

(2006) 10 KAR CK 0034
In the Karnataka High Court
Case No : Writ Petition No. 33462 of 2004

Doddarangamma

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 28-10-2006

Acts Referred:

Citation : (2006) 10 KAR CK 0034

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : Vishnu Bhat, for the Appellant; R. Kumar, HCGP for R1 to R3 and A.N. Venugopala Gowda, for the Respondent

Final Decision : Allowed

Judgement

V.G. Sabhahit, J.—This Writ petition is filed being aggrieved by the order passed by the Deputy Commissioner, Hassan District, Hassan, dated 24.05.2004 in case No. RA/148/2002-2003 confirming the order passed by the Assistant Commissioner, Hassan Sub-Division, Hassan dated 24.10.2002 in case No. RA.102:99-2000, wherein it is ordered that the name of the fifth respondent shall be entered in the record of rights in respect of 02 Acres of land in Sy. No. 351, totally measuring 04 Acres 15 Guntas situate in Bagu Village, C.R, Patna Taluk, Hassan District.

2. It is the case of the petitioner that the land comprised in the said Sy. No. 351 measuring 04 Acres 15 Guntas belonged to Boralingegowda, who died intestate leaving behind his wife Smt. Nanjamma and two daughters namely, Smt. Doddarangamma - writ petitioner and Smt. Sannarangamma, Nanjamma died in the year 1993. Petitioner along with her younger sister Smt. Sannarangamma succeeded to the property of Boralingegowda as his successors and legal heirs. On 05.02.1976, Smt. Sannarangamma executed a registered relinquishment deed relinquishing her right in favour of Smt. Nanjamma, the mother of the petitioner and the petitioner in respect of the above said land bearing Sy. No. 351 along with other properties. The mother of the petitioner Nanjamma died in

the year 1983 and the petitioner became the absolute owner of Sy. No. 351. It is further averred that during the year 1986-87, son of the petitioner M.N. Ramachandra - Respondent No. 4 submitted a representation to the revenue officer stating that Smt. Nanjamma, wife of Boralingegowda consented to change the khatha in respect of the entire land bearing Sy. No. 351 taking advantage of illiteracy and old age of late Nanjamma and the name of the fourth respondent was entered by the revenue authorities without giving an opportunity to the petitioner. Thereafter, in the year 1993-94, the fourth respondent gave consent before the revenue authority to change the khatha in respect of 02 Acres of land in Sy. No. 351 in favour of his wife i.e., the fifth respondent and mutation entry was changed in the name of the fifth respondent under M.R. No. 16/1993-94. In the year 1996-97, the fourth respondent once again approached the revenue authority to change the khatha and got entered his name in respect of 02 Acres in place of 5th respondent, who is stated to have given consent for the same as per M.R. No. 19/97-98. Petitioner filed O.S. No. 186/1999 on the file of the Civil Judge (Jr. Dn.), Chanarayapatna, for declaration of title and consequential injunction against the fourth respondent and in the said suit, the fourth respondent conceded to the title of the petitioner to the land in Sy. No. 351 measuring 04 Acres 15 Guntas and compromise decree was passed on 24.10.2002 as per Annexure "E" to the Writ Petition in respect of Sy. No. 351 measuring 4.15 Acres, decreeing the suit for declaration of title and injunction and entry was made in the revenue records in the name of the petitioner as per the decree in M.R. No. 93/98-99. However, the fifth respondent filed an appeal before the Assistant Commissioner without making the petitioner as a party to the said appeal and impleading the fourth respondent as respondent in the said appeal and the said appeal was allowed by order dated 24.10.2002 and M.R. No. 19/1997-98 was set aside. Being aggrieved by the same, respondent No. 4 preferred revision petition before the Deputy Commissioner, Hassan, in R.A. No. 148/2003 and the Deputy Commissioner dismissed the revision and confirmed the order passed by the Assistant Commissioner and being aggrieved by the same, present writ petition is filed.

3. I have heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the fifth respondent and the learned High Court Government Pleader appearing for respondents 1 to 3, Respondent No. 4 though served with notice, has not chosen to appear before this Court.

