

(1999) 07 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 4026 of 1998 connected with Writ Petition No. 31244 of 1997

Dyavappa Gowda and Others

APPELLANT

Vs

District Registrar, Hassan District and Others

RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Revenue Act, 1964 — Section 129, 136 (2)
Registration Act, 1908 — Section 58, 59, 60, 72

Citation : (2000) ILR (Kar) 183 : (2001) 2 KarLJ 502 : (2000) 4 KCCR 196 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri A.V. Gangadharappa, for the Appellant; Sri H.S. Surendra, High Court Government Pleader, Sri G.K. Narasimha Murthy, Smt. M.C. Kavitha and Smt. H.P. Radha, for the Respondent

Judgement

V. Gopala Gowda, J.—These two writ petitions are heard together as the subject-matter of the property in both the petitions is one and the same and the parties namely the petitioners and the contesting respondents in the petitions are same, hence both the petitions are being disposed of by this common judgment.

2. The petitioners in the first Writ Petition i.e., No. 4026 of 1998 have challenged the impugned order passed by the first respondent vide Annexure-E, dated 31-10-1996 in No. RA 5:95-96 and registration of the document by respondent 2 dated 8-10-1996 vide Annexure-F urging various legal contentions. In the connected Writ Petition i.e. No. 31244 of 1997 the petitioners have challenged the order passed by the second and third respondents refusing to mutate the name of the first petitioner in respect of land bearing Sy. No. 7, 2nd Block of Kanadahally Village to an extent of 2 acres of land in the name of the first petitioner vide its order dated 27-12-1996. That order came to be affirmed by the second respondent in the appeal u/s 136(2) of the Karnataka Land Revenue Act, 1964, urging various legal contentions.

3. The brief facts to consider the case of the parties are stated as hereunder:

The Tahsildar vide order dated 18-11-1980 granted four acres of land in Sy. No. 7 situated at Kanadahally Village, Alur Taluq, with non-alienation clause for a period of 15 years, in favour of the first petitioner. Third respondent has falsely claimed that the first petitioner has executed a general power of attorney on 19-10-1982 in respect of 2 acres of land of which Schedule was mentioned in the said document. The case of the third respondent is that, in respect of the land measuring remaining two acres as per Annexure-R1 the first petitioner had executed power of attorney which is more fully described in the Schedule to the document. Pursuant to the said general power of attorney, the third respondent without notice to the first petitioner has sold the property in question in favour of the 4th respondent by executing the sale deed dated 21-11-1995. The first petitioner issued notice on 13-11-1995 vide Annexure-B stating that the general power of attorney dated 19-10-1982 in favour of the third respondent has been cancelled. The notice of cancellation of general power of attorney was sent by Certificate Annexure-C, dated 14-11-1995. The execution of the sale deed was presented by the third and 4th respondents before the second respondent for its registration under the Registration Act of 1908. The first petitioner has submitted his objection statement before the second respondent objecting to the registration of the document in favour of the 4th respondent. The second respondent has refused to register the sale deed in favour of 4th respondent for the reason that the first petitioner has revoked the general power of attorney executed in favour of third respondent in respect of 2 acres of land and he has objected to registration of the said property in favour of the fourth respondent by executing the sale deed by the third respondent, in view of that he has referred to sub-rule (iii) of Rule 171 of the Karnataka Registration Rules, 1965 (in short "the Rules"), the Sub-Registrar has refused to register the document and issued an endorsement dated 25-11-1995. The 4th respondent without impleading the petitioners as party respondents to the appeal before the first respondent has filed an appeal u/s 72 of the Act of 1908 questioning the legality and validity of the endorsement issued by the second respondent in refusing to register the sale deed in favour of the 4th respondent. The first respondent exercised his power u/s 72 and allowed the appeal on the basis of the no objection given by the third respondent before the first respondent who was the executant of the sale deed in favour of the 4th respondent and set aside the endorsement issued by the second respondent and directed the second respondent to register the sale deed presented by the 4th respondent vide his order dated 31-10-1996. Pursuant to the said order, the second respondent registered the document on 22-11-1996. The said document is also challenged in this writ petition by the petitioners. It is also pertinent to refer to in this order that the first petitioner was owner of the land in question and has sold the same in favour of the second petitioner on 21-11-1995 i.e., much before registration of the document in favour of the 4th respondent on 22-11-1996.

4. Mainly on two grounds the impugned orders are challenged in this writ

petition. The third respondent is not the owner of the property in question. Therefore, the execution of the sale deed in favour of 4th respondent by executing sale deed presented the same before the second respondent for its registration under the provisions of the Act is not legal and valid and the same is liable to be quashed.

