

(1997) 07 KAR CK 0082
In the Karnataka High Court
Case No : Writ Petition No. 17842 of 1994

Chandrappa

APPELLANT

Vs

Assistant Commissioner, Basava Kalyan Sub-Division, District
Bidar and Others

RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Revenue Act, 1964 — Section 39

Citation : (1998) 1 KarLJ 694

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri I.G. Gachchinamath, for the Appellant; Sri S.N. Aswathanarayana, Government Advocate, Sri B.C. Mandappa and Sri C.S. Hiremath, for the Respondent

Judgement

1. This petition has been filed under Article 226 of the Constitution of India with a prayer to the effect that this Court may be pleased to quash the impugned order dated 24-8-1984 in Writ Petition No. 4490 of 1984 by this Hon"ble Court vide Annexure-B to the writ petition and to pass suitable orders.

2. The facts of the case in brief are that the land involved is measuring 2 acres 20 guntas of land of Sy. No. 53/A and Sy. No. 53/AA measuring 3 acres 29 guntas, situate in village Ben-Chincholi, Tq. Humnabad, District Bidar. These lands originally are alleged to have belonged to one Bandappa who was alleged to be the exclusive owner in possession of the property. The parties to the case are related as under. The following tree will indicate the relationship of the parties and is material for the purpose of the case.

Bandappa s/o Mariappa Sambanna Laxmappa Kallappa Chandrappa Ismail 3.
Writ Petition No. 4490 of 1984 had been filed by Annappa s/o Bhimrao, challenging the order of the Tahsildar, Humnabad, dated 1-3-1984, in case No. HBD/KDR-CR-8/83-84 whereby the Tahsildar had ordered the Revenue Inspector

to deliver the possession of land Sy- Nos. 53/A and 53/AA, to Sri Ismail S/o Kallappa and brothers. The Tahsildar had taken the view that the land in dispute had been mortgaged to Bhimrao s/o Sangappa and Annappa s/o Bhimrao and the deed in question was not the sale deed and in that view of the matter he held that the said deeds dated 23-5-1973 and 17-11-1967 were null and void and then he directed the Revenue Inspector to hand over the possession of land to Ismail s/o Kallappa and Chandrappa s/o Sambanna, Potraj and other brothers. It is this order of Tahsildar that had been challenged by Annappa in Writ Petition No. 4490 of 1984. The petitioner in Writ Petition No. 4490 of 1984 did not implead Chandrappa s/o Sambanna and his brothers. Only Ismailappa had been impleaded as respondent 3.

4. This Court (Hon"ble Sri Rama Jois, J.) allowed the petition after having taken the view that in view of Section 39 of the Karnataka Land Revenue Act, no person could be dispossessed from a land unless reasonable notice to vacate the land is given. He further observed, "taking of possession from one and handing over it to another in this manner that is without notice is patently illegal, that petitioner must be deemed to be in possession of the land. However, the possession was purported to have been taken and handed over to respondent 2, a direction had to be issued to the Tahsildar-directing respondents 1 and 2 to re-deliver the said land" and then the Court ordered allowing the writ petition and quashing the impugned notice of Tahsildar and Taluka Executive Magistrate-Annexure-E to the writ petition and further directed the Tahsildar, Humnabad Taluka to re-deliver possession of the two lands to Annappa, the petitioner in Writ Petition No. 4490 of 1984, who is respondent 3 in the present petition.

5. Chandrappa s/o Sambanna, filed this present petition under Article 226 of the Constitution and counter and rejoinder affidavits have been filed and exchanged. A preliminary objection was taken by the learned Counsel for respondent 3, that the petition under Article 226 is not maintainable as the order challenged in this writ petition, has been passed by this Court (Hon"ble Mr. Justice Rama Jois), under writ jurisdiction itself.

Another preliminary objection has been taken on the ground of delay. Learned Counsel for the petitioner on merits has submitted that the petitioner had not been made a party, though he was a necessary party and when the order of this Court was obtained he had no information. Learned Counsel for the petitioner further submitted and replied that when the cause for filing the petition arose, the petitioner did immediately file it and the cause arose when respondent 3 tried to interfere with the present petitioner's possession over the land in dispute and when the present petitioner and his cousin brother filed Suit No. 267 of 1984 and in that impugned order was filed, by present respondent, then the need arose for the petitioner to move this petition or application. The petitioner submitted that under the Tahsildar's order the possession had already been delivered to the petitioner. The Tahsildar's order when it was challenged, the petitioner was in possession. Learned Counsel for the petitioner Sri