4. It is clear from a perusal of the material on record and the statement of objections filed by respondent No. 2 that the petitioner had filed O.S. No. 186/1999 against the fourth respondent and her name had been entered in the revenue records in respect of Sy. No. 351 measuring 04 Acres 15 Guntas and in the said suit, Respondent No. 4 in the writ petition - defendant in the suit consented for passing of a compromise decree to the effect that the petitioner herein, who was the plaintiff in the suit was the absolute owner of the said land in Sy. No. 351 measuring 04 Acres 15 Guntas and that she is entitled to the decree as sought for in the suit and accordingly, a compromise decree was

passed on 15/17.04.1999 decreeing the suit of the plaintiff - petitioner herein for declaration of title and injunction against the fourth respondent and entry was made in favour of the petitioner as per M.R. No. 93/98-99. However, after passing of the compromise decree and entry made in favour of the petitioner, the fifth respondent filed an appeal before the Assistant Commissioner without impleading the petitioner as a party challenging the mutation entry M.R. No. 19/1997-98 dated 16.11.1997 impleading the fourth respondent herein and Tahsildar as respondents and the said appeal was allowed by order dated 24.10.2002 and the same has been confirmed in the revision petition filed by the fourth respondent before the Deputy Commissioner, Hassan, by the impugned order dated 25.04.2001. Therefore, it is clear from the above said facts that when the fourth respondent had conceded to the title of the petitioner in respect of the land in Sy. No. 351 measuring 04 Acres 15 Guntas in O.S. No. 186/1999 and compromise decree has been passed against the fourth respondent on 15/17.04.1999 and entry is made in favour of the petitioner pursuant to the said compromise decree as per M.R. No. 93/98-99, the fifth respondent could not have preferred an appeal without impleading the petitioner to challenge the entry M.R. No. 19/97-98 and the order passed by the Assistant Commissioner setting aside the mutation entry is clearly without jurisdiction and the same has been erroneously confirmed in revision petition by the Deputy Commissioner, wherein also the petitioner was not made a party and revision was filed by the fourth respondent against the fifth respondent and Tahsildar, Channarayapatna Taluk. It is well settled that the question of title cannot be gone into by the revenue authorities and in view of the fact that the suit O.S. No. 186/1999 filed by the petitioner for declaration of title and injunction against the fourth respondent has been decreed as per the joint compromise petition filed by the writ petitioner and the fourth respondent herein on 15/17.04.1999, it is clear that the order passed by the Assistant Commissioner dated 24.10.2002 to the effect that entry shall be made in the name of the fifth respondent in respect of 02 Acres of land in Sy. No. 351, which has been confirmed by the Deputy Commissioner by order dated 24.05.2004 is clearly without jurisdiction as it was for the fifth respondent to approach the Civil Court and obtain a declaration if decree passed in O.S. No. 186/1999 is not in accordance with law and validity of the decree or investigation into the title of the parties to the proceedings cannot be gone into by the revenue authorities as the same is the province of the Civil Court. In view of the compromise decree passed in O.S. No. 186/1999, which was filed by the petitioner herein against the fourth respondent, it is clear that the order passed by the Assistant Commissioner, which has been confirmed by the Deputy Commissioner impugned in this writ petition cannot be sustained and the same is liable to be set aside. It is well settled that entry made by the revenue authorities is always subject to the declaration that may be granted by the civil Court and it is open to the fifth respondent to challenge the compromise decree passed in O.S. No. 186/1999 in accordance with law before the competent Civil Court and thereafter, make an application for change of entry and accordingly, I pass the following Order:

The Writ Petition is allowed. The Order passed by the Deputy Commissioner, Hassan District, Hassan, dated 24.05.2004 in case No. RA/148/2002-2003 as per Annexure "H" to the writ petition confirming the order passed by the Assistant Commissioner, Hassan Sub-division, Hassan, dated 24.10.2002 in case No. RA.102:99-2000 as per Annexure "G" to the Writ Petition are quashed. However, it is open to the fifth respondent to work out her remedy before the competent Civil Court regarding the validity of the compromise decree passed in O.S. No. 186/1999 as per the joint compromise petition filed by the petitioner and the fourth respondent herein and thereafter, make an application for change of entry as per the decree, which the fifth respondent may obtain in the suit filed by her. No order as to costs in this writ petition.