5. The second ground of attack of the impugned order at Annexure-E is considered on the basis of the objection filed by the first petitioner on 22-11-1995 contending that the execution of sale deed in favour of the 4th respondent by the third respondent on the basis of the general power of attorney dated 19-11-1982 which has been cancelled by his legal notice dated 14-11-1995. Therefore, the third respondent has no right to continue as power of attorney holder on behalf of the first petitioner. Therefore, she had no right to execute the sale deed in favour of the 4th respondent. Having accepted the objection raised by the first petitioner, second respondent has refused to register the sale deed is not the ground on which the appeal lies u/s 72 of the Act. Therefore, the first respondent has no jurisdiction to entertain the appeal filed by the 4th respondent. Further, he had no authority to exercise his appellate power u/s 72 to entertain the appeal filed by the 4th respondent in the absence of the first petitioner making him as a party respondent. Therefore, the impugned order passed by the first respondent is a nullity in the eye of law for two reasons.

6. The order is a nullity as the first respondent could not have entertained the appeal filed by the 4th respondent for the reason that the appeal lies u/s 72 only when the executant of the sale deed denies the execution of the instrument in favour of the 4th respondent, that is not the reason for which the second respondent has refused to register the document is an admitted fact as could be noticed from Annexure-D1. Therefore, the first respondent has no jurisdiction to entertain the appeal and pass the order at Annexure-E. The impugned order passed at Annexure-E also suffers from serious error in law, as it is a nullity in the eye of law for another reason that, at the instance of the first petitioner, the second respondent refused to register the document in favour of the 4th respondent presented by him and the first petitioner was not made a party in the appeal. Therefore that order is not binding on the first petitioner. Therefore, the learned Counsel appearing on behalf of the petitioners Sri A.V. Gangadharappa submits that the impugned orders at Annexure-E and F are liable to be quashed.

7. Learned Counsel Sri G.K. Narasimha Murthy appearing on behalf of respondents 3 and 4 in this petition and appearing for petitioners in the connected writ petition sought to justify the impugned order passed by the first respondent and the registration of the document at Annexure-F by the second respondent contending that, the notice at Annexure-B cancelling the general power of attorney vide Annexure-R1 was not served by the first petitioner on the third respondent. Therefore, she had no notice of cancellation of general power of attorney in respect of the land in question. Therefore, there is no cancellation of general power of attorney as contended by the first petitioner. The subject-

matter of sale deed executed in favour of 4th respondent is in respect of remaining portion of the land in respect of which the general power of attorney was executed in favour of the third respondent. Therefore, she had right and power to execute the sale deed in favour of the 4th respondent in respect of the land in question. Further, the first petitioner had no locus standi to submit his objection statement before the second respondent when the sale deed was presented by the third and fourth respondents for its registration as he had sold the property in favour of the second petitioner. Therefore, the learned Counsel for the third and fourth respondents submits that, there is no error in the impugned order at Annexure-E. Hence, the learned Counsel for the third and fourth respondents Sri G.K. Narasimha Murthy has prayed for dismissal of the writ petition filed by the petitioners in the first writ petition.

8. Learned Counsel Mr. G.K. Narasimha Murthy appearing on behalf of the petitioners in the connected Writ Petition No. 31244 of 1997 has challenged the impugned orders at Annexure-A and B passed by the second and third respondents refusing to mutate the name of the first petitioner in the revenue records as owner of the property in question contending that, the order passed by the third respondent is in contravention of Section 129 of the Karnataka Land Revenue Act, 1964 read with the Karnataka Land Revenue Rules. Once the document is registered, the mutation charges are collected by the Sub-Registrar and copy of the sale deed will be forwarded to the Tahsildar for mutating the name of the vendee of the property in question. It is the statutory duty of the Tahsildar to mutate the name of the owner in whose favour the sale deed is executed. Not taking into consideration of this relevant provision of the Karnataka Land Revenue Act and the Rules referred to above, the second respondent has failed to exercise his power. Therefore, the order passed by him suffers from error in law. The order passed by the third respondent was challenged before the second respondent on the grounds referred to above. The second respondent also failed to exercise his appellate power and jurisdiction therefore, the impugned order challenged by the petitioners in this petition suffers from error apparent on the face of the record therefore, it is a proper and fit case for this Court to exercise its extraordinary and supervisory power under Articles 226 and 227 of the Constitution of India to quash the impugned orders in this petition. Therefore, he has prayed for quashing of the impugned orders challenged in the connected writ petition filed by the petitioners.