Gachchinamath submitted that the order of Tahsildar was in favour "of Ismail as well as Chandrappa that is the present petitioner and his brothers. The Tahsildar's order in question in that writ petition has been quashed behind the back of the present petitioner Chandrappa, as he has never been impleaded as a party, nor any notice of that petition had been issued nor served on him and so the order appears to have been passed in violation of the principles of natural justice against the petitioner. Learned Counsel submitted that without hearing the petitioner, an order has been passed by this Court quashing the order which was unfavourable to the petitioner behind the back of the petitioner, may be said to be not binding on the present petitioner, being on the safer side the petitioner thought it better to move this petition for recall of the order which has been passed against him, without the present petitioner being given any opportunity of hearing and without petitioner being made a party in that writ petition that is Writ Petition No. 4490 of 1984. Learned Counsel for the petitioner Sri Gachchinamath contended that the order passed behind the back of the petitioner and without notice to the petitioner and without hearing him is really an order adversely affecting the jurisdiction of the Court and it may be said to be suffering from error of law apparent on the face of record. That this is a substantial ground on which this order may be quashed, or withdrawn.

6. The order of Tahsildar has been placed before me. The copy of which has been filed by respondent 3 himself, which is Annexure R-5 to the counter-affidavit of respondent 3.

7. I have applied my mind to the order and the contentions made by the learned Counsel for the parties. It is one of the trite principles of law that justice should be done to the parties and justice should also appear to have been done. It is also one of the trite principles of law that if this Court finds that on account of its ownself some error apparent has crept in the proceedings of the Court or order, which is likely to adversely affect any party, to litigation then it is its duty to see that no party be made to suffer because of the mistake of the Court itself, and it inheres in every Court to rectify such an error. It is not only the power of the Court, but the duty of the Court to see that no person is made to suffer because of any mistake of the Court itself -- *Jai Berham and Others v Kedar Nath Marwari and Others*, *Rodger v The Comptoir "d" escompte de paris*, *Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others*, and *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, .

8. In the present case the order of Tahsildar as mentioned earlier had been challenged in W.P. No. 4490 of 1984, has been passed in favour of Ismail s/o Kallappa, Chandrappa s/o Sambanna, Potraj and other brothers and the Revenue Inspector was directed by the Tahsildar to hand over the possession of land in Sy. Nos. 53/A and 53/AA to Ismail s/o Kallappa, Chandrappa s/o Sambanna and other brothers. This order of the Tahsildar was passed, after having held that the deeds dated 17-11-1967 and 23-5-1973 to be mortgage deeds and not be valid as sale deeds. When this order of Tahsildar had been passed in favour of two

persons Ismail s/o Kallappa and Chandrappa s/o Sambanna and his brothers, then Chandrappa and Ismail and his brothers who were given thereunder, if that order favourable to them was sought to be challenged, they all should have been impleaded, because they are going to be adversely affected on the writ petition being allowed or in case that order is set aside or quashed. It is well-settled principle of law that when order, favourable to certain parties is sought to be challenged and to be set aside, then such persons need be given an opportunity of hearing and to have their say. It appears it has not been brought to the notice of the Court at that time of hearing and decision of the writ petition that Chandrappa was one of the persons in whose favour order impugned in Writ Petition No. 4490 of 1984 had been passed and he had not been impleaded in the said writ petition.

9. In this view of the matter, the order which has been passed on 24-8-1984 appears to have been passed in ignorance of this position and the order as such suffers from error of law apparent on the face of record which requires to be corrected, because such an order may be said either not to be binding on the person, who is not made a party or may be said to be null and void. In such circumstances, this Court which is a Court of record, in which also has the powers vested in it to rectify its own mistake, would be justified in the interest of justice to rectify its order dated 24-8-1984. I am not going into the question on merits of this decision. The decision and order dated 24-8-1984 is only recalled on the ground that the present applicant who had filed this petition, which in view of law laid down by the Supreme Court and Division Bench of this Court i.e., in C.N. Byrappa Vs. State of Karnataka, , has to be treated as a petition for review or recall of the order aforesaid, by exercise of inherent power of the Court, read with Order 47 of the CPC as present applicant is neither been impleaded in the said Writ Petition No. 4490 of 1984 nor had been opportunity of hearing before or at the time of passing of the order adverse to him in the said writ petition.

It is hereby ordered that order dated 24-8-1984 is recalled. The Writ Petition No. 4490 of 1984 is hereby restored to its original number. The petitioner is hereby directed to implead all necessary parties in that writ petition, that is to implead Chandrappa s/o Sambanna and his brothers, in whose favour the Tahsildar's order has been passed. The application for addition of the parties may be moved by the petitioner in Writ Petition No. 4490 of 1984, within a period of three months.

The writ petition is allowed treating it as review petition.