

(2015) 01 KAR CK 0057
In the Karnataka High Court
Case No : W.A. No. 31259 of 2013 (LR)

Hanumanthappa and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0057

Hon'ble Judges : A.S. Bopanna and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : V. Shivaraja Hiremath, Advocate, for the Appellant; C.S. Patil, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.S. Bopanna, J.—I.A. No. 4/2013 is filed seeking condonation of delay of 496 days in filing the appeal.

The appellants herein are the legal representatives of deceased petitioner Hanumanthappa. Since the said Hanumanthappa died during the pendency of the writ petition, legal representatives contend that they were not aware of the proceedings therein and the order being passed. On gaining knowledge of the said order, they have filed the instant appeal by seeking leave of this Court. This Court had allowed the application in I.A. Nos. 4 to 6/2014. In that view, the delay stands explained. The reasons are accepted. Delay is condoned. I.A. No. 4/13 is allowed.

I.A. No. 3/2013 is produced seeking leave to produce additional documents. The application is allowed. The documents are taken on record.

2. The petitioner Hanumanthappa was before the learned Single Judge in W.P. No. 21296/2005 assailing the order dated 25.8.2005 passed by the Deputy Commissioner, Koppal District which was impugned at Annexure-G to the petition. In a proceeding seeking occupancy rights, the said Hanumanthappa has sought for right in respect of the property bearing Sy. No. 32 measuring 33 acres

24 guntas in Hulkihal village, Gangavathi Taluk, Koppal District. The Deputy Commissioner while considering the case for occupancy rights as sought was of the opinion that the said Hanumanthappa was entitled to an extent of 25 acres and 24 guntas and the respondents 6 and 7 herein are entitled to remaining 8 acres on the southern side. The predecessor of the appellants claiming to be aggrieved was before this Court. The learned Single Judge while considering the contentions put forth had taken note of the observations made in the order of the Deputy Commissioner that the predecessor of the appellants herein during the course of enquiry admitted that respondent Nos. 6 and 7 herein are cultivating the property to an extent of 8 acres lying on the southern side. It is in that view, the learned Single Judge was of the opinion that the order of the Deputy Commissioner was justified and did not find need to interfere with the said order. Accordingly, writ petition was dismissed.

3. Learned counsel for the appellants had contended that the observations as made by the Deputy Commissioner as also the learned Single Judge is contrary to the records maintained by the Deputy Commissioner. In order to establish his contention, the additional documents which had been produced was relied upon. From the copy of the order-sheet maintained by the Deputy Commissioner during the course of proceedings, it is pointed out that on 11.8.2005, though the proceeding had been listed, no evidence had been recorded and as such the admission as stated to have been made by the predecessor of the appellants is not the correct position.

4. In order to ascertain this aspect of the matter, we had requested the learned Government Advocate to secure the records from the office of the Deputy Commissioner.

5. The learned Government Advocate having secured the records has pointed out from the same that though the matter had been proceeded before the Deputy Commissioner on 11.8.2005, the statement of the predecessor of the appellants has not been recorded on the said date. If that be the position, the observations as made by the Deputy Commissioner in the course of the order that there is admission by the predecessor of the appellants is contrary to the material on record. The observations made by the learned Single Judge that the predecessor of the appellants had admitted before the Deputy Commissioner that respondents 6 and 7 herein are cultivating the land to an extent of 8 acres on the southern side is not the position emanating from the records. Therefore, that aspect of the matter relating to the actual cultivation of extent of 8 acres lying on the southern side requires reconsideration by the Deputy Commissioner on respondent Nos. 6 and 7 herein being notified on that aspect of the matter.

6. To enable the same, the order dated 25.8.2005 (Annexure-G to the writ petition) to the extent of rejecting the claim of the appellants to an extent of 8 acres of land in Sy. No. 32 of Hulkihal village, Gangavathi Taluk, Koppal District is quashed. For the same reasons, the order dated 5.6.2012 passed in W.P. No. 21296/2005 is set-aside. The matter stands remitted to the Deputy

Commissioner, Koppal District to reconsider the case of the appellants seeking occupancy rights in respect of 8 acres of land lying on the southern side of the property described above. The consideration shall be made in an expeditious manner after notifying all the concerned parties.

In terms of the above, the appeal stands allowed. I.A. No. 1/2013 is disposed of as unnecessary.