

Narasegowda Vs. Assistant Commissioner

Narasegowda Vs. Assistant Commissioner

SooperKanoon Citation : sooperkanoon.com/384999

Court : Karnataka

Decided On : Aug-08-1995

Reported in : ILR1995KAR3295

Judge : Tirath S. Thakur, J.

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

Appeal No. : W.P. No. 29862 of 1995

Appellant : Narasegowda

Respondent : Assistant Commissioner

Advocate for Pet/Ap. : M.R. Rajagopal, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Tirath S. Thakur, J.

1. The petitioner appears to have filed a suit for declaration against one Smt. Nagamma from whom he claims to have purchased the land in dispute. This suit was compromised and a Compromise Decree passed by the learned Munsiff and J.M.F.C. Pavagada by his order dated 20.1.1994. The petitioner thereafter

approached the Tahsildar for making entries in the Record of Rights which prayer of the petitioner was allowed by the Tahsildar by an order dated 16.3.94 entering the petitioner's name as owner in occupation of Sy.no. 61/2 of Madde Village, Nidagal Hobli, Pavagada Taluk.

2. Aggrieved by the said order and Mutation entry, the 3rd respondent herein preferred an appeal before the Assistant Commissioner, Madhugiri in RRF (A) No. 16/94-95. In the said appeal it was contended that the Tahsildar had not followed the procedure prescribed by Section 128 of the [Karnataka Land Revenue Act, 1964](#), while passing the order of maturation in favour of the petitioner. This argument found favour with the Assistant Commissioner who by his order dated 22.5.95 set aside the order passed by the Tahsildar and allowed the appeal.

3. Aggrieved, the petitioner has filed the present Writ Petition against the appellate order of the Assistant Commissioner.

4. I have heard the learned Counsel for the petitioner, who argued that the procedure prescribed by Sections 128 and 129 of the [Karnataka Land Revenue Act, 1964](#) was inapplicable to cases where mutations were entered on the basis of a decree of the Civil Court. It was urged that since the Revenue Officer has no option but to attest a mutation on the basis of a decree passed by the competent Civil Court, in accordance with the procedure prescribed by Section 129, it would be an exercise in futility to issue a notice or consider the objections of any party interested in filing the same. I am not impressed by this submission of the learned Counsel. There is nothing in Sections 128 or 129 of the Act to suggest that the procedure prescribed by the same has no application to cases in which the mutation entries are claimed on the basis of a decree passed by a Civil Court. On the contrary, Section 128 specifically provides that any person acquiring any right in immovable property by any one of the modes specified in the said Section or otherwise shall report to the officer concerned either orally or in writing the acquisition of any such right. The term 'otherwise' appearing in Section 128 would bring within its fold a case where the person claims title not on the basis of one of the modes specifically mentioned in the said provision but on the basis of a decree passed in his favour by the Civil Court. Section 129 of the Act prescribes the

procedure which the officer receiving the report under Section 128 has to follow does not either expressly or by necessary implication exclude the mutations claimed on the basis of a decree of a Civil Court from the rigors of the said procedure. Understandably so, because a decree may be passed with or without contest. It may be an *ex parte* decree, or a decree based on the consent of the defendant, even when the defendant has no right to the property in question or has only a limited right. In all such cases adherence to the procedure prescribed by Section 129 would serve the purpose of finding out whether the interests of any third party in the property in question is being adversely affected. Determination of the rights of the third parties or the effect upon such rights by the decree passed by the Court would be impossible unless the provisions of Section 128 and 129 are read harmoniously to mean that a third party would be entitled to a notice before a mutation is entered in favour of the decreeholder. That apart, the very fact that a party to the proceedings or one who is likely to be affected can have no possible defence to the proposed action is no reason for the authority concerned to dispense with a notice to such a party. The first ground of attack urged by the learned Counsel therefore fails.

5. Learned Counsel then argued that the Assistant Commissioner ought to have remanded the matter back to the Tahsildar for a fresh enquiry and a fresh order after following the procedure prescribed by Sections 128 and 129. He urged that the impugned order of the Assistant Commissioner did not remit the matter back to Tahsildar and therefore must be deemed to be a final determination of the issue. I find no substance even in this submission.

6. The order passed by the Assistant Commissioner sets aside that passed by the Tahsildar as one passed without following the procedure prescribed by Sections 128 and 129 of the Act. This would imply that the Tahsildar had committed a procedural error in passing the order of mutation. It is evident that whenever an error of procedure results in an order passed by the authority being set aside, the natural consequence flowing from the same is that the appellate authority would remit the matter back to the original authority for a fresh enquiry and a fresh order in accordance with the procedure prescribed. The impugned order passed by the Assistant Commissioner has to be viewed in that perspective and must be treated

to be an order remitting the matter back to the Tahsildar for a fresh order in accordance with the provisions of law including those contained in Sections 128 and 129 of the Act, Consequently the parties shall be at liberty to approach the Tahsildar for fresh orders on the subject which the Tahsildar would be at liberty to pass after following the procedure prescribed by law. The order of the Assistant Commissioner may be silent on this aspect of the matter, but the same cannot be interpreted to mean that the Tahsildar is debarred from passing fresh orders keeping in view the observations made by the Assistant Commissioner.

7. With the above observations, this Writ Petition fails and is accordingly dismissed in limine.

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