

(2006) 02 KAR CK 0076

In the Karnataka High Court

Case No : Writ Petition No. 20487 of 2002

Gangamma and Another

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 17-02-2006

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 129, 135, 136 (3), 49, 56

Citation : (2006) 2 KCCR 1035

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : J. Chandrashekaraiah, for the Appellant; G. Chandrashekaraiah, AGA for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—This writ petition is filed by the petitioners seeking directions in the nature of writ of certiorari quashing the impugned order at Annexure "L" dated 5.3.2002 passed by the Deputy Commissioner, Tumkur, whereby the Deputy Commissioner set aside the order of the Asst. Commissioner, Tiptur, in RP48/2000-200L

2. The petitioners have come up before this Court mainly on the ground that 1st petitioner is non other than the daughter of late. Ningaiah and the 2nd petitioner is taken as illatom son-in-law long back from the family of late. Hutchana. Late. Chikkaiah was owning 12 Guntas of land in Sy. No. 69/3 measuring of Kodihalli, Honnavalli Hobli, Tiptur Taluk, as illatom son-in-law of late. Ningaiah, who was looking after the family property and therefore, an agreement was executed on 24.2.1979 by Hutchanna and respondent No.3/Chikkanna wrongly showing the land as Sy.No.69/4 and to that effect an agreement was made on 24.2.1979. Since the petitioners were in possession and enjoyment of the said land, they have approached the revenue authorities seeking mutation of 12 Guntas of land. Accordingly, the Tahsildar effected the mutation which was challenged by respondent No.3 before the Asst. Commissioner and the appeal No. 35/99-2000

filed by respondent No.3 came to be dismissed. Therefore, respondent No.3 preferred R.P.No. 48/2000-2001 before the Deputy Commissioner and the Deputy Commissioner set aside the review petition as per Annexure "L". Therefore, aggrieved by the said order, petitioners have come up with this writ petition praying to quash Annexure "L" passed by the 1st respondent/Deputy Commissioner.

3. Heard the arguments of the Learned Counsel for the petitioners, Learned Counsel for respondent No.3 and the learned Addl. Govt. Advocate for respondents 1 and 2.

4. During the course of arguments, Learned Counsel for the petitioners submitted that the Deputy Commissioner, Tumkur ought not to have entertained revision petition filed by respondent No.3 u/s 136(3) of Karnataka Land Revenue Act, 1961, and he has no jurisdiction to entertain the same.

5. In support of his contention, learned Counsel for the petitioner relied upon a decision reported in case of Srimanmaharaja Niranjana Jagadguru Mallikarjuna Murugarajendra Mahaswamy Vs. Deputy Commissioner, wherein it has been held that "Scope and ambit-Deputy Commissioner has no power under Sub-section (3) to revise appellate order under Sub-section (2)-Sub-section attracted only when order u/s 129 not appealed against-only relief against appellate order is suit u/s 135".

6. It is further submitted that since the revision is not maintainable, Annexure "L" passed by the Deputy Commissioner is not at all maintainable and the an illegal order has been passed and therefore, the present writ petition is liable to be allowed by quashing the impugned order. It is further contended that the Deputy Commissioner, Tumkur, adjourned the case from time to time and when both parties were present, they undertook to file written arguments on 3.12.2001 and the same was again listed on 31.12.2001 for orders. On that day, petitioner submitted that the case was not called and without giving any opportunity, submitted that the case was not called and without giving any opportunity, revision petition was disposed of by setting aside the order of the Asst. Commissioner behind the back, which is illegal and incorrect and therefore, the order dated 5.3.2002 is liable to be set aside. Further it is submitted that the 1st petitioner is none other than the sister of respondent No.3 and 2nd petitioner is the illatum son-in-law to the family of late. Hutchanna and late. Chikkaiah, who was given 12 Guntas of land out of Sy. No. 69/3 of Kodihalli village and to that effect, Annexures "A" and "B" were executed by late. Hutchanna in favour of Chikkaiah. It is further contended that without considering the recital of the documents, the Deputy Commissioner passed the order in order to seek transfer of property and u/s 129 of the Karnataka Land Revenue Act, there must be sale or mortgage for succession, which is incorrect. The Asst. Commissioner after considering all those documents rightly allowed to enter the names of the petitioners in the concerned records and the petitioners are in possession of the land and they are cultivating the same. It is also submitted that the revision is

maintainable u/s 136(3) of the Act. Therefore, it is prayed that the impugned order passed by the Deputy Commissioner is liable to be quashed since the same is illegal and incorrect and passed without giving any opportunity.