9. After hearing the learned Counsel appearing on behalf of the parties at length and after perusing the records produced in both the cases, this Court proceeds to examine the legal contentions urged by the learned Counsel appearing on behalf of the respective parties. The point for consideration in this case is, whether the appeal filed by the 4th respondent before the first respondent in the first petition should have been entertained u/s 72 of the Act. In this connection, it is relevant to extract the provision u/s 72 of the Act which reads thus:

"72. Appeal to Registrar from orders of Sub-Registrar refusing registration on

ground other than denial of execution.--(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration".

10. It is not the case of either the third respondent or the 4th respondent that the third respondent has denied the execution of sale deed vide Annexure-F in favour of the 4th respondent in respect of the land in question. The second respondent has not refused to register the document on that ground. The ground on which he refused to register the document is that, the third respondent on the basis of the general power of attorney executed the sale deed in respect of the land in question in favour of the 4th respondent. Notice was issued on 13-11-1995 by the first petitioner vide Annexure-B by revoking the power of attorney executed by him in favour of the third respondent and objections were raised before the second respondent by the first petitioner while registering the said document in favour of the 4th respondent which statement of objection was accepted by the second respondent under sub-rule (iii) of Rule 171 of the Karnataka Registration Rules, 1965. The reason assigned in the endorsement at Annexure-D1 is not the ground available for the fourth respondent to file appeal u/s 72 of the Registration Act of 1908. Therefore, the submission of the learned Counsel appearing on behalf of the petitioners that the 4th respondent could not have filed the appeal and the first respondent should not have entertained the same as there was no appeal provided u/s 72 of the Act against the endorsement at Annexure-D1 is well-founded and same must be accepted by this Court. Further, at the instance of the first petitioner, the second respondent refused to register the document which was presented before him. As could be seen from Annexure-D1 the endorsement was issued by the second respondent, stating that it is noticed that he has refused to register the same at the instance of the first petitioner. Deliberately, the 4th respondent has omitted to implead him as party respondent in the appeal proceedings by him to the proceedings. The third respondent had colluded with the 4th respondent, on the basis of the statement made by the third respondent, the first respondent allowed the appeal without applying his mind and examining the legal position as to whether the appeal lies against the endorsement issued vide Annexure-D1 by the second respondent u/s 72 of the Act. Therefore, the order passed by the first respondent is a nullity in the eye of law for the reason that, the petitioners were not impleaded as party respondents. Therefore, on this ground also impugned order at Annexure-E is

liable to be quashed. Consequently the action of the second respondent in registering the document at Annexure-F is also nullity in the eye of law as the appeal filed by the fourth respondent was not maintainable u/s 72 of the Act, as against the endorsement issued by the second respondent at Annexure-DI, no appeal could have been filed by the fourth respondent u/s 72 of the Act and the first respondent should not have entertained the appeal, in which the impugned order at Annexure-E was passed by the first respondent.

11. On the basis of the order vide Annexure-E, the second respondent registered the document on 22-11-1996. As on that date, the property was sold by the first petitioner in favour of the second petitioner on 29-11-1995. Further, the general power of attorney executed in favour of the third respondent was cancelled by the first petitioner pursuant to notice vide Annexure-B. Therefore, the third respondent had no power, right, title or interest upon the property in question to sell the property and execute the sale deed in favour of the 4th respondent. The first respondent passed the order vide Annexure-E which is a nullity in the eye of law in registering the document in favour of the 4th respondent. Therefore, this Court has to quash the impugned order Annexure-E for the reasons recorded above. Since the impugned order Annexure-E is liable to be quashed, the consequent action of the second respondent in registering the document in favour of the 4th respondent is also liable to be quashed. Hence, the petitioners are entitled for the reliefs sought for in Writ Petition No. 4026 of 1998.

12. Insofar as the challenge with regard to the impugned orders passed by the second and third respondents in the connected Writ Petition No. 31244 of 1997 is concerned, this writ petition is liable to be dismissed for the reason that the impugned order at Annexure-E and the sale deed registered by the second respondent in favour of the fourth respondent at Annexure-F in the Writ Petition No. 4026 of 1998 are liable to be quashed. Therefore, no right, title and interest is accrued in favour of the petitioners in this connected writ petition for quashing the impugned orders and therefore of giving necessary direction as prayed for by the petitioners in this petition does not arise. Hence, the connected writ petition must fail.

13. For the reasons stated supra, I pass the following order:

Writ Petition No. 4026 of 1998 is allowed. Rule made absolute. Impugned order vide Annexure-E, dated 31-10-1996 and the sale deed Annexure-F, dated 22-11-1996 are hereby quashed. The connected Writ Petition in No. 31244 of 1997 is dismissed. No costs.