

Smt. Devamma Vs. Somegowda and ors.

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Court : Karnataka

Decided On : Jan-29-2002

Reported in : 2002(3)KarLJ433

Judge : N.K. Patil, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 128 and 128(1); [Evidence Act, 1872](#) - Sections 114

Appeal No. : Writ Petition No. 1696 of 2001

Appellant : Smt. Devamma

Respondent : Somegowda and ors.

Advocate for Def. : M.B. Chandrachooda, Adv. and ;R.A. Ramachandraiah, High Court Government Pleader

Advocate for Pet/Ap. : M. Shivappa, Adv.

Disposition : Writ petition dismissed

**Judgement :
ORDER**

N.K. Patil, J.

1. The matter is taken up for hearing with the consent of learned Counsels for both the parties.
2. The petitioner is assailing the legality and validity of the impugned order passed by the 3rd respondent in RP No. 66 of 1998, dated 15-11-2000. The petitioner is claiming that she is the owner and in enjoyment of Sy. No. 17/7 measuring 35 guntas situated in Chandupura Village, Maddur Taluk on the alleged palupatti said to have been executed by the 1st respondent and another his brother on 20-2-1985. She has filed an application for sanction of mutation before the Village Accountant on 10-2-1997 and contended that the said application has been duly signed by the 1st respondent and his another brother. In pursuance of the said application filed by the petitioner dated 10-2-1997, the Village Accountant has issued notice to the concerned authorities and when he has not received any objections within 30 days from the date of filing of the application, the Village Accountant submitted his wardi on 15-3-1997. On the basis of the wardi submitted by the Village Accountant, the 2nd respondent has sanctioned the mutation and the name of the petitioner was entered in the RTC extract for the agricultural years 1996-97 and 1997-98. Further she has placed reliance on Annexure-D, an intimation/letter addressed to the petitioner on 30-12-2000 by the Society. When things thus stood, feeling aggrieved by the said mutation sanctioned in favour of the petitioner by the 2nd respondent, the 1st respondent herein has filed the revision petition before the 3rd respondent under Section 136(3) of the Karnataka Land Revenue Act. The Deputy Commissioner has allowed the revision by his order dated 15-11-2000 cancelling the mutation sanctioned by the 2nd respondent in favour of the petitioner. Assailing the correctness of the impugned order passed by the 3rd respondent-the Deputy Commissioner, the petitioner has come up with this petition.
3. The principal submission canvassed by the learned Counsel appealing for the petitioner is that the petitioner is in peaceful possession and enjoyment of the suit schedule land since 1985 and the said land has fallen to the share of the petitioner on the basis of the Palupatti (oral partition) arrived at between the petitioner and the 1st respondent and another brother on 20-2-1985 to the extent of 35 guntas of land. The 1st respondent and another brother have given no objection to the

application filed by the petitioner to the Village Accountant to sanction the mutation in favour of the petitioner. Accordingly, the Village Accountant has rightly submitted wardi to the 2nd respondent for sanctioning the mutation and the 2nd respondent has also rightly sanctioned mutation as 1st respondent and another brother has given consent for sanction of the mutation in favour of the petitioner.

4. Further the learned Counsel appearing for the petitioner persuaded that the Village Accountant before submitting his wardi to the 2nd respondent has issued notice to the 1st respondent and his another brother but nobody has filed objection, particularly 1st respondent herein has not made any objection to that effect. Therefore, he contended that the 2nd respondent has rightly sanctioned the mutation in favour of the petitioner. In pursuance of sanction of the said mutation, thereafter, the petitioner's name has been entered in the relevant RTC records. Further he has pointed out that the petitioner has grown sugar-cane crop in the land in question and for that purpose she has raised loan from the Society and the Society in turn has issued Annexure-D to that effect to show that the petitioner has obtained the loan for growing sugarcane crop in the land in question. Even otherwise also, the Deputy Commissioner had given a specific finding to the effect that before mutation was sanctioned in favour of the petitioner, notice was issued to the 1st respondent and the said notice was served on him and he had not filed any objection before the 2nd respondent at the time of sanctioning mutation. When this is the factual aspect of the matter and the said material records is available before the 3rd respondent, the 3rd respondent ought not to have interfered with the sanction of mutation granted by the 2nd respondent in favour of the petitioner. Therefore, taking into consideration all these facts and circumstances of the case, the order passed by the Deputy Commissioner is contrary to the relevant provisions of the Act and the same is not sustainable in the eyes of law. Hence, he prayed that the impugned, order may be set aside.