7. On the other hand, learned Counsel for respondent No.3 Contended that the revision petition is very much maintainable u/s 136 (3) of the Karnataka Land Revenue Act and the Deputy Commissioner can suo moto initiate and review/revise the order passed by the Asst. Commissioner or the Tahsildar and there is no bar as such to entertain the writ petition. Neither Section 49 nor Section 56 of the K.L.R. Act will come in the aid of the petitioners since the petitioners have no right to claim the property and they are concocted documents and the petitioners have not filed any written arguments even though opportunity was given to them, Therefore, the present writ petition is not at all maintainable. It is further contended that the Deputy Commissioner has rightly allowed the review petition with a direction to approach the Civil Court to prove their legal right in respect of the land in Sy. No. 69/2 measuring 12 Guntas and prays for dismissal of the writ petition.

8. On the other hand, learned Addl. Govt. Advocate appearing for respondents 1 and 2 submitted that the revision is maintainable u/s 136 (3) of the Act and the Deputy Commissioner has given sufficient opportunity for the parties to file written arguments. Since the petitioners have not availed of the opportunity given, it is submitted that the order passed by the Deputy Commissioner is in accordance with law and therefore, the writ petition is liable to be dismissed.

9. Having heard the arguments of the learned Counsel appearing for the parties, now I proceed to see whether the impugned order under challenge passed by the Deputy Commissioner is without any jurisdiction or not?

10. It is seen that respondent No.3 assailing the order of the Asst. Commissioner filed a revision u/s 136(3) of the K.L.R. Act. Even the Deputy Commissioner can suo moto entertain the revision or on the basis of the review petition filed by either of the party. Therefore, the contention of the learned Counsel for the petitioner that the revision filed by the respondent No,3 u/s 136(3) is not at all maintainable cannot be accepted. As far as not providing the opportunity to file written arguments of the petitioners is concerned, Annexure "K" is the order passed by the Deputy Commissioner in R.P. 48/2000-2001. The order dated 12.11.2001 passed by the Deputy Commissioner indicates that on that day, both parties and their advocates were present and they undertook to file written arguments on 3.12,2001. On the very same day, the case was adjourned to 31.12.2001 for passing the orders. The order passed by the Deputy Commissioner in the revision discloses that the advocate for the revision petitioner i.e., respondent No,3 herein filed written arguments and respondents 2 and 3, who are the writ petitioners have not filed, any written arguments. Therefore, the Deputy Commissioner proceeded to pass orders only on the basis of the available records. It is seen that the Deputy Commissioner has given a specific date for both advocates to file written arguments on 3.12.200, which

means that on or before 3.12.2001, they are expected to file their written arguments but he posted the matter for pronouncements of orders/ judgment on 31.12.2001 but the petitioners have not made any explanation as to why their advocates has not filed written arguments on or before 3.12.2001 or subsequently. If the petitioners are really interested in filing written arguments they ought to have filed on or before 3.12.2001. Since they have not made any attempts to file the written arguments, it is not proper to accept the contention of the learned Counsel for the petitioner that the Deputy Commissioner has not provided sufficient opportunity. The petitioners have produced Annexures "A" and "B", which are the documents said to have been executed by the father of respondent No.3 and the revision petitioners herein have not produced the said documents before the Deputy Commissioner to show that Annexure "A" and "B" executed by Ningappa, who is the father of respondent No.3 Of course, respondent No.3 has taken the contention that petitioners 1 and 2 have not produced the alleged documents Annexure "A" and "B" before the Asst. Commissioner and the Deputy Commissioner. But Annexure "E" is the R.O.R. in respect of the lands in Sy.No.69/3 measuring 12 Guntas wherein the name of Gangamma, W/o Chikkanna, Boregowda are shown as Kathedar and also in Col.No. 12(2) for the year 2000-2001 and respondent No. 3 disputed the very document and challenged before the Asst. Commissioner. So, in order to get the mutation entered in their name, it is for the petitioners to prove by producing the documents like registered sale deed, mortgage, grant order or occupancy right. But in the instant case, no such documents have been produced by the petitioners before the revenue authorities to claim the land in question. The Deputy Commissioner who has passed the impugned order at Annexure "L" holding that the petitioners herein have not at al produced the relevant documents like registered sale deed, gift or mortgage deed, occupancy right granted if any and the mutation entry confirmed by the Asst. Commissioner is liable to be set aside. It is for the parties to prove their title or right over the property before the competent Civil Court. Therefore, viewed from any angle, I do not find any good reasons to interfere with the impugned order under challenge.

11. Hence, the writ petition is dismissed.