

(2002) 02 KAR CK 0084

In the Karnataka High Court

Case No : Writ Petition No's. 21556 and 22223 of 2000

Gangawwa

APPELLANT

Vs

Rudragouda Daramagonda Patil and Others

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 147

Citation : (2002) 6 KarLJ 387 : (2002) 2 KCCR 130 SN : (2002) 3 RCR(Criminal) 153

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Ravi B. Naik, for the Appellant; S.A. Kalagi, for Respondent 1 and H.B. Mahesh, Government Pleader for Respondent 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—With the consent of the learned Counsels appearing for both the parties, the matter is taken up for hearing.

2. Heard the learned Counsel appearing for the petitioner, 1st respondent and the Government Pleader for respondents 2 to 4.

3. The petitioner is assailing the legality and validity of the impugned order dated 24-11-1999 passed by the 4th respondent in RTS:AP:156+158/95-96 (Annexure-F).

4. The father of the petitioner had no male issues. Taking into consideration of his age factor he was affectionate towards the petitioner and applied to the Tahsildar, on 25-4-1988 requesting to enter the name of his daughter in respect of the lands bearing Sy. No. 231, situated Shirangapur and Sy. Nos. 295 and 321 situated at Madalur village of Saundatti Taluk to the extent of his 1/2 share. In pursuance of the application filed by the petitioner's father, the revenue authorities have sanctioned the mutation in M.E. Nos. 3669 and 2646 in favour of the petitioner and her name was entered in the RTC extract. Further, the case of

the petitioner is that she is in peaceful possession and enjoyment of the lands in question and at no point of time the mother of the petitioner objected to the said mutation entries and the enjoyment of the lands in question by the petitioner and her mother died on 26-3-1996. In order to create a false litigation and claim, the father of the 1st respondent got created a false adoption deed dated 5-12-1995 stating that the mother of the petitioner had taken the 1st respondent in adoption. Taking undue advantage of the said alleged adoption deed, 1st respondent has filed an appeal before the Assistant Commissioner, 4th respondent in the name of dead person Smt. Mallawwa Bistannavar though she has not authorised and signed on the said appeal. The 4th respondent herein has passed the order on 13-11-1998 by setting aside the mutation entry. Being aggrieved by the order passed by the 4th respondent, the petitioner herein has filed the revision before the Deputy Commissioner, 3rd respondent u/s 136(3) of the Land Revenue Act. The said revision is pending for consideration as on the date of the filing of these writ petitions.

5. When things stood thus, the 1st respondent made an application to the 4th respondent on 18-11-1999 requesting him to give protection. As per the said request, 4th respondent has passed the impugned order dated 24-11-1999 directing the police authorities to give protection to the 1st respondent protecting his possession if there is any violation to avoid struggle between the parties. Feeling aggrieved by the order dated 24-11-1999 passed by the 4th respondent the petitioner has filed the present writ petitions.

6. The principal submission canvassed by the learned Counsel for the petitioner is that the order passed by the 4th respondent is one without jurisdiction on the ground that as a matter of fact, the 1st respondent herein has filed O.S. No. 16 of 1996 on the file of the Principal Civil Judge, Bailhongal for partition and separate possession of his share on the strength of the alleged adoption deed against the petitioner and others. Without taking this fact into account the 4th respondent has issued direction to the Tahsildar to direct the police authorities to give protection to the 1st respondent. Thereafter, it is shock and surprise to the petitioner to come to know that the Tahsildar has issued the eviction notice on 20th July, 2000. Therefore he submitted that the impugned order passed by the 4th respondent is one without jurisdiction in view of the well-settled law laid down by the Apex Court and this Court the revenue authorities have no power to issue direction that too when the matter is seized by the competent Civil Court regarding their rights. Hence, he prayed that the impugned order passed by the 4th respondent may be set aside and writ petitions may be allowed.

7. Per contra, the learned Counsel appearing for the 1st respondent inter alia contended and justified the impugned order passed by the 4th respondent on the ground that the 1st respondent has filed an application u/s 147 of the Criminal Procedure Code for protection and not to interfere with possession in respect of his share and he is not in a position to justify or persuade regarding the notice issued by the Tahsildar for eviction. Hence, he prayed that the petitioner has not

made out any case to interfere with the impugned order and to dismiss the petitions.

8. The short question for consideration in these petitions is whether the 4th respondent has passed the impugned order in accordance with law.

9. It reveals from the records which are made available to this Court that there is no dispute regarding the revision petition filed by the petitioner is pending consideration before the Deputy Commissioner and also it is an admitted fact that the 1st respondent herein has filed O.S. No. 16 of 1996 on the file of the Principal Civil Judge, Bailhongal for partition and separate possession of his share on the strength of the alleged adoption deed against the petitioner, her children and others which is pending consideration.

10. It is significant to note that the conduct of the 1st respondent is to be taken into consideration because when the matter was seized by the Civil Court as he himself has filed the suit for partition, it is open for him to make an appropriate application before the Principal Civil Judge for protection instead of that, he has taken the steps for making application before the 4th respondent for protection. In my considered view, the approach of the 1st respondent is one without justification. When the said application has come up for consideration, the 4th respondent ought not to have entertained the same, because he himself has passed the order exercising power u/s 136(2) of the Karnataka Land Revenue Act cancelled the mutation sanctioned in favour of the petitioner and he is well-aware about the dispute regarding the petitioners and the 1st respondent. It reveals from the records that the 4th respondent has passed the impugned order unilaterally. No notice was issued and no enquiry was conducted as required under law. Therefore, in my considered view, the said communications/orders passed by the 4th respondent is one without jurisdiction. Hence, taking into consideration of the facts and circumstances of the case, I am satisfied that the impugned order passed by the 4th respondent is liable to be rejected in toto.

11. Accordingly, the writ petitions filed by the petitioner are allowed with the following observations:

(i) The impugned order passed by the 4th respondent is hereby quashed.

(ii) Liberty is reserved to the 1st respondent to make appropriate application before the Principal Civil Judge, Bailhongal in O.S. No. 16 of 1996 for appropriate interim relief if he so desires.

(iii) The Civil Court to pass appropriate orders in case any application is filed by the 1st respondent for interim relief without being influenced by the observations made during the course of this order and the order passed by the revenue authorities.

(iv) Parties to bear their own costs.