(2007) 09 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 27212 of 2004

Jayalakshamma and Another APPELLANT

Vs

The Deputy Commissioner and Others RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 135, 136 (2)

Citation : (2007) 6 KarLJ 100 : (2007) 4 KCCR 2523

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

Bench : Single Bench

Advocate : S.N. Satyanarayana, for the Appellant; G. Chandrashekaraiah, A.G.A. for Respondents-1 to 3, H. Jayakar Shetty, for Respondent-4 and Kavitha H.C., for Respondents-5 and 6, for the Respondent

Judgement

N.K. Patil, J.—Petitioners, questioning the correctness of the impugned order dated 23rd March, 2004 in proceedings No. R.A. 51/2002-03 passed by first respondent and the order dated 22nd October, 1998 in proceeding''s No. R.A. 157/1995-96 passed by second respondent vide Annexure-A and B respectively, have presented the instant writ petition.

2. The grievance of petitioners in the instant writ petition is that, petitioners herein claim that, the first petitioner is the wife and second petitioner is the son of late Sri Manje Gowda and there was a partition between Sri Manje Gowda, the husband and father of petitioners herein respectively and late Sri Ninge Gowda, the husband of fourth respondent - who is none other than the father of late Sri Manje Gowda. As per the partition deed entered into in the joint family consisting of late Sri Ninge Gowda, his wife Smt. Puttamma and their son, late Sri Manje Gowda in the month of July 1986, Sy. No. 99/2 measuring an extent of 12 guntas came to the share of late Sri Manje Gowda. Accordingly, late Sri Manje Gowda has filed the application before the Tahsildar, Hassan Taluk, Hassan seeking transfer of khata of the said property to his name by furnishing all the documents. Accordingly, mutation was sanctioned in respect of an extent of 10

guntas in Sy. No. 99/2 situate at B. Katihalli, Hassan Taluk and the same was certified by the jurisdictional Revenue Inspector on 11th May, 1988, on the basis of the report submitted by the Village Accountant vide Annexure-D. After certifying the mutation, the name of the deceased late Sri Manje Gowda, the husband of first petitioner and father of second petitioner has been recorded in the record of rights and other revenue records and since then, petitioners have been in peaceful possession and enjoyment of the said land.

3. When things stood thus, after lapse of nearly three years ten months, and after the death of the father of late Sri Manje Gowda, i.e., late Sri Ninge Gowda, the husband of fourth respondent, the fourth respondent herein has filed the appeal u/s 136(2) of the Karnataka Land Revenue Act, 1964 on the file of the Assistant Commissioner, Hassan Sub-Division, Hassan in proceedings No. R.A. 157/95-96. The said appeal had come up for consideration before the said authority on 22nd October, 1998 and the second respondent after verifying the records available on file and other material available, has set aside the mutation certified in M.R. No. 19/88-89 by his order dated 22nd October, 1998. Assailing the correctness of the said order passed by second respondent, petitioners herein have filed the revision petition before the first respondent in proceedings No. R.A. 51/2002-03. The said matter had come up for consideration before the first respondent on 23rd March, 2004. The first respondent, after perusal of the order passed by second respondent and other material available on file, has dismissed the revision petition filed by petitioners. Being aggrieved by the impugned orders passed by respondents 2 and 1, vide Annexure-B and A respectively, as referred above, petitioners herein felt necessitated to present the instant writ petition.

4. I have heard learned Counsel appearing for petitioners and learned Counsels appearing for respondents.

5. After careful perusal of the impugned orders passed by respondents 1 and 2, dated 23rd March, 2004 and 22nd October, 1998 vide Annexure-A and B respectively, it emerges that, both the authorities have committed an error of law and illegality inasmuch as both the authorities have proceeded to pass the impugned orders without conducting proper enquiry. It is significant note that, it is the specific case made out by petitioners before the Revisional Authority, (first respondent herein) that, there is a delay of nearly three years and ten months in filing the appeal by the fourth respondent before the second respondent-Assistant Commissioner in R.A. No. 157/95-96. The second respondent has committed an error resulting in serious miscarriage of justice inasmuch as the said authority has entertained the appeal filed by fourth respondent and proceeded to pass the impugned order, without condoning the delay in filing appeal and allowed the appeal, setting aside the mutation certified on the basis of the partition entered into between the husband and father of petitioners herein respectively and husband of fourth respondent. It is significant to note that, on the basis of the said partition deed, mutation has been certified in the

