

(1988) 11 KAR CK 0054
In the Karnataka High Court
Case No : Writ Petition No. 15770 of 1988

Kalappa Manappa Kummar

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 02-11-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Revenue Act, 1964 — Section 135
Karnataka Land Revenue Rules, 1966 — Rule 16

Citation : (1989) ILR (Kar) 988

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Swami, J

1. In this petition under Articles 226 and 227 of the Constitution the petitioner has sought for quashing the order dated 20th September 1988 passed by the Assistant Commissioner, Haveri in RTS: AP.20/88 Annexure-G. By the said order, the Assistant Commissioner has set aside the mutation entry No. 1393 made in respect of the lands bearing S.No. 73/2B and 73/2A of Yellapur Tarpe Honnathi village. After setting aside the mutation entry, the Assistant Commissioner has reserved liberty to the petitioner to have the land measured by the Assistant Director of Land Records, and get the revenue records corrected according to the measurement.

2. The contention of the petitioner is that the appeal was preferred after a lapse of 14 years and there was no application filed for condonation of delay. Therefore the Assistant Commissioner acted illegally in entertaining the appeal. The learned Counsel for the petitioner has placed reliance on Rule 16 of the Karnataka Land Revenue Rules, 1966 (hereinafter referred to as the "Rules") in support of his contention.

3. To appreciate this contention, it is necessary to state a few facts.

4. Even though no specific application was filed for condonation of delay, but an explanation for the delay was offered by respondents 2 to 4 and it was contested by the petitioner. The Assistant Commissioner accepted the explanation and condoned the delay. Under these circumstances, the question for consideration is whether absence of a formal application will affect the order condoning the delay.

5. It is relevant to remember that Rule 16 of the Rules relates to procedural matters. A Rule of the type in question prescribing the form and contents of the Memorandum of Appeal and filing of an application for condonation of delay if there is a delay in filing the appeal should not be construed as mandatory and strict compliance as per the letter of the Rule should not be insisted upon, so as to defeat the substantive right, namely the right of appeal. Such a provision is directory. As long as there is an explanation offered for the delay and the respondents in the appeal are given an opportunity to contest the explanation and it is considered by the Appellate Authority, there is substantial compliance with the first proviso to Rule 16 of the Rules. In such a case, absence of a formal application for condonation of delay does not amount to non-compliance with the requirement of the first proviso to Rule 16 of the Rules in as much as there is substantial compliance with the first proviso to Rule 16 because explanation for the delay is offered and accepted. The whole object of Rule 16 is to see that the Appellate Authority does not entertain the appeal which is barred by time unless the delay is properly explained and condoned. In the instant case, the delay is condoned.

6. It is next contended that according to the sale deed, the petitioner is the owner of 3-03 acres comprised in S.No. 73/2 whereas respondents 2 to 4 are the owners of 3-03 acres comprised in S.No. 73/2B. Therefore by the mutation entry No. 1393 no injustice is caused. Hence the Assistant Commissioner ought not to have set aside the said entry.

7. In this regard it is relevant to notice that as per mutation entry No. 270 dated 10-4-1932 the land bearing S. No. 73/2B was shown as measuring 2 acres 39 guntas and S.No. 73/2A has shown as 3 acres 7 guntas and that mutation entry continued till it was corrected by mutation entry No. 1393. The mutation entry No. 1393 was made without notice to respondent-2. Under these circumstances, the order passed by the Assistant Commissioner reserving liberty to the 2nd respondent to have the land measured by the Assistant Director of Land Records and then to have the necessary entry made in the record of rights is just and proper. In addition to this, the impugned order is the one passed under Chapter XI of the Karnataka Land Revenue Act, 1964. Any person aggrieved by the order passed under this Chapter has got a right of suit under the proviso to Section 135 of the Act. Anything decided by the Assistant Commissioner under this Chapter is neither final nor conclusive. Therefore, I do not consider it just and appropriate to entertain this Writ Petition. It is accordingly rejected. All the contentions are left open. The impugned order of the Assistant Commissioner is

subject to the result of a suit. Any finding recorded and the observations made therein shall not be taken as final and conclusive. The Civil Court has to decide the suit as per the pleadings of the parties and the evidence adduced by them.