

K.C. Prashanth Vs. Ayyappa and Others

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Court : Karnataka

Decided On : Feb-18-2011

Judge : D.V. Shylendra Kumar

Appeal No. : Writ Petition No. 29885 of 2010 (KLR-RR/SUR) A/w. Misc. W. Nos.1439 & 1440 of 2011 In Writ Petition No. 29885 of 2010 (KLR-RR/SUR)

Appellant : K.C. Prashanth

Respondent : Ayyappa and Others

Advocate for Pet/Ap. : For the Petitioner: Chandrashekar Adv. for M/s. Ravi B Naik Associates, Advovates. For the Respondents: Yoganarasimha Sr. Counsel for B T Indushekar, Adv. for C/R1; Sri R Omkumar, AGA for R2 to R4.

Judgement :

(Prayer: This petition is filed under Articles 226 and 227 of the constitution of India praying to quash the order Dt.9.9.10 in revision petition No.222/09-10 passed by the R2 special Deputy Commissioner in revision petition 222/09-10 produced at Ann-P to the WP and etc.

1. Though the matter has come up for orders on the application in Misc. Nos. 1439 and 1440 of 2011 for impleading and for direction respectively, with the consent of learned counsel appearing for the parties, The main matter itself is taken up for disposal.

2. Utilization of writ Jurisdiction under Article 227 of the constitution of India only for the purpose of the examination of the quality of orders passed by the revenue authorities functioning under the provisions of the Karnataka Land Revenue Act, 1964 [for short "the Act "] and particularly while exercising powers under section 129 of the Act, in the first instance, by the Tahsildar and later either the Assistant Commissioner acting as appellate authority in terms of section 136[2] of the Act or the Deputy Commissioner acting as a revisional authority in respect of the original proceedings under section 136[3] of the Act, is nothing short of a criminal misuse of the precious, scarce time of this court.

3. Even when the basic dispute is with regard to the right, title and interest in immovable properties, agricultural land assessed to land revenue and the dispute becoming a real battle when the location of such properties is in the close vicinity of highly urbanized area and a metropolitan city like Bangalore, such persons who are really disputing their rights in respect of the property, find it most convenient to bring about changes in the revenue records, with the help of revenue officials exercising powers under section 129 or section 136 of the Act, as the Revenue Authorities are pliable and amenable persons, to show one-upmanship over their rivals and with the image and reputation of revenue officials, particularly those holding the posts of Tahsildar, Assistant Commissioner and Special Deputy Commissioners functioning in and around Bangalore City, only one of being corrupt officials, amenable to all sorts of extraneous considerations while the pitch of battle is raised, court's time is wasted in unending litigation and with counsel engaging time and space whether needed or not so needed and with disputes relating to title dating back to periods even before Independence, the matter while definitely cannot result in a satisfactory resolution by the orders of this court while exercising jurisdiction under Article 227 of the Constitution of India, it makes little difference to the litigating parties who time and again flock this court with such petitions.

4. The present writ petition only depict one such story or picture, but is nevertheless, examined even in the exercise of jurisdiction under Article 227 of the Constitution of India, as it should not be presumed by errant, misbehaving and even corrupt revenue officials, that any order passed by them will be overlooked

by the High Court in writ jurisdiction, as the normal rule in such proceedings is non-interference and it is only as an exception, when this court notices there is something radically wrong in the manner of exercise of power by the revenue authorities and therefore interference is warranted to discipline them or to correct their orders, the matter is given a second look.

5. The present writ petition appears to be one such for the simple reason that while the real dispute as urged by Sri. Chandrashekar, learned counsel for the petitioner and Sri. Yoganarasimha, learned senior counsel for the first respondent who has appeared for Sri. Indu Shekar. Advocate for the first respondent, is a dispute relating to the land measuring an extent of 34 guntas in Sy. No.49/3 of Karivobanahalli Village, Yeshwanthpur Hobli, Bangalore North Taluk and while the petitioner claims or traces his title to a recent sale deed [comparatively] dated 31.1.1991 said to have been executed by not less than six persons by name Lakshmaiah, Venkatappa, Gangappa. Venkataswamy, Byanna, Venkatamma in respect of an extent of 2 acres 20 guntas with 8 guntas of kharab land as claimed by the petitioner, the first respondent claiming right, title and interest in the extent of 34 guntas of land through his father by name Guruswamy who it is claimed had purchased an extent of 34 guntas of land in the very survey number way back in the year 1949 as per sale transaction 7.2.1949 under on Venkataswamy, petitioner traces his title by going back to one Venkataswami Bhovi who it is claimed had acquired right, title and interest in respect of precise extent of land which the petitioner now claims to have purchased and said Venkataswami Bhovi having acquired interest in the land as per sale transaction dated 20.12.1945.

