

(1994) 11 KAR CK 0052
In the Karnataka High Court
Case No : Writ Petition No. 16823 of 1994

Doddakka

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 09-11-1994

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 129 (4), 136 (2)

Citation : (1994) ILR (Kar) 3453 : (1995) 1 KarLJ 265

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : K.R. Kumar, for the Appellant; H.H. Kaladgi, HCGP for R-1 and R-2 and Ravi B. Naik, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Bharuka, J.—Heard. By the impugned order - Annexure-E, the respondent - Assistant Commissioner has set aside the order passed by the Revenue inspector, Kora Hobli in MR. 25/89-90 by which the kath"a of Sy.No. 151P was changed in favour of the petitioner. The reason given by the Appellate Authority for taking the said view is that katha was changed on the basis of Panchayath Paikhath executed during 1968 by which the property is said to have fallen to the share of the petitioner. But, as claimed the petitioner had subsequently executed a Registered Relinquishment Deed dated 19.1.1990 relinquishing her right in the land in question.

2. Learned Counsel for the petitioner assailed the impugned order on two grounds viz., (i) the appeal was hopelessly barred by limitation and therefore the same could not have been entertained without condonation of delay and (ii) the alleged deed of relinquishment is a concocted document and as such should not have been taken note of.

3. Learned Counsel for Respondent No,3 submits that Respondent No. 3 had come to know about the certification of the entry only on 4.8.1993 and he had

filed the appeal within 60 days thereof as provided u/s 136(2) of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the Act"). Therefore the appeal was much within time. With reference to the Memo of Appeal filed before the Assistant Commissioner, he states that this fact was duly mentioned in the Memorandum of Appeal which had not been controverted by the petitioner before the Appellate Authority, Therefore, according to him there was no occasion on the part of the Assistant Commissioner to pass any specific order condoning the delay.

4. With reference to the second ground of challenge his submission is that whether a particular document having bearing on title and interest of the parties is genuine or concocted, can be appropriately decided only by the competent Civil Court and the revenue authorities cannot enter into such disputed questions.

5. In my opinion the submission made on behalf of the respondents has to be accepted. Even in the Writ Petition, the petitioner has nowhere stated that the appeal was barred by limitation. u/s 136(2) of the Act the limitation has to be computed either from the date of communication of the order passed u/s 129(4) or the date of the knowledge of certification of the entry as provided under Sub-section (6) thereof. If the date of knowledge as stated by a particular appellant is not disputed and if from such a date the appeal is found to be within the period of limitation, the question of condoning the delay cannot arise. Thus, the first ground taken by the petitioner fails.

6. So far as the second ground of challenge is concerned it has not been disputed that the finding of the respondent-Assistant Commissioner is based on a registered document. The question whether the document is genuine or concocted can only be decided by the Civil Court keeping in view the evidence lead in this regard. In this view of the matter, no relief can be granted to the petitioner under Writ jurisdiction. If so advised, the petitioner may file a Civil Suit the result whereof will govern the revenue authorities for making appropriate entries according to law as provided under the Proviso to Section 185 of the Act.

9. Learned Counsel for the petitioner apprehends that in view of the impugned order she may be dispossessed from the land, If she is in fact in possession and if there is any such apprehension as stated at the Bar, it is better for her to approach the Civil Court at the earliest and pray for appropriate interim relief. Subject to the observations as above, the Writ Petition is dismissed.