(2015) 04 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 63477 of 2010 [KLR-RR/SUR]

Damodar and Others APPELLANT

Vs

Government of Karnataka and Others RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44, 48A, 5, 58, 77
Karnataka Land Revenue Act, 1964 — Section 127, 128, 129, 136(2), 136(3)
Succession Act, 1925 — Section 63, 64

Citation : (2015) 4 AKR 548

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : A.A. Pathan and P.H. Gotkhindi, Advocates, for the Appellant; Ravi V. Hosamani, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

B. Veerappa, J.—The petitioners in the above writ petition have sought for to quash the impugned orders dated 19.09.2006 passed by the Assistant Commissioner Annexure ''L'' and the order dated 14.07.2009 passed by the Deputy Commissioner, Annexure ''Q''.

2. The brief facts of the case are:

It is the case of the petitioners that the land bearing Sy. No. 34 with Block No. 159 measuring 6 1/2 guntas i.e., 6 guntas 10 annas of Amargol Village, Hubli Taluk, now within the Hubli-Dharwad Municipal Corporation Limits of Dhrawad District is the subject matter of this writ petition. The said land was totally measuring 4 acres and 37 guntas, out of which, 1 gunta is pota Kharab. Thus, 4 acres 36 guntas belongs to respondent No. 3 and his deceased mother - Smt. Parvatavva Patil by succession. Petitioners further contended that out of 4 acres 36 guntas, in Sy. No. 159, Smt. Parvatavva Patil sold 6 guntas 10 Annas in favour of respondent No. 4/Dattusa Walvekar on 05.03.1973. Thereafter, respondent No. 4 has executed a permanent registered lease deed in respect of the said property in favour of one Smt. Mangala Kamat--who is the mother of petitioner Nos. 2 to 4 and wife of petitioner No. 1, on 24.04.1973 permanently and the petitioners are in possession and enjoyment of the same till today.

3. It is further averred in the petition that after the death of Smt. Mangala Kamat, petitioners filed an application before the Tahasildar on 19.11.1987 to make entry of the property as per the registered lease deed to an extent of 6 1/2 guntas i.e., 6 guntas 10 annas. The Tahasildar on the basis of the registered lease deed, by his order dated 27.03.2004, has entered the name of the petitioners, as per Annexure ''E'' to the writ petition. The petitioners further contended that respondent No. 5 is alleged to have purchased the property to an extent of 4 acres 37 guntas in Sy. No. 159 from Parvatavva Patil and respondent No. 3/Virupaxappa. Thereafter on 14.02.2005, as per Annexure ''E2'', the Tahasildar divided Sy. No. 159 into three Blocks, 159/1, 159/2 and 159/3. The subject matter of the present writ petition is in respect of Block No. 159/3 measuring 6 guntas 10 annas (6 1/2 guntas). Respondent No. 5/Shabbirahmed, who is the purchaser, has filed an appeal before the Assistant Commissioner, challenging the Mutation Entry No. 9577 in respect of Sy. No. 159/3.

4. The Assistant Commissioner after hearing both the parties by an order dated 19.9.2006 has cancelled the Mutation No. 9577 directed to enter the name of 5th respondent on the basis of the registered sale deed. As against the said order, petitioners filed revision petition before the Deputy Commissioner under Section 136(3) of the Karnataka Land Revenue Act, 1964. The Deputy Commissioner after hearing both the parties, by his order dated 14.07.2009 has disposed of the revision petition holding that the land was in the name of the Parvatavva Patil, and she has executed one sale deed in the year 1973 and another sale deed in the year 2003. In the mean time, Sri Dattusa-respondent-4, who purchased the land in the year 1973, has also executed a perpetual land lease document. On the other hand, Sri Shabbirahmed/5th respondent herein is claiming the rights flowing to him through registered sale deed executed in 2003. It is also held that after the amendment of the Karnataka Land Reforms Act, 1961, all the land leases in the State were prohibited from 1.3.1974 and all leases subsisting on that date were vested in the state Government. Thus, even if the claim of the revision petitioner is accepted that the rights flow through the valid lease document, the land needs to be vested with the State Government as per the provisions of the Karnataka Land Reforms Act, 1961. As regards the validity or otherwise in respect of sale deed executed in favour of the 5th respondent is concerned, it was held that the same has to be decided by a competent Civil Court and a direction was issued to the 5th respondent to prove the validity of his title and till such time, the name of the Government be mutated in respect of the said land (as per Annexure-M to the writ petition). Against the said order, present writ petition is filed.

