

(2010) 04 KAR CK 0210
In the Karnataka High Court
Case No : Writ Petition No. 20790 of 2009

M. Ashwath and Others

APPELLANT

Vs

The Special Deputy Commissioner and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128 (4), 129

Citation : (2010) 3 KarLJ 286

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : M.S. Rajendra Prasad, for the Appellant; Omkumar, A.G.A. and R.B. Sadashivappa, for J.C. Kumar, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—Petitioners have sought for to issue writ of certiorari quashing the order passed by the Special Deputy Commissioner in Revision Petition No. 95 of 2007-08, dated 30-4-2009 at Annexure-A and to restore the order passed by the 2nd respondent in R.A. No. 405 of 2004-2005 and for such other orders.

2. Heard.

3. Petitioners are claiming to be the children of one Jayamma, who is said to have purchased the properties in Sy. Nos. 16/3 and 17/2 measuring 2 acres 20 guntas and 1 acre 13 guntas respectively situate at Gollahalli Village, Jala Hobli, Bangalore North Taluk from one Joseph during the year 1968 and the said Joseph is said to have purchased the property in question from the 4th respondent during 1967.

4. According to the learned Counsel for the petitioners, the properties in question has been sold by the erstwhile vendor namely, respondent 4 in favour of one Joseph and thereafter, from Joseph, the petitioners' mother has purchased and as such, the question of entering the name of the 4th respondent in the revenue

records is without authority of law and not considering the material documents produced. It is further submitted that, as per Section 128(4) of the Karnataka Land Revenue Act, 1964, the petitioners are exempted from reporting to the revenue authorities regarding changing of entries i.e., names in the record of rights and other registers by virtue of the sale deed executed by respondent 4 to one Joseph and from Joseph to petitioners' mother and for the lapse on the part of registering authorities and revenue authorities in not making the entries pursuant to the sale deed, the petitioners cannot be made to suffer; the order passed by the Assistant Commissioner cancelling the entries made in favour of the 4th respondent and remanding the matter back to the Special Tahsildar, Bangalore North Taluk, to look into the documents and to pass appropriate orders, is appropriate and the observation made by the Special Deputy Commissioner at Annexure-A is non est and is uncalled for.

5. Per contra, the learned Counsel appearing for respondents 4 and 5 has submitted that throughout, the name of the 4th respondent is found in the revenue records and as such, based on the said entries subsequently, on the request of the 4th respondent, the name of 4th respondent was entered in the mutation register as per Annexure-E by the Tahsildar. It is further submitted that at no point of time, the revenue records never depicted the names of the petitioners and as such, they are not entitled for any rights and it is for the petitioners to approach the Civil Court asserting their rights.

6. Section 128(4) of the Karnataka Land Revenue Act, 1964 reads thus:

128. Acquisitions of rights to be reported.-....

(4) No document by virtue of which any person acquires a right in any land as holder, occupant, owner, mortgagee, landlord or tenant or assignee of the rent or revenue thereunder, shall be registered under the Indian Registration Act, 1908 (Central Act 12 of 1908), unless the person liable to pay the registration fee also pays to the registering authority such fees as may be prescribed for making the necessary entries in the record of rights and registers referred to in Section 129; and on the registration of such a document, the Registering Authority shall make a report of the acquisition of the right to the prescribed Officer.

Section 128(4) of the Act provides for exemption from reporting the acquisition of right, rather, the duty is cast on the revenue authorities as well as on the registering authorities to make the entries regarding change of title etc., and suo motu action has to be carried out by the revenue authorities. In the absence of the same, if the changes made came to their knowledge at a belated stage, it is from the date of entry that could be taken into consideration.

7. What is being noticed at Annexure-E is that the name of the 4th respondent has been entered in the mutation register during 1991 by the 3rd respondent-Tahsildar at his instance. However, the same has been challenged by the petitioners before the Assistant Commissioner, who in turn on noticing the sale deed alleged to have been executed in favour of one Joseph by the 4th

respondent and from Joseph in favour of the petitioners" mother, directed the Tahsildar to hold an enquiry and to pass appropriate orders looking into the documents available. However, the said order has been challenged by the 4th respondent before the Special Deputy Commissioner, who in the usual course, has directed him to approach the Civil Court for adjudication of his rights, which order is under challenge by the petitioners.

8. When the duty is cast upon the revenue authorities to change the names and if the changes are not made, necessarily the petitioners could very well-challenge the entries made when it has come to their knowledge. The action taken by the revenue authorities contrary to the registered sale deeds and entering the name of the 4th respondent, the original vendor is contrary to the legal position. As such, after verifying the same, the Assistant Commissioner, in appeal, has rightly set aside the order passed by the Tahsildar in entering the name of the 4th respondent and directed to verify the alleged sale deeds regarding its authenticity and to pass appropriate orders giving opportunity to both the parties, which cannot be found fault with. It is not as if the parties are agitating over the property rights. Once the sale deeds have been executed, unless it is challenged by the vendor himself, he cannot say that he has not sold the property. Mere disputing that he has not executed the sale deeds is not sufficient when there are registered sale deeds. The order of the Deputy Commissioner would be without noticing the provisions of Section 128(4) of the Act. Further, the citation relied upon by the learned Counsel for the respondents in the case of D.S. Basavegowda and Others Vs. The Deputy Commissioner and Others, , is not straightaway applicable to the case on hand.

9. In the circumstances, petition is allowed and the impugned order passed by the Special Deputy Commissioner at Annexure-A is quashed while upholding the order of the Assistant Commissioner in directing the Tahsildar to pass orders in accordance with law while setting aside the order passed by the Tahsildar at Annexure-E. It is for the Tahsildar to consider the case of the respondents for an interim order after verifying the record if permissible.