name of the late Sri Manje Gowda, the husband and father of petitioners herein respectively. This aspect of the matter has not been looked into either by the Revisional Authority or by the second respondent. It is pertinent to note that, there is a specific reference made by the Revisional Authority that, the case made out by petitioners herein in the revision is that, there is a delay of three years and ten months in filing the appeal before the second respondent and the same is filed only to protract the proceedings and that, no cogent reasons are assigned for condonation of said delay. But, on perusal of the entire order passed by the Revisional Authority, it can be seen that, there is no reason or finding as such recorded by the Revisional Authority on the said aspect nor has the said authority assigned proper reasons for rejecting the revision petition filed by petitioners herein. Without giving finding to the specific grounds urged by petitioners in their memorandum of revision petition, the Revisional Authority has proceeded to pass the impugned order, rejecting the revision filed by petitioners.

6. Further, one more aspect to be borne in mind is that, the fourth respondent, without any right, title or interest in the land in question, is alleged to have sold an extent of 10 guntas in Sy. No. 99/2 situate at B. Katihalli Village in favour of sixth respondent, who is none other than her elder brother. When this fact has come to the knowledge of the second and first respondents, both the authorities, instead of exercising their powers under the relevant provisions of the Karnataka Land Revenue Act, 1964 and the Karnataka Land Revenue Rules, 1966, ought to have directed the fourth and sixth respondents to work out their remedy before the Competent Civil Court. It is not in dispute that, mutation has been certified and sanctioned in the name of late Sri Manje Gowda on the basis of partition between the parties of joint family members vide Annexure-C and that was in force for a period of three years and ten months and another important aspect that has been overlooked by both the authorities is that, after certifying the mutation, late Sri Manje Gowda has filed the application before the Mandal Panchayat Office, Bhuvanahalli, Hassan Taluk for converting the land in question from agricultural land into non-agricultural land. The said application has been considered and a resolution has been passed on 5th February, 1992 vide Annexure-E permitting the conversion of land from agricultural to non-agricultural purpose in respect of an extent of 0.01 guntas from out of 12 guntas and the said resolution has been forwarded for approval to the Hassan Development Authority. The Town Planning Member of the Hassan Development Authority, in turn, has given approval, permitting the conversion of the said land into non-agricultural purpose. When these vital material were very much available on the file of both the authorities, both the authorities have proceeded and exercised their power u/s 136(2) and 136(3) of the Act without looking into these material documents. Whenever, the dispute between the parties is of civil nature, it is always duty cast on the revenue authorities to direct the parties to wrorkout their remedy as envisaged u/s 135 of the Karnataka Land Revenue Act before the Competent Civil Courts. In the instant case also, both the authorities ought to have directed the parties to workout their remedy before the Competent

Civil Court. Inspect of that, both the authorities have entertained and proceeded to pass the impugned orders without conducting proper enquiry and without considering the specific case made out by petitioners herein. Therefore, in view of non-conduct of proper enquiry in strict compliance of the relevant provisions of the Karnataka Land Revenue Act and Rules and for not taking into consideration the vital material that were very much available on the file of both the authorities, I am of the considered view that, at any stretch of imagination, the impugned orders passed by both the authorities cannot be sustained and hence, they are liable to be set aside.

7. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioners is disposed of as follows.-

(I) The writ petition filed by petitioners is allowed in part;

(II) The impugned order passed by first respondent dated 23rd March, 2004 bearing No. R.A. 51/2002-03 vide Annexure-A and the order dated 22nd October, 1998 in No. R.A. 157/1995-96 vide Annexure-B are hereby set aside and the matter stands remitted back to second respondent to reconsider the matter afresh and to take appropriate decision in strict compliance of the relevant provisions of the Karnataka Land Revenue Act and Rules and after affording reasonable opportunity to petitioners as well as respondents 4 to 6, and to dispose of the same in accordance with law, as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this order.