5. Per contra, the learned Counsel for respondent 1 inter alia submitted that he has filed detailed statement of objections meeting all the contentions taken by the petitioner. In the statement of objections, the 1st respondent has denied the oral partition (palupatti) between the petitioner and the 1st respondent. As a matter of fact, the 1st respondent has purchased the land in question as per the registered

sale deed in the year 1986 in pursuance of which his name has been entered in the relevant ETC after sanctioning mutation by the Competent Authority in No. MF 4 RR 720, dated 12-9-1967. From the date of entering his name till the order passed by the 2nd respondent his name stood in the relevant HTC extract. Further he contended that on the date of filing of the petition he was in peaceful possession and enjoyment of the land in question. The learned Counsel for the 1st respondent has pointed out that the petitioner has kept silent for more than 12 years claiming alleged rights on the basis of the palupatti and on one fine day she made an application in the year 1997 for sanction of mutation on the forged signature of the 1st respondent. He has specifically contended that the 1st respondent is not at all the signatory to the application filed by the petitioner for sanctioning the mutation and he is not a party to the alleged palupatti alleged to have been executed in the year 1985 and he has not received any notice from the 2nd respondent before sanctioning the mutation. Therefore, he submitted that the petitioner has not approached this Court with clean hands nor stated the true facts. On the ground of suppression of material facts in the case, writ petition filed by the petitioner is liable to be rejected and the impugned order passed by the 3rd respondent may be confirmed.

6. The short question for consideration in this case, whether the impugned order passed by the 3rd respondent is in accordance with law?

7.1 have gone through the entire papers carefully and the impugned order passed by the 3rd respondent. It reveals on the face of the record that the petitioner intentionally and deliberately suppressed the material fact before the 3rd respondent and also before this Court. The petitioner has claimed the alleged right in respect of 35 guntas, on the basis of the alleged palupatti (oral partition) executed by the 1st respondent and another brother in her favour and they had arrived at amicably on 20-2-1985. It is significant to note that the petitioner has not taken any steps for making application well in time or at least within a reasonable time for entering her name by way of sanctioning the mutation. But as a matter of fact after lapse of more than 12 years, the petitioner had filed an application for sanction of mutation in her favour alleging that the 1st respondent and another brother have given no objection for entering her name in the relevant extract on

the basis of the alleged palupatti. This conduct of the petitioner is suffice for this Court to draw an adverse inference on the ground that the petitioner has not taken any steps to make an application to enter her name within a reasonable time. Further it is significant to note that the petitioner has placed reliance on a letter issued by the society dated 30-12-2000 to the effect that she raised a loan for growing sugarcane crop in the land in question. But the said endorsement does not support the contention raised by the petitioner on the simple ground that the petitioner herself has produced Annexure-C, the RTC extract issued by the Competent Authority. In the RTC it has been specifically mentioned in Column 13 that the petitioner has grown paddy crop for the agricultural years 1996-97 and 1997-98. Therefore, the said reliance placed by the petitioner will not support her case.

8. The Deputy Commissioner after considering all the materials on record and after taking into consideration the submission made by the Counsels appearing for both the parties has rightly given a finding that the petitioner has failed to produce any authenticated document to show that how she got the right in respect of the land in question and taking into consideration the submission made by the learned Counsel appeared before him on behalf of the 1st respondent that the said mutation sanctioned by the 2nd respondent is on the fabricated document produced by the petitioner. The contention of the learned Counsel for the petitioner that can be treated as a substantial piece of evidence and can be the basis of the order passed by the 2nd respondent is unbelievable. In support of the said contention, the learned Counsel failed to bring in any corroboration, provided the same would bring authority of sense of confidence and trustworthiness in the mind of the Court, why the petitioner has not produced the alleged palupatti before this Court and this is only material piece of evidence on the basis of which the petitioner has claimed her alleged rights. In my considered view, it is not otherwise a very safe piece of evidence to rely upon the contention of the petitioner. Therefore, the 3rd respondent has rightly cancelled the mutation sanctioned in favour of the petitioner by the 2nd respondent which is contrary to the relevant provisions of the Act. It is pertinent to note here itself as per Section 128 of the Karnataka Land Revenue Act the petitioner shall report either orally or in writing the acquisition of her right in respect of the land in question to the prescribed

officer of the village within three months from the date of such acquisition of rights. In the instant case after lapse of more than 12 years she has filed an application before the 2nd respondent for sanctioning the mutation. Therefore, I do not find any error of law in the impugned order passed by the 3rd respondent nor the petitioner has made out any ground to interfere with the impugned order passed by the 3rd respondent.

For foregoing reasons, writ petition fails and it is dismissed with costs of Rs. 1.000/- payable to the 1st respondent within four weeks from the date of receipt of this order. However the dismissal of the writ petition will not come in the way of the parties to redress their grievance before the appropriate, Competent Authority if they so desire.

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