

Golappa Vs. Malakappa

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Court : Karnataka

Decided On : Dec-08-1994

Reported in : ILR1995KAR118; 1994(5)KarLJ174

Judge : G.C. Bharuka, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 128

Appeal No. : W.P.No. 10370 of 1987

Appellant : Golappa

Respondent : Malakappa

Advocate for Def. : S.G. Kulkarni, Adv. for R-1 and ;H.H. Kaladgi, HCGP for R-2 to R-4

Advocate for Pet/Ap. : I.G. Gachchinamath, Adv.

Judgement :

ORDER

Bharuka, J

1. Petitioner seeks quashing of the order dated 4.6.1984 passed by the Assistant Commissioner, Bijapur (Annexure-D) by which he has affirmed the order of the Tahsildar dated 27.9.1983. By these orders the request of the Petitioner for mutation of his name in respect of 8 acres of eastern portion of land in Survey No.

1148 of Basavana Bagewado, Bijapur District, has been rejected. Petitioner filed a worthy for mutating his name as required under Section 128 of the [Karnataka Land Revenue Act, 1964](#) ('the Act', for short). His claim was based on a registered Sale Deed dated 3.2.1964 executed by the contesting respondent No. 1 who in fact was the original owner. Respondent Tahsildar by his order dated 27.9.1983 rejected the claim of the petitioner for mutation on the grounds - (i) the application was belated by about 19 years; (ii) from the enquiry it transpired that respondent No. 1 is still in possession of the land in question; and (iii) the sale deed does not appear to be genuine. The appeal filed there against by the petitioner before the respondent No. 3 has been rejected thereby affirming the reasoning given by the Tahsildar.

2. I have heard the learned Counsel for the parties.

3. So far as the question of delay in filing the worthy is concerned, it may be stated here that when there is an acquisition of right in any land pursuant to a registered document, it is the duty cast upon the registering authority under Section 128 of the Act to make a report of such acquisition of right to the prescribed authority. In the present case it seems that no such report was made by the registering authority, or, if made, no notice thereof was taken by the revenue authority for initiating desired proceedings as provided under Section 129 of the Act. The duty on the part of the registering authority was mandatory as noticed by this Court in the case of *N. SHIVANNA v. STATE OF KARNATAKA AND ANR.* 1. 1980 (1) KLJ 419. Moreover, neither Section 128 nor Section 129 of the Act prescribes any period for filing an application seeking mutation in case of acquisition of a right. That being the position, the reasoning given by the Tahsildar that the application was belated and therefore the same cannot be entertained is erroneous being based on extraneous ground. Further, since the execution of the sale deed at Annexure-A was not disputed by respondent No. 1 either before the Revenue Courts or before this Court, ex-facie, for the purpose of the Act, it has to be taken that the document confers a good title on the Petitioner; and, therefore it was incumbent upon the revenue authorities to enter the name of the Petitioner in the owner's column, namely Column No. 4 of the record of rights.

4. But, so far as the possession is concerned, on enquiry, on the materials available - both documentary and oral, it was found that respondent No. 1 is in possession of the land. That being the position, in Column No. 12 of the record of rights, the name of respondent No. 1 was rightly retained by the authorities; and, no interference is called for by this Court in respect of that finding in the Writ jurisdiction. If the petitioner feels in any way aggrieved by that finding, the remedy lies before the Civil Court, and any declaration made in this behalf by the competent Court will have an over-riding effect on the findings of the Revenue Courts as provided under the Proviso to Section 135 of the Act.

5. In view of the discussion and the findings recorded as above, Writ Petition is partly allowed. No costs.

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