

(1996) 09 KAR CK 0038
In the Karnataka High Court
Case No : Civil Petition No. 151 of 1992

C. Rangaiah and Others

APPELLANT

Vs

Assistant Commissioner, Tiptur Sub-division, Tiptur, Tumkur
District and Others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114

Citation : (1997) 2 KarLJ 160

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. Heard the learned Counsel for the applicants. This is an application for review of the judgment and order dated 30th September, 1991, passed by Hon"ble Justice S.R. Rajashekara Murthy, in Writ Petition No. 15998 of 1990.

2. The applicants case is that the applicants have filed writ petition for issuance of a writ of mandamus directing the respondents 1 to 3 in the writ petition to notify in public, confirm and preserve the land bearing Survey No. 8/1, as described in the relief clause of the writ petition, situate in Kyamasandra Village, Dabbeghatta Hobli, Turuvekere Taluk, Tumkur District, as per provisions 67 and 72 of the Karnataka Land Revenue Act, 1964 and Rule 97 of the Rules framed under the Act as "Gomal Land", for the use and benefit of the public of Kyamasandra Village.

3. According to the petitioners case Survey No. 8 of the above mentioned village measuring 16 acres was left from time immemorial for being used as Gomal Land, for grazing of cattle and common use of the people in the village and no one had any right or title in the same originally, except the Government itself. The petitioners filed Annexures-A and B in support of their claim that the said land was Government owned Gomal Land. Petitioners case has been that some 30 years earlier to the date of filing of the writ petition, during 1961, the said land was erroneously out into four pieces, each measuring 4 acres, as per order of respondent 2 under the order dated 27-12-1961, was granted to 4 persons-

Bettegowda, Mudligiriyaiah, Madallaiah and Thimmaiah respectively. Thereafter the people of the village realised and made representation to the authorities that is respondents 1 and 2 that the land in question was Gomal Land. According to the petitioners after investigation for good long time into the old records and being satisfied that the land ought not to have been granted or being made subject-matter of grants, respondent 1 by order dated 20-11-1962, cancelled the said grants. In support of that contention the petitioner has produced Annexure-D to the writ petition, which was common notice issued to the grantees after the cancellation, requiring all the four grantees whose grants had been cancelled on 20-11-1962 to surrender the land granted and the surrender was required to be made in favour of respondent 4 to the writ petition, that is respondent 2 to the review application, namely the Tahsildar. It was further asserted in the writ petition that all persons surrendered the land. It was provided that in lieu of the price of this land some other land may be allotted and so all expressed their (sic) intention towards the grant of new lands, instead of Gomal Land, including Bettegowda. Petitioners have further asserted that it appears that out of these 4 persons, 3 persons surrendered their land but Bettegowda did not make surrender. The petitioners case is that subsequently it came to the notice of the petitioners that Bettegowda left that place and settled at Bangalore. According to the petitioners case, respondent in 1984 was able to get some manipulation in the revenue records pertaining to the said piece of land and thereafter got that grant order confirmed by respondents and ultimately got the registered sale deed in his favour on 26-11-1985 from the said Bettegowda. Petitioners case is that Bettegowda also raised objection when he came to know about this and submitted an application on 20-9-1989. Petitioners case is that on 19-8-1989 people of the village had also made certain complaint in this regard to the Tahsildar, alleging that it was a Gomal Land and requested for the protection being granted to that land as Gomal Land and that being used as Gomal Land. Petitioners case is that they also made representation to the authorities and also sought the police help to protect the property of the village as Gomal Land and nothing having been done, the petitioners have filed the writ petition for redressal before this Court with a prayer that respondents be directed to treat the land in dispute as Gomal Land and to preserve for user as Gomal Land for the benefit of the villagers.

4. Counter-affidavit has been filed in this case.

5. Learned Single Judge dismissed the petition on the presumption and taking the fact that land had been granted in favour of the vendor of respondent 4 in the writ petition along with 3 other persons in 1961 and that first petitioner was one of the grantees who took advantage and large extent of land was reserved out for Gomal Land, but the petitioner in this petition has challenged the grant of that land, out of the alleged Gomal Land which grant had been made in favour of Bettegowda, the vendor of respondent 4 only and the Court took the view that writ petition was motivated by personal prejudice as grants in favour of others have not been challenged and the second writ petition had been filed challenging

that grant after 30 years from the date of grant, so there was no bona fides. On that ground, the learned Judge dismissed the writ petition.

