

Anandappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-04-1988

Reported in : ILR1989KAR983; 1989(1)KarLJ94

Judge : K.A. Swami, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 10 and 49(b); Code of Civil Procedure (CPC) , - Sections 54

Appeal No. : W.P. No. 12476 of 1987

Appellant : Anandappa

Respondent : State of Karnataka

Advocate for Def. : S. Udayashankar, HCGP for R-1, 1A, 1B and 2 and ;T.N. Raupathy, Adv. for R-3 to 6

Advocate for Pet/Ap. : P. Ramachandra Rao, Adv. for ;R.S. Chakrabhavi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K.A. Swami, J

1. A preliminary decree for partition and separate possession of an undivided estate assessed to the payment of revenue payable to the Government was passed in O.S.326/1962 by the Munsiff Court, Bagalkot. This preliminary decree was sent to the Deputy Commissioner under Section 54 of the CPC for effecting partition in terms of the decree. The Assistant Commissioner, Bagalkot effected the partition by the order dated 22-5-1986 in No. BPD CR 85/86 (Annexure-A).

2.1. Being aggrieved by the order of the Assistant Commissioner the petitioner and respondents 8 and 9 preferred an appeal No. 707/86 before the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as the Tribunal).

2.2. The Tribunal by the impugned order dated 27-7-1987, has held that an appeal against the order of the Assistant Commissioner passed under Section 54 of CPC lies to the Deputy Commissioner and not to the Tribunal. Accordingly it has dismissed the appeal as not maintainable, it is the validity of the aforesaid order of the Tribunal that is challenged in this Writ Petition.

3. Sri Ramachandra Rao, learned Counsel appearing for the petitioner contends that the Tribunal is not right in holding that the appeal was not maintainable because the power exercised by the Assistant Commissioner was that of the Deputy Commissioner as provided under Section 54 of the CPC inasmuch as he did it as a Gazetted Assistant to the Deputy Commissioner therefore the appeal could not lie to the Deputy Commissioner. Hence the appeal preferred before the Tribunal was maintainable.

4. On the contrary Sri Raghupathy, learned Counsel appearing for respondents 3 to 6 contends that the powers of the Deputy Commissioner are exercisable by the Assistant Commissioner placed in charge of a revenue Sub-division having regard to the provisions contained under Section 10 of the [Karnataka Land Revenue Act, 1964](#) (hereinafter referred to as the Act). Hence for the purpose of Section 49 of the Act, the Assistant Commissioner being a subordinate to the Deputy Commissioner an appeal lies to the Deputy Commissioner.

5. Sri Udayashankar, learned Government Pleader also contents that an appeal lies to the Deputy Commissioner and not to the Tribunal because the Assistant

Commissioner has not exercised the power under Section 54 of the CPC as a Gazetted Assistant to the Deputy Commissioner deputed by the Deputy Commissioner but as Assistant Commissioner placed in charge of the revenue Sub-division.

6. Having regard to the aforesaid contentions the point that arises for consideration is, whether the appeal filed before the Tribunal was maintainable?

7. In this case the facts necessary for the purpose of deciding the point are not in dispute. The preliminary decree for partition of an undivided estate assessed to the payment of revenue payable to the Government passed by the Civil Court was sent to the Deputy Commissioner for effecting partition under Section 54 of the CPC. It is not the case of the petitioner and also of the respondents that the Deputy Commissioner deputed the Assistant Commissioner as his Gazetted Assistant to effect partition. It is also not in dispute that the Assistant Commissioner at the relevant point of time was in charge of the revenue Sub-division, Bagalkot. Sub-section (2) of Section 10 of the Act specifically provides that:

'The State Government may place any Assistant Commissioner appointed under Sub-section (1) to be in charge of the revenue administration of one or more Taluks called a Revenue Subdivision. Such Assistant Commissioner shall perform all the duties and exercise all the powers conferred upon the Assistant Commissioner by this Act or any other law for the time being in force. Such Assistant Commissioner shall also, subject to the provisions of Chapter V and to the orders of the State Government, if any, perform all the duties and exercise all the powers conferred upon the Deputy Commissioner by this Act or any other law for the time being in force.'

Chapter V of the Act relates to appeal and revision. It is not brought to my notice that there is any order issued by the State Government limiting the powers of the Assistant Commissioner. In the absence of any such order of the State Government, the Assistant Commissioner placed in charge of a Revenue Sub-Division, is entitled to exercise all the powers conferred upon the Deputy Commissioner by the Act or any other law for the time being in force. In the

absence of any order passed by the Deputy Commissioner deputing the Assistant Commissioner of the Revenue Sub-Division to effect partition pursuant to the preliminary decree, the power exercised by the Assistant Commissioner must, and shall have to, be construed as the one exercised in his own authority as conferred upon him under Section 10 of the Act read with Section 54 of the CPC. If that be so, as per Section 49(b) of the Act read with the Preamble portion of the very Section, an appeal lies to the Deputy Commissioner and not the Tribunal. Therefore the Tribunal is right in holding that the appeal was not maintainable. Accordingly the point raised for determination is answered in the negative.

8. However the Tribunal has committed an error in dismissing the appeal. It ought to have returned the memorandum of appeal to the appellant for presenting it before the appropriate Appellate Authority. To that extent the petition is entitled to succeed.

9. For the reasons stated above it is held that the appeal preferred before the Tribunal by the petitioner and respondents 8 and 9 against the order of the Assistant Commissioner dated 22-5-1986 passed in No. BPD CR 85-86 was not maintainable. However the order of the Tribunal to the extent it dismissed the appeal is quashed. The Tribunal is directed to return the memorandum of appeal to the petitioner and respondents 8 and 9 for presenting it before the Deputy Commissioner. To avoid further delay in service of notice on the petitioner and respondents 8 and 9, they are directed to appear either personally, or through their Counsel before the Tribunal on 14-11-1988. On that day the Tribunal shall return the memorandum of appeal to the appellants to enable them to present the same before the appropriate Authority.