioner, in the proceedings under Sections 128 to 136(2) of the [Karnataka Land Revenue Act, 1964](#) (for short 'the Act'). In many cases, either the Prescribed Officer or the Assistant Commissioner have assumed powers to themselves to construct and decide the purport, intent and the effect of a document. In some other cases, orders are being made merely because of a decree in a partition suit without ascertaining whether or not the decree has been executed and the proceedings are terminated and in some other cases orders are being made altering the entries in the revenue records which have been made long ago without there being any transaction compelling such alteration. This petition is one of those such cases in which neither the Prescribed Officer nor the Assistant Commissioner have taken care to ascertain, from the settled legal principles, the extent of their powers and the consequences of their orders by virtue of Sections 128 to 136 of the Act.
4. The Tahsildar, Hukeri Taluk, by his order dated January 31, 1994, unsettled a thing which was settled about 30 years ago, assuming powers which is not vested in him, having been told of such powers by this Court, in more than one case and the order of the Tahsildar is affirmed by the Assistant Commissioner adopting an equally casual approach.
5. The facts leading to this petition which are almost admitted are as follows.-

One Vishnu Pant Mahajan was the owner of Sy. No. 11/1 measuring 5 acres in Badakundi Village, Hukeri Taluk. By a Will dated June 18, 1947 he bequeathed his property in favour of one Venkubai and her son Dhanasingh Rajaput who was then a minor. Venkubai had three daughters in addition to Dhanasingh. The son and the daughters of Venkubai sold the property in favour of the petitioner by a

registered sale deed dated June 10, 1963, pursuant to which the name of the petitioner came to be mutated in MR. No. 1006, dated January 14, 1964. It is stated that there was no problem till 1993. On June 21, 1993 respondents 3 to 5, the sons of Dhanasingh, filed an application before the Prescribed Officer to mutate their names in the revenue records contending inter alia, that their father and the paternal aunts did not have right to alienate the property in view of the terms and conditions of the will and the transfer of the property in question is, therefore, null and void, The petitioner filed his objections. The application filed by respondents 3 to 5 is registered as a Disputed Entry No. 2603.

6. The Tahsildar, after holding an enquiry, approved the Diary Entry No. 2603 and directed to enter the names of respondents 3 to 5 as successors to the estate of Vishnupant by his order dated January 31, 1994. The relevant portion of the order of the Tahsildar reads thus.-

7. Having been aggrieved by the said order, the petitioner filed an appeal before the Assistant Commissioner under sub-section (2) of Section 136 of the Act who by his order dated April 15, 1994 dismissed the appeal by affirming the order of the Tahsildar and leaving liberty to the parties to approach the Civil Court to get their title declared. The relevant portion of the order of the Assistant Commissioner reads as follows.-

8. It is true that in more than one case this Court has held that the aggrieved parties have a right of filing a suit as provided under proviso to Section 135 of the Act and a writ petition to examine the correctness of the order made by the Assistant Commissioner should not normally be entertained. In *Srimanmaharaja Niranjana Jagadgura Mallikarjuna Murugharajendra Mahaswamy Matadipathy v Deputy Commissioner, Coorg*, this Court has held that.-

'When sub-section (2) of Section 136 uses the expression 'final' as regards the order of the Appellate Authority made under that provision, unless there are express words in any other provision, which affects such finality and constitutes an authority to decide the validity of such an appellate order, it is difficult to hold that any other authority has the power to interfere with such an order'.

After considering the scope of Section 136(3) of the Act, this Court has further held that.-

'The intention of the legislature is, the party aggrieved by the appellate order can only resort to the remedy of filing a Civil Suit as permitted under the proviso to Section 135 of the Act'.

9. In *S. Halappa v Assistant Commissioner, Shimoga Sub-Division, Shimoga and Others*, this Court has held that whenever an Appellate Authority exercises a power which is not vested in it, it is the duty of this Court to interfere with the order without jurisdiction and keep the authorities and the Tribunal within their bounds. After considering the decisions of this Court in *Murugarajendra Mahaswamy's case, supra*, *Payappa Nemanna Huded v Chamu Appayya Huded and Others* and *Rajasab Husseinsab Mulla v Inayuthullakhan*, this Court has held that.-

'The authorities exercising the jurisdiction under Chapter XI of the Act have no jurisdiction to decide the title relating to an immovable property vide decision in *Rajasab Husseinsab Mulla's case, supra*. If really there is a mistake in mentioning the survey number in the sale deed, it is open to either of the parties to seek rectification of the sale deed under Section 26 of the Specific Relief Act or to have the title to the land declared by the Court. But, it is not open to the revenue authorities to go into that matter and determine that the land that has been sold under the sale deed comprised in S. No. 82/2 and not S. No. 82/1 as mentioned in the sale deed. That would amount to usurping the jurisdiction of a Civil Court'.

10. From the contents of the order of the Tahsildar and the Assistant Commissioner as extracted above, it is clear that the revenue authorities have assumed the power of interpreting the document in the context of Section 14(1) and (2) of the Hindu Succession Act, relating to the limited right getting enlarged into absolute right, which is not within the powers of the revenue Court. Whether the land in question is reverted to the original heirs by virtue of the conditions in the Will is a matter to be decided only by the Civil Court of competent jurisdiction and not by the revenue Courts. It is, therefore, obvious, the impugned orders are without jurisdiction.

11. In the result, this petition is allowed. The orders dated January 31, 1994 passed by the Tahsildar, Hukeri, in No. RTS. SR. 32/93-94 as per Annexure-C and the order dated April 15, 1994 passed by the Assistant Commissioner, Belgaum, in No. RTS.AP. 223/93 are hereby quashed.

12. In the circumstances of the case, there is no order as to costs.

13. Sri K. Nagaraja, the learned High Court Government Pleader, is permitted to file memo of appearance within four weeks.

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