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Court : Karnataka

Decided On : Feb-03-1999

Reported in : ILR1999KAR1484; 1999(5)KarLJ559

Judge : P. Vishwanatha Shetty, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 128 and 129

Appeal No. : Writ Petition No. 5199 of 1993

Appellant : Basagouda

Respondent : Assistant Commissioner, Chikodi Sub-division, Chikodi, District Belgaum and Others

Advocate for Def. : Sri K.B. Adhyapak, Adv. and ;Sri S. Mahesh, Additional Government Advocate

Advocate for Pet/Ap. : Sri Ravi S. Balikai, Adv.

Judgement :

ORDER

1. Sri S. Mahesh, learned Additional Government Advocate is directed to take notice for the 1st respondent.

2. In this petition, the petitioner has called in question the correctness of the order dated 4th January, 1993, a copy of which has been produced as Annexure-A passed by the 1st respondent rejecting the appeal filed by the petitioner and confirming the order dated 20th April, 1991 passed by the Tahsildar entering the name of respondents 3 and 4 in respect of land measuring 1 acre and 25 guntas situated on the eastern side in Sy. No. 772/2 of Raibag Taluk, Belgaum District.

3. A few facts in respect of which there is no serious dispute which may be relevant for the disposal of this petition may be set out as hereunder:

The petitioner and the 2nd respondent are brothers and members of the joint family. The land bearing Sy. No. 772/2 in all measures 3 acres and 12 guntas. Admittedly, the said 3 acres and 12 guntas of land in Sy. No. 772/2 is a joint family property and there has not been inter se partition of the said properties between the petitioner and the 2nd respondent. However, the 2nd respondent who has admittedly fifty per cent share in the said properties, by means of registered sale deed dated 4th January, 1990, a copy of which has been produced as Annexure-D sold land measuring 1 acre and 25 guntas in the said survey number situated on the eastern side of the said land which is more fully set out in the sale deed Annexure-D to respondents 3 and 4. Pursuant to the said sale deed, on the request made by respondents 2 to 4, the Tahsildar by means of his order dated 12th April, 1990, a copy of which has been produced as Annexure-E, subdivided the land measuring 3 acres and 12 guntas into two portions as Sy. No. 722/2A and 722/2B and entered the name of respondents 3 and 4 in respect of the land measuring 1 acre and 25 guntas in new Sy. No. 722/2B and continued the name of the petitioner in respect of the remaining 1 acre and 23 guntas in respect of new Sy. No. 722/2A.

4. Sri Ravi S. Balikai, learned Counsel appearing for the petitioner submits that when admittedly the entire extent of land measuring 3 acres and 12 guntas in Sy. No. 722/2 belonged to the joint family consisting of the petitioner and the 2nd respondent, it was not permissible for the revenue authorities on the basis of the sale deed Annexure-D to effect division of 3 acres and 12 guntas into two portions, each measuring 1 acre and 25 guntas and 1 acre 23 guntas and on that basis

proceed to enter the name of respondents 3 and 4 in respect of land measuring 1 acre and 25 guntas by giving new Sy. No. 722/2B. He submits that the only right which the respondents 3 and 4 acquire from the 2nd respondent is the undivided interest of the 2nd respondent in the 3 acres and 12 guntas of land. Therefore, he submits that the impugned orders are liable to be quashed.

5. However, Sri Adhyapak, learned Counsel appearing for respondents 2 to 4 while does not dispute that the land in question jointly belonged to the petitioner and the 2nd respondent submits that the 2nd respondent has sold his undivided interest in the land in question, and under these circumstances the respondents 3 and 4 having stepped into the shoes of the 2nd respondent, were entitled to get their names entered in the revenue records in respect of the interest acquired by them.

6. No doubt, as pointed out by Sri Adhyapak the respondents 3 and 4 acquire the undivided interest of the 2nd respondent in respect of the land bearing Sy. No. 772/2, however it is well-settled that so long as the partition of the family properties does not take place, what the respondents 3 and 4 acquire in the land in question is only the undivided interest of the 2nd respondent. Under these circumstances, it was not permissible for the Tahsildar to enter the names of respondents 3 and 4 in respect of the land in question on the basis of the sale deed Annexure-A and give separate sub-numbers as has been done in Annexure-E. If the respondents 3 and 4 have acquired right, title and interest of the 2nd respondent in respect of the land in question, the remedy open to the respondents 3 and 4 is to seek for partition of the family properties. Till that is not done it is not permissible for the revenue authorities to enter the name of the purchaser in respect of the joint family properties. In the light of the discussion made above, the order at Annexure-A, dated 4th January, 1993 and Annexure-E, dated 12th April, 1990 are liable to be quashed. Accordingly, they are quashed. However, it is made clear that the quashing of this order will not affect the rights of respondents 3 and 4 if any they have acquired, and to enforce the said right before the Civil Court. In terms stated above, this petition is allowed and disposed of.

7. Sri S. Mahesh, learned Additional Government Advocate is given four weeks' time to file his memo of appearance.

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