5. I have heard the learned Counsel for the parties.

6. Sri A.A. Pathan, appearing on behalf of Sri P.H. Gotkhindi, learned Counsel for

the petitioner, has contended that the Deputy Commissioner has no power to vest the private land in the State Government under Section 58 of the Karnataka Land Reforms Act, 1961 and Section 5 of the Karnataka Land Reforms Act, 1961 applies only with regard to the leases executed after 1.3.1974. In the present case, lease was executed prior to 1.3.1974 i.e., on 24.4.1973. There was no prohibition for execution of lease. Therefore, the impugned order passed by the Deputy Commissioner is liable to be quashed. The Deputy Commissioner being the highest revenue court under the Karnataka Land Revenue Act, cannot assume his powers and pass orders under the Karnataka Land Reforms Act by exercising his powers under Section 136(3) of the Karnataka Land Revenue Act, 1964. In order to substantiate his arguments, learned Counsel for the petitioner brought to my notice the provisions of Sections 5 and 58 of the Karnataka Land Reforms Act, 1961 and contended that the Deputy Commissioner has no jurisdiction to pass the impugned order under Section 136(3) of the Karnataka Land Revenue Act, 1964.

7. Sri Ravi Hegde, learned Counsel for the 5th respondent has contended that the order passed by the Assistant Commissioner is not set aside by the Deputy Commissioner. Therefore, there is no need to challenge the order passed by the Deputy Commissioner and vesting of the land in the State Government is wrong and the order passed by the Deputy Commissioner directing the petitioner and 5th respondent to approach the Civil Court is not correct and the 5th respondent has not filed any suit in view of pendency of the writ petition.

8. Sri Ravi V. Hosamani, learned AGA sought to justify the impugned order passed by the Deputy Commissioner contending that after 1.3.1974 leases, if any, are vitiated, all the lands shall vest in the State Government. He further contended that, at any time if the Deputy Commissioner being the highest authority under the Karnataka Land Revenue Act, 1964 finds any error in the orders passed by the Revenue Authorities working under him, can exercise his powers under Section 25 of the Karnataka Land Revenue Act, 1964. Therefore, he being head of the revenue, has passed the impugned order holding that there was prohibition to execute lease in view of Sections 5 and 58 of the Karnataka Land Reforms Act, 1961 and even lease executed prior to 1.3.1974 continues even after the Act coming into force. Therefore, he sought to justify the impugned orders. The learned AGA further stated that while passing the impugned order, the Deputy Commissioner has exercised his powers under the provisions of the Karnataka Land Reforms Act, 1961 and not under the provisions of the Karnataka Land Revenue Act, 1964.

9. In view of the aforesaid rival contentions urged by all the parties, the points that arise for my consideration are:

(i) Whether the revenue authorities have power to decide the title between the parties in respect of immoveable properties while exercising their powers under the provisions of the Karnataka Land Revenue Act, 1964?

(ii) Whether the Deputy Commissioner is justified in vesting the private lands in the State Government while exercising his powers under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964?

(iii) Whether the provisions of Sections 5 and 58 of the Karnataka Land Reforms Act, 1961 prohibits the lease after 1.3.1974?

10. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties.

