

(2014) 02 KAR CK 0098

In the Karnataka High Court

Case No : Writ Petition No. 82837 of 2013 (GM-RES)

Dilerkhan

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Bombay Court of Wards Act, 1905 — Section 42 9(1)

Citation : (2014) 4 KarLJ 371

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Jagadish Patil, Advocate for the Appellant; K. Vidyavati, Additional Government Advocate, F.V. Patil for N.P. Vivekmehta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Heard Sri S.L. Matti, learned Advocate appearing on behalf Sri Jagadish Patil for petitioners and learned AGA appearing on behalf of respondents 1 to 4 and Sri F.V. Patil appearing on behalf of Sri N.P. Vivekmehta for respondents 5 and 6. Perused the case papers. By consent of learned Advocates appearing for parties, this petition is taken up for final disposal. Petitioners are seeking for a mandamus to direct Deputy Commissioner, Haveri and Dharwad to take steps for recovery of possession of entire properties of Sardar Mehaboobalikhan, as on the date of issuance of Government order dated January 1969 vide Annexure-A.

2. It is the contention of Sri S.L. Matti, learned Counsel appearing for petitioners that vast and huge immovable properties in various Villages of Hubli, Savanur, Dharwad, Shirahatti, Kusugal and other places of Dharwad and Haveri Districts belonged to one Sardar Mehaboobalikhan S/o. Akbarkhan Biradar, Nawab of Savanur and he is said to have been expired on 23-3-1940 leaving behind his two uterine sisters namely Smt. Nawajkhatu and Smt. Munavarkhatu to succeed to his estate as legal heirs, since he was a bachelor. It is contended that there

was no partition in the family of Sardar Mehaboobalikhan between ancestors and it came under the charge of Deputy Commissioner, Dharwad, under Bombay Court of Wards Act, 1905 by order bearing No. GOW/52-55, dated 7-10-1955, whereunder, it is specifically stated that entire properties, both movable and immovable of Sardar Mehaboobalikhan has been continued in possession of Deputy Commissioner until succession is to be established in respect of entire properties in a Competent Civil Court vide Annexure-A and as such, properties stood vested with Deputy Commissioner, Dharwad-R2.

3. It is the grievance of learned Counsel for petitioners that when there is no order passed by Competent Civil Court to deliver possession of properties to 5th respondent herein and despite their being an order of status quo granted by Jurisdictional Civil Court in OS. No. 118 of 2010 on 19-4-2010 to which Deputy Commissioner was also a party, both movable and immovable properties have been delivered possession to 5th respondent in utter violation of order of status quo and as such, petitioners are seeking for a direction to 2nd respondent to take steps for recovery of possession of entire properties of deceased Sardar Mehaboobalikhan, as it stood as on the date of issuance of Annexure-A i.e., January 1969.

4. Per contra, Sri F.V. Patil, learned Counsel appearing for respondents 5 and 6 would submit that pursuant to a decree passed by Competent Civil Court, steps have been taken to deliver possession of properties by respondent 2 and at the instigation of present petitioners, a representative suit has been filed in O.S. No. 39 of 2001 which came to be dismissed and the said suit having been filed in a representative capacity, present petitioners are deemed to have knowledge and any subsequent suit filed or orders obtained would not be binding both on 5th respondent as well as other respondents and as such, he submits that there is no infirmity whatsoever in the order passed by the Deputy Commissioner divesting himself of the properties vested in the Court of Wards vide Annexure-K and same being delivered to respondent 5.

5. Smt. K. Vidyavati, learned Additional Government Advocate would also support the order passed by Deputy Commissioner that in view of judgment and award passed by Competent Civil Court, Deputy Commissioner has taken steps to implement the said order and even otherwise, if there is any violation of order, it is open to petitioners to take steps in pending suit O.S. No. 118 of 2010 which is said to have been filed by petitioners. As such, she also prays for dismissal of the writ petition.

6. Having heard the learned Advocates appearing for parties and on perusal of case papers and after bestowing my careful consideration to the rival contentions raised, it would emerge that undisputedly vast movable and immovable properties in various Villages like Hubli, Savanur etc., as noticed hereinabove, originally belonged to one Sardar Mehaboobalikhan and he expired intestate on 23-3-1940. He is said to have left behind him his two sisters to succeed to his estate, since he was not married. Appropriate Government vide Resolution No.

