

C. Muniyappa Vs. Assistant Commissioner

C. Muniyappa Vs. Assistant Commissioner

SooperKanoon Citation : sooperkanoon.com/381306

Court : Karnataka

Decided On : Nov-18-1994

Reported in : ILR1994KAR3652; 1994(5)KarLJ169

Judge : G.C. Bharuka, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 129(4), 129(6) and 136(2)

Appeal No. : W.P. No. 15023 of 1994

Appellant : C. Muniyappa

Respondent : Assistant Commissioner

Advocate for Def. : H.H. Kaladgi, H.C.G.P. for R-1 and R-2 and ;M. Papanna, Adv. for R-3

Advocate for Pet/Ap. : N. Kumar, Adv.

Disposition : Writ petition allowed

Judgement :

Bharuka, J

1. The petitioner assails the order dated 15.4.1993 passed by the first respondent-Assistant Commissioner in R.A.No.101/1989-90 ,(Annexure-L) on the ground that on the facts, the appeal was not maintainable under the provisions of Section

136(2) of the Karnataka Revenue Act, 1964 (for short, the Act).

2. The foundational facts leading to the controversy may be stated in short. The petitioner had purchased land measuring 6 acres 13 guntas in Sy.No.10 of Minasandra Village, under a registered deed dated 30.3.1972 from its previous owner Sri T.V. Ramaswamy Iyengar. According to the petitioner he is in peaceful possession and enjoyment of the same. On 2.7.1981 the petitioner learnt that the rSy.No.10 had been sub divided into Sy.No.10/1 and Sy.No.10/2 without his knowledge and in respect of Sy.No.10/1 measuring 30 guntas, the name of third respondent has been entered. So he filed an application as per Annexure-G before the Tahsildar for making necessary correction and restore his name in respect of the said extent of land. The Tahsildar thereupon registered mutation case No. 366/1985 and after due notice to the petitioner and respondent No. 3, by his order dated 15.9.1987 (Annexure-H) directed for correction of the entries in the mutation register by restoring the name of the petitioner. Respondent No. 3 aggrieved by the said order filed an appeal before the Assistant Commissioner which was numbered as R.A.No.83/1987-88. This appeal was dismissed by the order dated 20.12.1988 (Annexure-J) for default. Thus, the order of the Tahsildar became final. Accordingly, in pursuance of the said order the Revenue Inspector corrected the entries in the register of mutation by certifying the same on 21.9.1987 (Annexure-K). Against this correction and certification of entries, respondent No. 3 again preferred an appeal before the respondent-Assistant Commissioner. In pursuance whereof, the impugned order (Annexure- L) has been passed whereby after setting aside the entries in Annexure-K, the matter has been remitted to the Tahsildar for fresh enquiry and re-determination of the issue pertaining to mutation of the contesting parties.

3. Sri N. Kumar, learned Counsel, appearing for the petitioner, has submitted that in view of the earlier proceeding which attained its finality, the Assistant Commissioner had no jurisdiction to entertain an appeal against the consequential correction of entries and further that the impugned order was hit by the principles of res-judicata. On the other hand, Mr. Papanna, learned Counsel appearing for respondent No. 5, has submitted that the appeal preferred against Annexure-K was very much maintainable before the Assistant Commissioner because Section

136(2) of the Act on its very language permits preferring of an appeal against certification of entries under Section 129(6) of the Act. .

4. Chapter XI of the Act read with Chapter IX of the Karnataka Land Revenue Rules, 1966 deals with the Record of Rights. Under the scheme of the Act, any information received by the prescribed authorities either from the persons interested or the statutory authorities as envisaged under Section 128 of the Act, with regard to the acquisition of any right in any land by any mode and of any prescribed description, same has to be entered in the register of mutations as contemplated under Section 129 of the Act. Thereafter notices have to be published inviting objections from the interested persons. In case objections are received, the nature of objections have to be entered with given details in the register of disputed cases. Thereafter, an enquiry has to be made in respect of the disputes involved and the objections have to be finally adjudicated and decided by an order, which needs to be recorded in the register of mutations. Pursuant to such order, the entries in the register of mutations has to be either affirmed or altered. In case no objection is received in respect of an intended entry then it has to be straightaway certified for being transmitted to Record of Rights. The order disposing of the objections has to be passed under Sub-section (4) of Section 129 of the Act and the entries are required to be certified under Sub-section (6) of the said Section. Section 136(2) of the Act which calls for an interpretation in this case relates to an appellate forum against an order or entries under Section 129 of the Act and reads as under:

'136(2). Any person affected by an order made under Sub-section (4) or an entry certified under Sub-section (6) of Section 129 may within a period of sixty days from the date of communication of the order or the knowledge of the entry certified, appeal to such officer as may be prescribed by the State Government in this behalf and his decision shall be final.'

From a reading of the above provision it is clear that any person aggrieved by an order passed under Section 129(4) of the Act or an entry certified under Section 129(6) of the Act can prefer an appeal before the Assistant Commissioner within the prescribed period. The question involved is as to whether after attainment of

finality of an order passed under Sub-section (4) of Section 129 of the Act even in appeal filed against the said order, a further appeal is permissible against the entries certified pursuant to that order under Sub-section (6). My answer is in negative. The reason being, in cases where there is dispute regarding an entry pertaining to a particular description of land, the entries under Sub-section (6) has to be necessarily made in accordance with the order passed under Sub-section (4). After the order under Sub-section (4) attains the finality, no lis remains between the parties for any further adjudication. In such cases, the act of certifying entries under Sub-section (6) is merely ministerial in nature. It does not call for exercise of any discretion. If Section 136(2) is not interpreted in this manner, then it may lead to absurdity because if appeal is accepted as maintainable even against certification of entries in disputed cases, then it may give rise to conflicting orders, a situation which the Legislature could not have at all envisaged. As a corollary the appeal provided under Section 136(2) of the Act against the certification of entries under Section 129(6) of the Act can only be availed by an aggrieved person who had no notice about the mutation proceedings and had no occasion to raise any dispute in that regard, as a result whereof, certain entries had been made behind his back to his prejudice. Therefore, since in the present case the order under Section 129(4) of the Act as between the parties in relation to the very land had attained its finality, the appeal preferred against Annexure-K was not maintainable. Therefore, the impugned order (Annexure-L) is without jurisdiction.

5. Admittedly, at the instance of respondent No. 3 a civil suit being O.S.No.8/1990 is pending on the file of Munsiff at Malur for declaration of title and for injunction in respect of the land in question. Therefore, the entries in the revenue records have to ultimately abide by the declaration in the said suit as provided in the proviso to Section 135 of the Act. I

6. It appears that pursuant to the impugned order (Annexure-L) the learned Tahsildar has passed an order in favour of respondent! No. 3 on 3.6.1994 (Annexure-P). Admittedly the said order was passed despite his knowledge that the proceedings before him had been stayed by this Court on 2.6.1994. Mr. Papanna fairly concedes that this order under no situation can be defended,

Accordingly, Annexure-L and the consequential order and entries, if any made, are also quashed.

7. The Writ Petition is thus allowed. No costs. It is clarified that the 2nd, respondent-Tahsildar will restore the entries in accordance with Annexure-K.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com