11. The admitted facts are that petitioners are claiming their rights and possession on the basis of the registered permanent lease deed dated 24.4.1973 measuring 6 1/2 guntas (6.10 annas). The 5th respondent is claiming his right and title under the registered sale deed dated 3.12.2003 to an extent of 4 acres 37 guntas including Kharab. It is well settled law that while exercising the powers under the provisions of the Karnataka Land Revenue Act, 1964, the revenue authorities have no jurisdiction to decide the right and title of the parties in respect of the immoveable properties, but they can mutate the entries in the revenue records on the basis of the acquisition of rights as contemplated under the provisions of Section 128 of the Karnataka Land Revenue Act, 1964. Acquisition of rights includes survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof. The provisions of Section 128 of the Karnataka Land Revenue Act, 1964 reads as under:

"128. Acquisition of rights to be reported-(1) Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Prescribed Officer of the village within three months from the date of such acquisition, and the said Officer shall at once give a written acknowledgment of the receipt of the report to the person making it:

(2) xx xx xx

(3) xx xx xx

(4) No document by virtue of which any person acquires a right in any land as holder, occupant, owner, mortgagee, landlord or tenant or assignee of the rent or revenue there under, shall be registered under the Indian Registration Act, 1908 (Central Act 12 of 1908), unless the person liable to pay the registration fee also pays to the Registering Authority such fees as may be prescribed for making the necessary entries in the Record of Rights and registers referred to in Section 129; and on the registration of such a document, the Registering Authority shall make a report of the acquisition of the right to the Prescribed Officer."

By a plain reading of Section 128 of the Karnataka Land Revenue Act, 1964 makes it clear that it is the duty of the registering authority to make a report of the acquisition of right to the Prescribed Officer since the document is registered. In the present case, both the petitioners as well as 5th respondent are agitating their rights under the registered permanent lease deed and registered sale deed. If that is so, the lease deed is of the year 1973 and the registered sale deed is of the year 2003. If the dispute is regarding the said two documents, the aggrieved party has to approach the competent Civil Court to establish his right and title, if any.

12. The Full Bench of this Court in the case of C.N. Nagendra Singh Vs. The Special Deputy Commissioner and Others, while considering the provisions of the Karnataka Land Revenue Act, 1964 has held that the Revenue Courts have no jurisdiction to go into the question of title in respect of the immoveable property which exclusively vests in the Civil Court. Paras 8 and 9 read as under:

8. Rule 43 of the Karnataka Land Revenue Rules deals with settlement of disputes. It states every case entered in the register of disputed cases shall be enquired into and decided by the Sheristedar or by any officer of the Revenue Department equal or superior in rank to him on an appointed day of which due notice shall be given to the parties concerned. It categorically states the proceedings of the enquiry shall be oral and held in the public and there shall be no recording of statements and depositions. The only record shall be the decision of the officer holding the enquiry, in the register itself, which shall contain a brief summary of the facts elicited during the enquiry and the grounds for the decision. Of course an appeal is provided against such decision to the Assistant Commissioner in charge of the Sub-Division whose decision shall be final. Therefore, it becomes clear every revenue officer who is authorized to hold an enquiry in respect of disputed cases is a revenue court. The very fact he is prohibited from recording the statements and depositions of the parties makes it clear that no substantial rights of the parties in respect of the disputed property can be gone into by such revenue Court. If title or right set up by one party to an immovable property is disputed by the other party such title to the property cannot be enquired into by the revenue Courts much less any decision be rendered for any purpose whatsoever. In the first place the revenue Court constituted under the Act can only go into questions of assessment, recovery of land revenue and land revenue administration and it has no jurisdiction to go into the question of title in respect of an immovable property which exclusively vests in the Civil Court.

9. Considering Rule 43, when a person claims title to a property under a Will for the purpose of getting a mutation entry in the revenue records before any such entry is made the Revenue Court should prima facie be satisfied that the said document is genuine and valid even in the absence of any dispute as the said Will comes in the way of natural succession. By virtue of Section 128 when the owner of the land dies, the title to the said property passed on to the legal heir by succession or survivorship or inheritance and the property vests with such a legal heir without there being any document and purely based on the relationship