6. Petitioner having felt aggrieved from the order of rejection of the writ petition or dismissal of the writ petition dated 30th September, 1991, has come before this Court by way of review application.

7. I have heard learned Counsel for the applicant Sri Sanjayagowda and Sri M.R. Achar for the 4th respondent, as well the learned Government Counsel. The Counsel for the petitioner-applicant, submitted that the order impugned suffers from error apparent on the record and is liable to revise under Order 47, Rule 1. Learned Counsel submitted that misreading of the pleadings and ignoring the material facts alleged in the pleadings and then arriving at a decision which prima facie is erroneous amounts to nothing but error apparent. Learned Counsel submitted that this Court (Hon"ble Single Judge) dismissed the writ petition, ignoring the material allegations made in the writ petition to the effect that grants which were made in 1961 in favour of 4 persons including Bettegowda, a joint application was moved by all the grantees, for cancellation of that grant and for user of that land as Gomal Land, as it used to be done, and the applicants had agreed that instead of any part of Gomal Land being allotted to them, they were prepared to take some other land in lieu thereof, on the basis of joint application. Petitioners have clearly stated in the petition that authorities vide, order dated 20-11-1962, cancelled the grant order and issued a notice to those allottees, who surrendered the land. The petitioners have also filed document in support of that allegation. Annexures-A, B, C and D. The petitioners case was that grant had already been cancelled by the authorities and that respondent 4 had manoeuvred the entries in his name and the sale deed and that had taken place sometimes in 1985 and it had come to the knowledge of the parties in 1989. Therefore petitioners filed this petition in 1990, as per date mentioned in the writ petition. It has never been the case of the petitioners that earlier grants continued and were not cancelled. Those allegations in the pleadings escaped the notice of the learned Single Judge, when he assumed as if the petitioners were proceeding on the ground that grants continued from 1961, and as they were without being cancelled. The learned Counsel submitted that this was an erroneous assumption with respect to the pleadings of the petitioners and on this erroneous assumption the learned Single Judge assumed that now after 30 years, the petitioners are challenging the grant that had been made in favour of vendors of respondent 4 or that the petitioners were acting mala fide in not challenging the grant made in favour of others. Learned Counsel submitted that if the allegations made in the writ petition would not have escaped the notice of the learned Single Judge then, those observations could not have been made and petitioner would not have been dismissed on that ground without deciding that point.

8. Learned Counsel for the petitioners submitted that as such this is a case or error apparent on the face of record, as the finding of mala fide or delayed filing

of the writ petition on the ground on which it is dismissed is based on accidental omission of the learned Judge to consider the allegations of fact made in the writ petition or to (sic) while recording any finding on those facts. Learned Counsel submitted that this is a case of error apparent on the face of record.

9. Counsel for the opposite parties submitted that the point might not have been argued by the learned Counsel for the petitioner that cancellation had been done. So even if those allegations escaped the notice of the Judge, it cannot be said to be error apparent on the face of record and review application is not maintainable. Learned Counsel further submitted that appeal at one time had been dismissed by the Bench. So the review may be dismissed on that ground.

