

(2019) 11 KAR CK 0046

In the Karnataka High Court

Case No : Writ Appeal No. 2819, 3071, 2822 Of 2019

Anjinappa And Ors

APPELLANT

Vs

Special Deputy Commissioner And Ors

RESPONDENT

Date of Decision : 26-11-2019

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 135
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 KAR CK 0046

Hon'ble Judges : Abhay S. Oka, CJ;Pradeep Singh Yerur, J

Bench : Division Bench

Advocate : T.Seshagiri Rao, Vikram Huilgol, D.S.Ramachandra Reddy, Vikram Huilgol

Final Decision : Disposed Of

Judgement

1. I.A.No.1/2019 in W.A.No.2822/2019 is filed seeking condonation of delay of 11 days in filing the appeal. Sufficient cause is made out to condone the delay. Therefore, delay is condoned. The application for condonation of delay is allowed.

2. We have heard the learned counsel appearing for the appellants, the learned counsel appearing for the fourth to seventh respondents and the learned Government Pleader for the first to third respondents.

3. As far as W.A.Nos.2819/2019 and 3071/2019 are concerned, the challenge in the writ petitions filed by the appellants before the learned Single Judge was to an order passed by the Assistant Commissioner ordering mutation entries to be made in respect of the schedule land in favour of the fourth to seventh respondents. Even in W.A.No.2822/2019, the challenge is again to an order directing mutation entries to be made.

4. The learned Single Judge has dismissed the writ petitions filed by the appellants.

5. The submission of the learned counsel appearing for the appellants is that the

Assistant Commissioner had no jurisdiction to go into the issue of title and the Assistant Commissioner should have relegated the fourth to seventh respondents to filing of a civil suit. In W.A.No.2822/2019, he submitted that there is a decree of declaration passed in favour of the appellant declaring him to be the owner of the land by adverse possession. He submitted that even in the said case, the Assistant Commissioner had committed a serious error and he should have driven the contesting respondents to a Civil Court.

6. The learned counsel appearing for the fourth to seventh respondents in W.A.No.2822/2019 pointed out that reliance is placed on a decree to which the fourth to seventh respondents are not parties and the decree is declaring the appellant to be the owner by adverse possession. He, therefore, submitted that no interference is called for.

7. Both the cases arose out of the mutation entry proceedings. The challenge before the learned Single Judge was to the orders of the Assistant Commissioner ordering mutation entries to be made in the name of the contesting respondents.

8. It is well settled that the mutation entries under the Karnataka Land Revenue Act, 1964 (for short 'the said Act of 1964') are made only for fiscal purposes and the mutation entries do not confer any title in whose favour the same are ordered to be made. Moreover, the mutation entries are always subject to a civil suit and in fact, the proviso to Section 135 of the said Act of 1964 lays down that notwithstanding an order making a mutation entry, a decree passed by the Civil Court will have overriding effect and in case a declaration of ownership is granted, the record of rights is required to be amended as per the decree.

9. In both the cases, the learned Single Judge appears to have allowed the parties to canvass the issue of title. In W.A.No.2822/2019, the appellant relied upon a decree against a stranger to which the fourth to seventh respondents are not parties. It is not the case that they were claiming through the defendant in the said suit.

10. In our view, the learned Single Judge ought not to have entertained the writ petitions at all and ought to have relegated the parties to the Civil Court for establishing their title. However, the learned Single Judge seems to have gone into the merits of the issue of title. As far as the decree relied upon in W.A.No.2822/2019 is concerned, we have seen the decree. Fourth to seventh respondents were not made as parties to the said decree. Therefore, though the impugned orders cannot be sustained, by setting aside the impugned orders, the parties will have to be relegated to the remedy of filing a declaratory suit.

11. Whenever an order directing mutation entries is made by the authorities under the said Act of 1964, as the mutation entries do not confer title or affect title in any manner, a writ court should be very slow in entertaining such petitions under Article 226 of the Constitution of India as the aggrieved parties can always approach the Civil Court and establish their title.

12. Accordingly, we pass the following order:

(i) The order dated 1st July 2019 which is impugned in W.A.Nos.2819/2019 and 3071/2019 is hereby set aside and the writ petitions filed by the appellants are disposed of by observing that the mutation entries which will be made on the basis of the impugned order of the Assistant Commissioner will be always subject to the decree which may be passed in the suit filed by the appellants;

(ii) The order dated 14th June 2019 which is impugned in W.A.No.2822/2019 is hereby quashed and set aside and the writ petition filed by the appellant is disposed of by granting liberty to the appellant to file a civil suit.

(iii) We make it clear that we have made no adjudication on the issue of title and all issues are left open to be decided by the Civil Court.

(iv) The appeals are partly allowed in the above terms with no order as to costs.

The pending applications do not survive for consideration and they stand disposed of.