of the deceased with the legal heir. A will can come into operation only after the death of the executant. If a will is set up to deprive, a legal heir who had acquired title to the property either by succession, survivorship or inheritance, the person claiming under the Will has to show better title. If the Will is disputed strict proof of Will as required under Sections 63 and 64 of the Succession Act is to be provided. When the Revenue Court is prevented from recording the statements of the parties and the depositions, the question of establishing the genuineness of the Will for any purpose whatsoever before the Revenue Court in an enquiry would not arise. Under these circumstances, the revenue Courts have no jurisdiction to go into the genuineness or validity of the Will or to the question of title in respect of the land in dispute. The decision of the Revenue Court has to be necessarily based on the undisputed facts. The Revenue Court cannot go into the disputed questions of relationship, status of the parties'' title to the property or genuineness or otherwise of a document or challenge to the documents on the ground of fraud, undue influence, misrepresentation or mistake. As such, the petitioner cannot take advantage of Rule 43 in the case of a Will."

Considering the registration of permanent lease deed and registration of sale deed by the rival parties, the provisions of Section 128 of the Karnataka Land Revenue Act and the dictum of this Court in the case stated supra, issue No. 1 is answered in negative holding that the revenue authorities have no jurisdiction to decide the title of the parties in respect of immovable properties.

13. In so far as the question with regard to the powers of the Deputy Commissioner to vest the land in the State Government while exercising his powers under Section 136(3) of the Karnataka Land Revenue Act, 1964 is concerned, the disputed facts between the parties is with regard to the entry on the basis of the registration of permanent lease deed and registration of sale deed in respect of private lands. If the dispute is in respect of private lands and both the parties are claiming through registered documents, it is for them to approach the competent court independently. The Deputy Commissioner ought to have decided whose entry is to be made and under what circumstances. In the present case, while passing the impugned order the Deputy Commissioner has not stated anything about the registered lease deed or sale deed, but except referring to the same, has proceeded to pass orders holding that the lease was prohibited after 1.3.1974 and hence, the land vested in the State Government. In fact he has not recorded any finding while confirming the order of the Assistant Commissioner in canceling the mutation entry No. 9577 dated 2.2.2004 and with regard to dispute between the parties regarding registration of documents, but has proceeded to pass orders assuming his powers under the provisions of the Karnataka Land Reforms Act, 1961 which is impermissible in law. The Deputy Commissioner while passing the impugned order by exercising his powers under Section 136(3) of the Karnataka Land Revenue Act can examine on his own motion or on application of a party, call for and examine any records made under Sections 127 and 129 of the Act and pass orders as he may deem fit provided no order shall be passed except after hearing the party, who

would be adversely affected by such order. While deciding the case under Section 136(3) of the Karnataka Land Revenue Act, 1964, the Deputy Commissioner can pass orders only in respect of record of rights and registration of mutations and registration of disputed cases and he has no power to vest the land in the State Government applying the provisions of Sections 5 and 58 of the Karnataka Land Reforms Act, 1961 while passing the impugned order. It is not disputed by both sides that the Assistant Commissioner and the Deputy Commissioner have proceeded to pass the impugned orders by exercising their powers under the provisions of Sections 136(2) and 136(3) of the Revenue Act, 1964. If that is so, the power of the Deputy Commissioner to vest the land in the State Government applying the provisions of Karnataka Land Reforms Act, 1961 is unknown to law. Therefore, the Deputy Commissioner has no jurisdiction to vest the land in question in the State Government. Accordingly, issue No. 2 is answered in the negative.

14. With regard to issue No. 3, whether the provisions of sections 5 and 58 of the Karnataka Land Reforms Act, 1961 prohibits lease after 1.3.1974 is concerned, Section 5 of the Karnataka Land Reforms Act deals with leases, tenancy, etc., that after the date of commencement of the Amendment Act, no tenancy shall be created or continued in respect of any land nor shall any land be leased for any period whatsoever. Section 5 of the Karnataka Land Reforms Act, 1961 reads thus:

"5. Prohibition of leases, etc: (1) Save as provided in this Act, after the date of commencement of the Amendment Act, no tenancy shall be created or continued in respect of any land nor shall any land be leased for any period whatsoever.

