

(2002) 07 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 20144 of 2001

Charles Rego

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-07-2002

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128

Citation : (2002) 4 KCCR 2195

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : B.V. Krishna, for the Appellant; N. Basavarajaiah, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—With the consent of the learned Counsel appearing for the Petitioner and the learned Government Pleader appearing for the Respondents, the matter is taken up for hearing.

2. The Petitioner assailing the impugned order dated 27.3.2001 passed by the 2nd Respondent in RAP No. 28 of 2000-2001 (Annexure-F), order dated 6.3.2001 passed by the 3rd Respondent in No. C. Dis.RRT.SR.86 of 1999-2000 (Annexure-D) and the order dated 10.6.1999 passed by the 4th Respondent in MR No. 11 of 1999-2000 (Annexure-C) has presented this writ petition.

3. The case of the Petitioner is that the Petitioner's mother had filed a suit in O.S. No. 650 of 1974 on the file of the Munsiff, Mangalore, against the State Government represented by the Deputy Commissioner, D.K. District, for declaration contending that she is the absolute owner of the immovable property bearing Sy. No. 90/4 measuring 8 cents situated in Alape village, Mangalore Taluk, which was decreed on 27.1.1979. Against the judgment and decree of the Munsiff Court in O.S. No. 650 of 1974, the Petitioner's mother filed Regular Appeal in No. 51 of 1979 on the file of Civil Judge, Mangalore. The said appeal

was allowed, declaring that the Petitioner's mother is the absolute owner of the property to an extent of 8 cents of land in Sy. No. 90/4 by an adverse possession by its order dated 15.3.1980 as per Annexure-A produced along with this writ petition. The Civil Court also granted permanent injunction restraining the State Government and its officers from interfering with the possession of the Petitioner's mother over the property in question. The Petitioner's mother expired leaving behind her last Will and Testament dated 14.10.1975 which is duly probated as per the orders of the learned District Judge, D.K. Mangalore in P and SC No. 5 of 1998 as per Annexure-B. By virtue of that Will, the Petitioner is in peaceful possession and enjoyment of the property in question. After obtaining probate as stated supra, Petitioner filed an application for certification of mutation entry in the RTC in his name before the 4th Respondent in M.R. No. 11 of 1999-2000. The 4th Respondent by its order dated 18.6.1999 rejected the same. Assailing the correctness of the order dated 18.6.1999 passed by the 4th Respondent the Petitioner has filed an appeal before the 3rd Respondent, who in turn has dismissed the appeal by confirming the order passed by the 4th Respondent by its order dated 6.3.2000.

4. Being aggrieved by the order dated 6.3.2000 the Petitioner approached this Court in Writ Petition bearing No. 17352 of 2000 which was disposed of on 26.5.2000, reserving liberty to the Petitioner to approach the revisional authority- Deputy Commissioner. Thereafter, the Petitioner filed a revision before the 2nd Respondent in RAP 28 of 2000-2001, who in turn dismissed the revision confirming the orders of the 3rd and 4th Respondents.

5. Assailing the legality and validity of the orders passed by the Respondents 2 to 4, the Petitioner has presented this writ petition.

6. The principal submission of the learned Counsel appearing for the Petitioner is that the Respondents have rejected the request of the Petitioner for sanction of certification of mutation in his favour inspite of producing the judgment and decree passed by the learned Civil Judge, Mangalore, D.K. Court dated 15.3.1980 in Regular Appeal No. 51 of 1979 and the probate order passed by the District Judge, Mangalore in P and SC No. 5 of 1998 on 22.10.1998. Inspite of producing these material documentary evidence before the Respondents, the Respondents have rejected the Petitioner's request only on the sole ground that the land in question is the Government land. Further, the learned Counsel vehemently submitted that the said finding given by the Respondents are contrary to the material facts on record. As a matter of fact, as rightly pointed out by the learned Counsel who has taken me through the judgment and decree passed by the learned Civil Judge in Regular Appeal No. 51 of 1979, dated 15.3.1980 in which the Government is the Respondent-Defendant and the said judgment and decree is binding on the Respondents. Inspite of that, they have rejected the request of the Petitioner which is one without any basis. Hence, he prayed that the writ petition may be allowed by setting aside the order passed by the Respondents 2 to 4 and a direction may be issued to the Respondents 2 to 4 to

consider the request of the Petitioner for certification of mutation in respect of 8 cents in Sy. No. 90/4 of Alpe village, Mangalore, Dakshina Kannada.

7. Per contra, the learned Government Pleader appearing for the Respondents inter alia contended and justified the impugned orders passed by the Respondents 2 to 4 on the ground that, inspite of giving sufficient opportunity to the Petitioner, he has not produced any authenticated documents like certified copy of the judgment and decree and the probate order, except producing the xerox copies and therefore the Respondents 2 to 4 have not considered his request as per Section 128 of the Karnataka Land Revenue Act.

8. The short question that arises for consideration is whether the impugned order passed by the Respondents 2 to 4 are sustainable in the eye of law.

9. As rightly pointed out by the learned Counsel appearing for the Petitioner that the Respondent being a party to the proceeding before the competent Civil Court in the original suit and in the regular appeal as stated supra, was represented by the Counsel. The learned Civil Judge after considering the materials on record and after evaluation of both oral and documentary evidence produced by the parties, has decreed the suit by its order dated 15.3.1980 declaring that the Petitioner's mother had perfected her title to an extent of 8 cents of land in Sy. No. 90/4 by adverse possession. Thereafter, the Petitioner has obtained the probate order from the District Judge, Mangalore, in Probate No. 5 of 1998 as stated supra. When these are the documents made available by the Petitioner before the Respondents, the Respondents ought not to have rejected his application at the threshold without considering these documentary evidence and the declaration given by the competent Civil Court, by assigning the sole reason that the land in question is the Government land and the Petitioner has not produced any authenticated documents. The said finding given by the Respondents 2 to 4 are contrary to the declaration given by the competent Civil Court. In my considered view, having regard to the facts and circumstances of the case, I do not find any justification for rejecting the request of the Petitioner for certification of mutation in respect of the lands in question by the Respondents, when the competent Civil Court has declared that the Petitioner's mother is the owner of the lands in question. Once it is declared that the Petitioner's mother is the owner of the land in question by the Civil Court, it is the duty cast on the revenue authorities to make entries as per the relevant provisions of the Act.

10. Having regard to the factual and legal position and in totality of the case, the writ petition is allowed. The impugned orders dated 27.3.2001 passed by the 2nd Respondent in RAP No. 28 of 2000-2001 (Annexure-F), order dated 6.3.2001 passed by the 3rd Respondent in No. C. Dis.RRT.SR 86 of 1999-2000 (Annexure-D) and the order dated 10.6.1999 passed by the 4th Respondent in MR No. 11 of 1999-2000 (Annexure-C) are set aside.

The matter stands remitted back to the 4th Respondent for fresh consideration in

accordance with law, after giving opportunity to the Petitioner.

Further, the 4th Respondent is directed to pass appropriate orders strictly in accordance with the relevant provisions of the Act, as expeditiously as possible, but not later than six months from the date of the receipt of this order.

The Government Pleader is permitted to file memo of appearance within four weeks from today.