(2014) 09 KAR CK 0066

In the Karnataka High Court

Case No : Writ Petition No. 202407/2014 (KLR-RR-SUR)

Gundamma APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) 09 KAR CK 0066

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : Ameet Kumar Deshpande, Advocate for the Appellant; Basavaraj R. Math, Advocate and Shivakumar R. Tengli, Advocate for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—Petitioner herein is impugning the order dated 23.8.2013 passed by the second respondent herein in allowing the revision petition No. 33/2008-2009 u/s 136(3) of the Karnataka Land Revenue Act, 1961, consequently setting aside the order passed by the third respondent, namely Assistant Commissioner of Lingasugur Sub Division in RRT. Appeal No. 58/2006-2007 dated 21.3.2007 and remanding the same for reconsideration to third respondent.

2. Brief facts leading to this writ petition are as under:

Petitioner herein claims that she is the owner of land bearing Sy. No. 176/4, measuring to an extent of 6 acres situated at Balaganur village of Sindagi Taluk, Raichur District. According to her, said property was inherited, by her through her father and she is in possession and enjoyment of the same. Her grievance is that when the said property was standing in her name in the revenue records, the husband of fourth respondent and father of fifth respondent and other persons seem to have approached the Tahsildar seeking mutation of an extent of 4 acres in aforesaid survey number in their favour on the ground that under a release deed executed by petitioner along with others she gave up her right, title and interest in the aforesaid land to an extent of 4 acres in their favour. It is seen that the mutation entry which is changed pursuant to the order dated 22.3.1999 vide mutation entry No. 95 was the subject matter of an appeal before the third respondent in Appeal No. 58/2006-2007. In the said proceeding, it is stated that Basavantappa, husband of fourth respondent and father of fifth respondent remained exparte. The third respondent after considering the material on record set aside the revenue entry in registering an extent of 4 acres in favour of Basavantappa and consequently directed to restore the same in favour of petitioner.

3. Being aggrieved by the same, it is seen that said Basavantappa preferred a revision petition before the second respondent in revision petition No. 33/2008-2009, which came to be allowed on the premise that in the proceeding before the Assistant Commissioner since Basavantappa remained exparte sufficient opportunity not being given to him, the matter was required to be reheard. Accordingly, the said revision petition was allowed and the matter was remanded to the Assistant Commissioner, which is subjected to challenge in this petition. It is seen that in the meanwhile, Basavantappa, petitioner in the revision petition died and his legal representatives, namely his widow and son have come on record as respondent Nos. 4 and 5 respectively in this proceedings.

4. When the matter came up for consideration before this Court, for ascertaining the correctness or otherwise of the entries made in changing katha of 4 acres of land in favour of Basavantappa, this Court summoned the entire original records pertaining to the proceedings resulting in the mutation entry bearing No. 95 pursuant to order dated 22.3.1999. On going through the same, it is seen that on the basis of a xerox copy of release deed said to have executed on Rs. 20/- stamp paper, the katha of an extent of 4 acres of land in Sy. No. 176 is changed to the name of Basavantappa. It is seen that the name of Basavantappa is not seen in the xerox copy of release deed executed on Rs. 20/- stamp paper. With this it is clear that the manner in which the mutation entry No. 95 dated 22.3.1999 is passed is without any basis, it does not even refer to the name of Basavantappa. Even otherwise, it is seen that the right in an immovable property cannot be released on the basis of an unregistered release deed executed on Rs. 20/- stamp paper. In that view of the matter, this Court feel that the order of Assistant Commission in setting aside the aforesaid revenue entry and restoring the revenue entry in the name of Gundamma, petitioner herein, appears to be correct.

5. However, the learned Counsel for respondent Nos. 4 and 5 tried to substantiate that the correctness or otherwise of the revenue entry cannot be decided in a writ proceeding and in that behalf, he rely on the judgment rendered by this Court in the matter of Sri B. Poornachandra Reddy Vs. State of Karnataka and Sri Muniraju, . On going through the same, this Court is of the opinion that in the facts and circumstances when a revenue entry is fraudulently transferred without there being any supporting document in respect of the same, question of

keeping away the parties on the pretext that they can work out their remedy in civil court, would be denying them a fair opportunity to place before this Court the fraud committed by other parties in connivance with the officers of the revenue department. In that view of the matter, the fact situation in this case not being similar to the facts and circumstances under which the aforesaid judgment is rendered, the same cannot be relied on.

6. Accordingly, this writ petition is allowed. The order dated 23.8.2013 in revision petition No. 33/2008-2009 passed by the Deputy Commissioner, Raichur, is set aside and the order dated 21.3.2007 in RRT. Appeal No. 58/2006-2007 passed by the Assistant Commissioner, Lingasugur Sub Division is confirmed.