(2) Nothing in sub-section (1) shall apply to.-

(a) a tenancy created or continued by a soldier or seaman if such tenancy is created or continued while he is serving as a soldier or a seaman or within three months before he became a soldier or a seaman.

(b) To any land leased after the commencement of Karnataka Land Reforms (Amendment) Act, 1995 in the districts of Uttara Kannada and Dakshina Kannada by land owners or persons registered as occupants under the provisions of this Act for the purpose of utilizing the land for aquaculture for a period not exceeding twenty years, at such lease rent as may be determined by mutual agreement between the parties and such agreement shall be registered and a copy thereof shall be sent to the Deputy Commissioner within fifteen days from the date of such registration.

(3) Every lease created under sub-section (2) shall be in writing."

Section 58 of the Karnataka Land Reforms Act, 1961 deals with vesting of land in State Government which reads as under:

"58. Vesting in the State Government of land leased contrary to the Act:

(1) Where it appears to the Tahsildar that any person has leased land contrary to the provisions of this Act, he shall issue a notice to such person to show cause within fifteen days from the date of service of the notice why the land leased should not be forfeited to the State Government as penalty for contravention of the Act.

(2) If the Tahsildar on considering the reply or other cause shown is satisfied that there has been such a lease he may, by order, declare that the right, title and interest of such person in the land shall be forfeited to the State Government as penalty. Thereupon the land shall vest in the State Government and the Tahsildar may take possession thereof by summarily evicting any person occupying it. No amount shall be payable in respect of such land.

(3) Such land shall be disposed of in accordance with the provisions of section 77 ."

By conjoined reading of both the provisions of Sections 5 and 58 of the Karnataka Land Reforms Act, 1961 it clearly depicts that no lease can be created in respect of any agricultural land after 1.3.1974 and where it appears to the Tahsildar that any person has leased land contrary to the provisions of the Karnataka Land Reforms Act, he shall issue a notice to such person and after considering the reply, if he is satisfied that there has been such a lease, he may by order, declare that the right, title and interest of such person in the land shall be forfeited to the State Government as penalty. Thereupon the land shall vest in the State Government. Therefore, the Deputy Commissioner has no jurisdiction to vest the land in the State Government and he is not the competent authority either under Section 5 or 58 of the Karnataka Land Reforms Act, 1961. Accordingly, issue No. 3 is answered in the affirmative.

15. The Division Bench of this Court while considering the provisions of Sections 5 and 58 of the Karnataka Land Reforms Act, 1961 in the case of Hafizabi Vs. State of Karnataka, reported in 1984 (1) Kar. L.J. 268, has held that Sections 5 and 58 of the Karnataka Land Reforms Act, 1961 have been substituted by Act No. 1/1974 with effect from 01.03.1974 in respect of any agricultural land. It has further held that, under Section 44 of the Karnataka Land Reforms Act, all lands held on lease prior to March 1, 1974 shall vest in the State Government. Whether there has been a lease, and if so, who is entitled to occupancy right, are required to be determined by the Tribunal under Section 48A of the Karnataka Land Reforms Act, 1961. Section 58 of the Karnataka Land Reforms Act, therefore, obviously can have no application to the lease executed prior to March 1, 1974.

16. In the present case, the permanent lease was obtained by the petitioners on 24.4.1973 i.e., prior to 1.3.1974. Therefore, the provisions of Sections 5 and 58 of the Karnataka Land Reforms Act, 1961 have no application to the facts and circumstances of the present case.

17. In view of the aforesaid provisions of law and the dictum of the Division

Bench of this Court, the order passed by the Deputy Commissioner vesting the land in the State Government is without jurisdiction and the same is liable to be quashed.

18. Accordingly, the writ petition is disposed of and the impugned orders passed by the Assistant Commissioner and Deputy Commissioner are quashed. The matter is remanded to the Assistant Commissioner for fresh consideration with a direction to exercise his powers only under the provisions of Section 136(2) of the Karnataka Land Revenue Act, 1964 after giving opportunity to both parties and pass orders in accordance with law.

