

(2015) 10 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition Nos. 41024/2015 and 41025/2015 (KLR-RR/SUR)

Leela Bai and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Contract Act, 1872 — Section 202

Karnataka Land Revenue Act, 1964 — Section 128, 135, 136(2)

Citation : (2016) 1 KarLJ 283

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Jaikumar S. Patil, Senior Counsel and Pruthvi Wodeyar, Advocate, for the Appellant; H. Venkatesh Dodderi, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Common questions of law and that of fact arise for decision making, hence with the consent of the learned counsel for the parties, petitions are clubbed together, finally heard and disposed of by this order.

2. Petitioner in Writ Petition No. 41024/2015 claims to be the owner of the immovable property measuring 2 acres 10 guntas in Sy. No. 160 (Old No. 13) of Nagawara village, Kasaba Hobli, Bangalore North Taluk, having purchased the same under a registered sale deed dated 8.3.2006 for a valuable consideration from its erstwhile owners, none other than the legal representatives of deceased Ponnuswamy Mestri, following which, the Tehsildar, having exercised jurisdiction under Section 128 of the Karnataka Land Revenue Act, 1964, for short "Act" recorded the name of the petitioner in M.R. 93/2005-06.

3. Petitioner in W.P. No. 41025/2015, claims to be the absolute owner of 1 acre 1 gunta of land in Sy. No. 111 (Old No. 53) of Hennur village, Kasaba Hobli, Bangalore North Taluk, having purchased the same under registered sale deed 8.3.2006 for a valuable sale consideration executed by legal heirs of Ponnuswamy Mestri, following which, the Tehsildar in exercise of power under

Section 128 of the Act, recorded the name of the petitioner in MR. 1/2006-07. In addition, the said petitioner states that during the year 1998, officials of BDA, having interfered with petitioner's peaceful possession and enjoyment of the property led to institution of O.S. 7433/1998 as GPA Holder of the sons of Ponnuswamy Mestri, arraigning BDA as party defendant, for permanent injunction, whence, by judgment and decree dated 20th March, 2014, the suit was allowed and BDA was permanently restrained from interfering with petitioner's peaceful possession and enjoyment of the property which is said to have attained a finality.

4. It is the case of both the petitioners that respondent No. 4 A. Ameer Jaan approached the 2nd respondent-Assistant Commissioner, Bangalore North Sub-Division, challenging the mutation entry No. 8/2006-07 dated 21.4.2007 in respect of petitioner in W.P. No. 41024/2015 and M.R. 1/2006-07 in respect of petitioner in W.P. 41025/2015. Those appeals were registered as RA(BN) 202/2014-15 and RA (BN). 201/2014-15, whence Mahesh Babu the Assistant Commissioner exercising jurisdiction under Section 136(2) of Act passed an order of even date 11.3.2015 allowing the appeals. This Court by order dated 16th June 2015, in W.P. 22828/2015 allowed the petition, set-aside the orders of the Assistant Commissioner and remanded the proceeding for a fresh consideration after extending reasonable opportunity of hearing to the parties with a direction to dispose of the appeals on the same day or on the date to be fixed for pronouncing the order, while directing parties to be present before the Assistant Commissioner on 27.06.2015 at 2.30 p.m., and recording the submission of Sri Jai Kumar S. Patil, learned Senior counsel for petitioners that petitioners would not dispose off or alienate the property during the pendency of the appeals.

5. On remand, the Assistant Commissioner took on record the statement of objections to both I.A. for condonation of delay and the appeals, filed by the petitioners, arraigned as respondent in each of the appeals, as also their written arguments. By orders of even date 21st August, 2015, the Assistant Commissioner allowed the appeals, set-aside M.R. 1/2006-07, subject matter of W.P. 41205/2015 and M.R. 8/2006-07 subject matter of W.P. 41204/2015, recording findings of fact that Ponnuswamy Mestri's legal representatives received the entire sale consideration on executing a general power of attorney on 23.3.1987 in favour of Ameer Jaan, in respect of the immovable properties in question which under Section 202 of the Contract Act is an agency coupled with interest which is not revocable, directed that the name of the appellants be recorded in the RTC Pahani in respect of said properties; that the documents placed by the appellant, more appropriately, copies of sale deeds and survey records, and subsequent declaration dated 6.5.1991 of the owners, clearly establishes that "the appellant is having right over land in question being GPA holder with an agreement to sale"; and that the land in question is allotted with house list number from village panchayat of Nagavara, based upon which the appellant being the GPA holder sold and conveyed several sites in favour of prospective purchasers evident from the copies of sale deeds, observing that

petitioners, arraigned as respondent No. 2 did not specifically deny the sale deeds. It is in the said circumstances, the Assistant Commissioner opined that recording of names of petitioners in the revenue records was liable to be set-aside and further observed that petitioners can work out their remedies before a competent civil Court. Hence these petitions.

6. Learned Senior Counsel for petitioners submits that the G.P.A., affidavit and other documents are not in the nature of transfer of property in favor of Ameer Jan, in view of the decision of the Apex Court in Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, ; that the sale deeds copies of which are produced are in respect of sale of sites not carved out of the lands in question; that there is no proof of execution of the GPA, and all other documents by LR"s of Ponnuswamy Mestri and; that the Assistant Commissioner had neither competence nor jurisdiction to record findings of fact over title to immovable property in view of the decision in C.N. Nagendra Singh Vs. The Special Deputy Commissioner and Others, .

7. At this stage, Sri C.M. Nagabhushana, learned Senior counsel for contesting respondent submits that impugned orders passed in appeals if set aside, may permit the contesting respondent to institute a civil suit for declaration and consequential reliefs by way of directions to the revenue authorities to make entries in the revenue records in respect of lands in question.

8. Regard being had to the claims of title to the property on the basis of power of attorney, agreement of sale, said to be executed in favour of Ameer Jaan, and the well settled position over their validity in Suraj lamps" case, supra, needless to state that the Assistant Commissioner, did not have jurisdiction to adjudicate upon title to the property and record findings on facts touching upon title to property, in the light of Full Bench decision of this Court in C.N. Nagendra Singh Vs. The Special Deputy Commissioner and Others, , observing that the revenue court had no jurisdiction to go into the genuineness of the Will or questions of title. Yet again, the Assistant Commissioner in his order in R.A.(BN) 202/2014-15 did not notice that the name of petitioner in WP 41024/2015 was recorded in M.R. 93/2005-06 and not M.R. 8/2006-07.

9. The orders impugned are unsustainable. Petitions are accordingly allowed. The orders of Mahesh Babu, the Assistant Commissioner are quashed and the appeals dismissed, with a direction to the 2nd respondent present before court during entire hearing and dictation of the order to abide by the rule of law and not pass orders which are apparently illegal and arbitrary reserving liberty to the appellant arraigned as 4th respondent in each of the petitions to institute civil proceeding for declaration of title in respect of immovable properties in question and consequential reliefs directing the revenue authorities to amend entries in the revenue records in the light of the proviso to Section 135 of the Act.

10. If suits are instituted by 4th respondent, within two months from today, petitioners are directed not to alienate or not dispose of the immovable

properties, until such institution.