10. I have applied my mind to the contentions made by the learned Counsel for the parties. As regard contention that review should be dismissed on the ground that the applicant has availed the remedy of appeal, in my opinion, there is no substance, particularly in view of the fact that the Bench itself has observed that appeal is allowed to be withdrawn and appellant is so advised may seek review of the order under appeal. It means the learned Judges constituting the Division Bench permitted the petitioners to file the review application and on that basis the petitioners withdrew the appeal. So review application if it is maintainable under Order 47 of the C.P.C., passes the test of Order 47, then it may succeed, otherwise it has to be dismissed. The basic yardsticks are that if there is some error apparent on the face of record, or there is some new discovery of material which was not with the knowledge of applicant earlier could not be placed before the Court in spite (sic) of due diligence by the parties, then that may be a case for review. Here the petitioners have pleaded case of error apparent on the face of record. I have been taken through the petition. I find that the allegations contained in paragraph 5 in particular, show that according to petitioners case, the grant that had been made in 1981 had been cancelled. I may make it clear I am not deciding whether the assertion is correct or incorrect, but what I am pointing out is that it has been the petitioners case that grant that had been made in favour of 4 persons including Bettegowda the vendor of respondent 4 on 27-11-1961, according to the petitioners case was cancelled by respondent 1 by the order dated 20-11-1962 and thereafter the petitioners have alleged the things that happened as mentioned in the writ petition in 1985-89 and onwards. If this position is correct, or that is after consideration found to be correct by the learned Single Judge, then, petitioners could not be blamed either for delay or for mala fides, but with all due respect to the Hon''ble Single Judge, as submitted by learned Counsel for the applicants, these allegations escaped the notice and therefore the learned Judge assumed that petitioners were acting mala fide in filing the petition, challenging the allotment in favour of Bettegowda and he has not challenged the allotment in favour of other three persons, including himself nor he would have arrived at a finding that petition was filed delayed after 30 years from the date of making of the grants.

11. It is well-settled principle of law that if a finding has been arrived at as a

result of misapprehension of true state of facts, or erroneous assumption of fact, resulting from ignoring of material pleadings or the material pleadings or material fact having escaped to be noticed by the Court i.e., Judge deciding the matter, then that may be a case for interference, as the decision may be said to be the result of error of law apparent. See *North-West Frontier Province v Suraj Narain Anand*, AIR 1949 PC 112 and *M/s. Hindustan Sugar Mills v State of Rajasthan and Others*, AIR 1981 SC 1681.

12. That as regard the contention of the learned Counsel for the respondents that mistake might have been the result of mistake of the Counsel that he might not have pointed out the same to the learned Judge. In my opinion if a case of error apparent is made out it is immaterial whether the error apparent on the face of record is the result of Counsel's failure to point out the particular fact or the escapement on the part of the learned Judge in taking note of certain allegations. When I so observe I find support from the view expressed by their Lordships of the Federal Court in the case of *Mt. Jamma Kuer v Lal Bahadur and Others*, AIR 1950(37) FC 131, wherein their Lordships observed as under:

"8. There can be no doubt that this appeal must be allowed. The mistake as to the items of property regarding which Mt. Jamma Kuer had laid claim is apparent on the face of the record. The trial Judge had clearly stated in his judgment that Jamma Kuer's claim related to properties 3 to 37 of the gazette notification. In para 15 of her amended objection petition, she had laid claims to all the properties left by Kunj Behari. On 29th April, 1942, it was admitted by the pleader of the applicants that all these properties related to the estate of Kunj Bihari and that so far as the debtors were concerned, they were owners of only two properties mentioned in the gazette notification. In this situation it would have been appropriate if the High Court had corrected this error on the review petition and saved the appellant the trouble and expense of an appeal to the Privy Council or to this Court. Whether the error occurred by reason of the Counsel's mistake or it crept in by reason of an oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision. We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry. A mere look at the Trial Court's decision indicates the error apart from anything else".

13. In that view of the matter, it appears just and proper that on bare presumption, the petitioners should not have been deprived of the legal recourse, they have taken, unless the petition is found otherwise defective at the time of final hearing. On the other hand it is just and proper that the order dated 30th September, 1991 be reviewed and recalled, and it is hereby so ordered. The review application is allowed. The order of dismissal of the writ petition is recalled and the writ petition is restored to its original number.

14. In view of the provisions of Order 47, Rule 8, Civil Procedure Code, as the review application is being allowed, let a note be made in the register by the

Registry that the review application has been allowed and the case be listed for rehearing or hearing afresh on any other date, before the Hon"ble Judge who is nominated to hear the writ petitions, arising from orders under the Karnataka Land Revenue Act. It will be open to the petitioners as well as to the respondents to raise all the pleas open to them at the hearing of the writ petition.

15. Let the name of Sri N.S. Srinivasan for the petitioners and Sri M.R. Achar for the opposite party, respondent 4 be shown on the cause list when the case is listed along with the entry of Government Advocate for the State Authorities.