5255, dated 7-10-1955 had accorded sanction to the Court of Wards, Dharwad, u/s 9(1) of Bombay Court of Wards Act, 1905, to assume the superintendence of properties of Nawajkhatu W/o. Abdul Dilerkhan Biradar Nawab, who was said to be one of the sisters of deceased Akbarkhan Biradar Nawab. By virtue of same, Deputy Commissioner took possession of properties under his superintendence and was managing these properties. On perusal of said order at Annexure-A, it would clearly indicate that properties belonging to Nawab of Savanur was retained by State Government to be under its Superintendence until "succession to be said properties is established in a Competent Civil Court". Accordingly, properties continued to be in possession of Deputy Commissioner, Dharwad and it was under his superintendence and control undisputedly. Subsequently, 5th respondent herein filed a suit in O.S. No. 171 of 1984 on the file of Munsiff, Savanur, for a declaration to declare that she is the nearest legal heir of deceased Akbarkhan Biradar, Nawab of Savanur and said suit came to be decreed vide judgment and decree vide Annexure-B. In the said suit, Deputy Commissioner of Dharwad was a party namely he had been arrayed as 1st defendant. Being aggrieved by said judgment and decree, appeal came to be filed by respondent 2-Deputy Commissioner in R.A. No. 16 of 1996 and said appeal came to be dismissed on merits on 17-12-1998 vide Annexure-C. Deputy Commissioner, Dharwad who was aggrieved by judgment and decree dated 17-12-1998 passed in R.A. No. 16 of 1996 preferred a Regular Second Appeal in R.A. No. 277 of 1999, since North-West Karnataka Road Transport Corporation claiming to be in possession of a portion of properties was also aggrieved by the said judgment and decree and on such Corporation also filed a regular second appeal in R.S.A. No. 130 of 1999. Both these second appeal came to be clubbed and heard together and judgment and decree came to be passed dismissing the same on 28-2-2000. Undisputedly, said judgment and decree passed by Co-ordinate Bench of the Court has reached finality.

7. Thereafter, a writ petition came to be filed by 5th respondent before this Court in W.P. No. 33190 of 2001 seeking for a direction to respondent 2-Deputy Commissioner to handover actual possession of properties under his superintendence pursuant to judgments and decree passed by Co-ordinate Bench of this Court. Said writ petitioner came to be dismissed by order dated 7-12-2001 Annexure-E, observing that petitioner cannot invoke the writ jurisdiction for delivery of possession and she has to approach Competent Civil Court. Being aggrieved by said order, W.A. No. 295 of 2002 was filed by 5th respondent and said appeal was dismissed on 5-4-2002 Annexure-F, by affirming the order passed by learned Single Judge. Said order has also reached finality.

8. In the meanwhile, Deputy Commissioner, Dharwad-respondent 2 herein passed an order on 22-4-2006 in accordance with provisions of Section 42 of the Bombay Court of Wards Act, 1905 and in pursuance to the Government Order No. RD 39 LGD 2001, dated 21-5-2004 withdrawing with effect from the date of said notice his Superintendence over the estate of late Smt. Nawajkhatu W/o. Dilerkhan, Nawab of Savanur, except one item. In order to give effect to said

order, 2nd respondent by order dated 21-2-2007 has transferred possession of the properties vide Annexures-R7 and R8 to 5th respondent, as per endorsement issued by Tahsildar, Savanur vide Annexure-R9. Thus, 5th respondent has continued in possession of the properties.

9. Grievance of petitioners is that a suit has been filed by them in O.S. No. 118 of 2010 on 19-4-2010 seeking for a declaration to declare the judgment and decree passed in O.S. No. 171 of 1984 as null and void and in the said suit relief of petitioners being declared as legal heir of deceased Smt. Nawajkhathu W/o. Dilerkhan Biradar, Nawab of Savanur and for consequential relief for perpetual injunction against 5th respondent is also sought for and in the said suit, an interim order of status quo was granted on 19-4-2010 and it was in operation till 18-10-2010 and during this interregnum period i.e., on 4-10-2010, Deputy Commissioner is said to have delivered possession of properties to 5th respondent on 4-10-2010 and as such mandamus is to be issued to respondent 2 to take back possession of properties so delivered. At the outset, it requires to be noticed that Trial Court on 19-4-2010 has passed on an order of status quo without specifying or qualifying as to what the status quo was. Be that as it may. It is an undisputed fact that in said suit petitioners herein, who are plaintiffs in O.S. No. 118 of 2010 have filed an application for contempt under Order 39, Rule 2-A and it is for the said Court adjudicate as to whether there was any violation of order on status quo and to pass necessary orders thereon and this Court in writ jurisdiction would not be in a position to find out as to whether there is violation of order passed by Trial Court. When undisputedly, original order passed in January 1969 vide Annexure-A by the then Government of Mysore to take over the superintendence and control of the properties of Nawab to be vested with Deputy Commissioner has itself been withdrawn, it is for the appropriate Government to take a decision the manner in which properties are to be handed over and to whom. As such, by order dated 22-4-2006 Annexure-R6, appropriate Government has withdrawn its superintendence over the estate of deceased Nawajkhathu and pursuant to the same, possession has been delivered to 5th respondent vide Annexures-R7 and R8. At this stage, no infirmity can be found in the said order and as such, I am of the considered view, no direction can be issued to 2nd respondent-Deputy Commissioner to handover or to take over possession of properties which has been delivered to 5th respondent and without expressing any opinion with regard to alleged violation of order of status quo granted on 18-4-2010 in O.S. No. 118 of 2010, this writ petition is being dismissed. Hence, for the reasons aforesaid, I proceed in pass the following:

ORDER

(i) Writ petition is hereby dismissed.

(ii) Costs made easy.