6. Though it is pointed out by Sri. Yoganarasimha, learned senior counsel appearing for the first respondent that there is some trickery or even fraud played by the petitioner to bring about changes in the revenue entries even when person has really not acquired title and is claiming title to the property through forged document etc., and it is also asserted that extent of 34 guntas in respect of which first respondent claims right, title and interest is comprised as part of the larger extent of 12 acres of land in Sy. No.49 and therefore while there was a possibility of both the petitioner and the first respondent having peaceful co-existence but that being not the position and obviously the petitioner and first respondent having

some rivalry or tussle have only been manipulating the revenue authorities for the game of one upmanship to get their names entered or other person's name deleted and this has gone on from the year 1991 onwards when it appears the petitioner got his name entered into the revenue records in terms of sale transaction dated 31.1.1991.

7. Be that as it may, the present writ petition questioning the legality of the order dated 9.9.2010 passed by the Special Deputy Commissioner [copy at Annexure-P] makes examination only for the reason that while the Special Deputy Commissioner purports to exercise jurisdiction which is not really vested in him in terms of section 136[3] of the Act as the subject order was already subject matter of an appeal before the Assistant Commissioner under section 136[2] of the Act and therefore remedy, if any, to any aggrieved person was only to file a suit before a civil court in terms of proviso to section 135 of the Act as is pointed out by Sri. Omkumar, learned Additional Government Advocate seeks to submit that this court has taken the view that even in respect of an order passed by the Assistant Commissioner exercising appellate jurisdiction under section 136[2] of the Act, a revision before the Deputy Commissioner under section 136[3] of the Act is maintainable in terms of the Judgment rendered in the case of 'C M Aiyanna vs. State of Karnataka and Others' reported in 2003 [1] KCCR 817, I am of the clear opinion that his order may not be of much significance as the statutory provisions are crystal clear and if at all a Judgment is rendered in ignorance of express statutory provisions, it can only be a Judgment per incuriam and moreover in the present examination, it is only indicated as a legal possibility to examine the manner in which the Deputy Commissioner has exercised his jurisdiction, but much more than that, it is found that the order passed by the Deputy Commissioner impugned in this writ petition is more arbitrary than based on any relevant material, particularly, as the first respondent has not been able to show or indicate any material where under the first respondent's name had been mutated in the revenue records at any time prior to the order passed by the Deputy Commissioner in the year 2010 though the first respondent asserts right, title and interest in the property through his father from the year 1949 itself. Unless that acquisition of interest had been depicted in the revenue records from that point of time and continuously it is not for the Special Deputy Commissioner purporting to

exercise revisional jurisdiction under section 136[2] of the Act, to recognize such a right, in the proceedings under the Karnataka Land Revenue Act, 1964 and it is only for this reason, the writ petition has to be allowed and the impugned order at Annexure-P deserves to be quashed by issue of a writ of certiorari.

8. It is made clear that disputes, if any, between the parties, relating to title and ownership of land is to be resolved only before a civil court and through a properly laid suit, impleading necessary parties against whom the person approaching the civil courts seeks relief and assert the right. Without prejudice to such possibilities and for the aggrieved party to approach the civil court to assert their rights in accordance with law, the petition is allowed to the extent of quashing the impugned order of the Special Deputy Commissioner.

9. Rule made absolute.

10. It is made clear that examination in this writ petition is only within the scope of Article 227 of the Constitution of India and not beyond and at any rate not to affect rights of the parties as per law.

11. In view of dismissal of the main writ petition itself. Misc. W. No. 1439 of 2011 for impleading and Misc. W. No.1440 of 2011 for direction do not survive for consideration which are hereby dismissed.

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