**(2006) 03 KAR CK 0090**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 34497 of 2002

N. Bhagyalakshmamma APPELLANT

Vs

Smt. Subbulakshmamma and Others RESPONDENT

**Date of Decision :** 27-03-2006

**Acts Referred:**

Karnataka Land Revenue Act, 1964 — Section 127, 128, 129
Registration Act, 1908 — Section 17, 58

**Citation :** (2006) 03 KAR CK 0090

**Hon'ble Judges :** K. Ramanna, J

**Bench :** Single Bench

**Advocate :** Ashok R. Kalyanshetty, for the Appellant; T. Krishna, for G.S. Vishweswara, N.S. Satish Chandra, for Caveator-Respondent 3 and Akkamahadevi, High Court Government Pleader for Respondents 6 to 11, for the Respondent

**Final Decision :** Allowed

## Judgement

K. Ramanna, J.—The petitioner herein filed this writ petition challenging Annexure-L, dated 29-4-2000 passed by the 9th respondent in Case No. RA 205/96-97, Annexure-R, dated 24-8-2002 passed by the 10th respondent in Case No. RA 37/2000-01 and to restore the mutation Entry M.R. No. 5/95-96, Annexure-E in favour of the petitioner.

2. The case of the petitioner is that late C.S. Narayana Rao, the husband of the deceased 1st respondent-Subbulakshmamma and father of respondents 2 to 4 being the Barabardar (Baravadhar) of Varamallenahalli Village pursuant to appointment order dated 7-5-1925 was in exclusive possession and enjoyment of the inam land bearing Sy. No. 1 measuring 6 acres 37 guntas of Varamallenahalli Village, Chickballapur Taluk. After coming into force of the Karnataka Village Offices Abolition Act, 1961, late C.S. Narayana Rao made an application for grant of the said land in his favour. Accordingly, the said land was regranted in his favour by the Tahsildar, Chickballapur in the year 1991 with certain conditions

 

regarding alienation, etc. Accordingly, his name alone came to be entered as kabjedar in the revenue records as is evident from the record of rights and pahani for the year 1993-94 as per Annexure-A. Therefore, late Narayana Rao being the absolute owner of the said land and since he was not in a position to cultivate the land decided to sell the land in order to help his children to construct a house at Bangalore. Therefore, late Narayana Rao executed power of attorney in favour of respondent 5-M.R. Krishna, who is none other than the son of petitioner herein and the power of attorney came to be executed on 26 9-1994 as per Annexure-B by late C.S. Narayana Rao husband of 1st respondent, respondent 3-C.N. Chandrashekar Rao and other legal representatives of late C.N. Narayana Rao. An agreement of sale was entered into between the petitioner and deceased 1st respondent and respondents 2 to 4 and C.S. Narayana Rao sold the said properly for a sum of Rs. 65,000/- as per Annexure-A. The agreement of sale was executed on 26th of September, 1994. In pursuance of the agreement of sale, the power of attorney as per Annexures-B and Bl, sale deed came to be executed in favour of the petitioner through the power of attorney holder of the respondent 5 herein on behalf of respondents 1, 2 to 4 and late C.S. Narayana Rao, that too after obtaining necessary permission from the concerned revenue authorities to alienate the property as per Annexure-Cl, dated 29-3-1995 and the sale deed was executed on 31-3-1995 as per Annexure-D. Therefore, after execution of the sale deed, mutation was effected in M.R. No. 5/95-96 and the name of the petitioner was entered in the record of rights for the year 1996-97 and patta book was issued as per Annexure-E2 and Annexure-E3 is the record of rights for the year 1999-2000. The petitioner is cultivating the land as the absolute owner. Annexure-G came to be filed by C.N. Chandrashekar before the Revenue Authority stating that his two brothers and his father executed power of attorney in favour of respondent 5-M.R. Krishna only to cultivate the land. So on the basis of the power of attorney respondent 5 executed sale deed in favour of his own mother the petitioner herein. Consequently, katha has been changed and the name of the petitioner has been entered in the record of rights. Therefore, respondent 3-Chandrashekar Rao seeks to set aside the sale deed and the land restored to their possession. So, on the basis of the representation dated 19-6-1996 at Annexure-G a case came to be registered before the Assistant Commissioner in R.A. No. 205/96-97. Notice came to be issued and the same was allowed. The petitioner herein challenged the same before this Court in W.P. No. 36318 of 1997 and this Court by an order dated 13-7-1999 allowed the writ petition and quashed the impugned order and remitted the matter back to the Assistant Commissioner for fresh disposal in accordance with law. After remand Annexure-L came to be passed by the very Assistant Commissioner on 29-4-2000 allowing the appeal and setting aside M.R. No. 5 of 1995-96, directing the 5th respondent and the petitioner herein to approach the Civil Court to prove their title, which has been challenged by the petitioner before the Deputy Commissioner as per Annexure-R, dated 24-8-2002. The Deputy Commissioner passed an order holding that respondent 5 who has executed a sale deed was not a kathedar and the power of attorney has not been registered. Therefore, the Deputy Commissioner dismissed the appeal R.A. No. 37 of 2000-01 filed by the 5th respondent and the petitioner therein as per Annexure-R. Therefore, the petitioner herein has come up with this writ petition, as the very petitioner who has challenged the order passed by the 8th respondent. Tahsildar, Chickballapur, dated 8-8-2001 in Writ Petition No. 33877 of 2001 before this Court, which was allowed as per Annexures-Q and K in the said writ petition was quashed. The submissions made at the Bar and from the pleadings, it is clear that it is a dispute regarding the property rights between the petitioner and respondents 1 to 4. Such disputes have to be settled in a manner known to law. Therefore, the petitioner herein, being the purchaser of the land has come up with this writ petition to quash Annexures-L and R and restore the Mutation Entry No. 5/1995-96.

3. Respondents 1 to 3 have taken the contention in the counter that there was a condition that land shall not be alienated for a period of 15 years from the date of regrant. After regrant, the katha came to be changed in favour of late C.S. Narayana Rao vide M.R. No. 2 of 1994-95. All the family members of C.S. Narayana Rao were and are in possession and enjoyment of the land in dispute after the land was re-granted by the Tahsildar. The katha also stands in the name of C.S. Narayana Rao and the entries in the pahanies were standing in his name and C.S. Narayana Rao has paid Kandayam also. The General Power of Attorney came to be executed on 29-6-2004 by C.S. Narayana Rao in favour of 5th respondent to manage and develop the land in dispute on their behalf. But 5th respondent has executed an agreement of sale in favour of the petitioner who is none other than his mother by colluding with her with a mala fide intention of grabbing this valuable land. The power of attorney is not coupled with interest and it is not registered one. Respondents have developed the land in question by spending a lot of money and labour and made it garden land containing 500 coconut trees, borewell along with pump sets and motor and also put up sheds. The alleged sale deed said to have been executed by respondent 5 on 2-10-1994 in favour of the petitioner who is none other than his mother and the petitioner has claimed title to the property on the basis of the alleged sale deed said to have been executed by the power of attorney holder i.e., 5th respondent. Since the power of attorney is not a registered document and it is not coupled with any interest and the said General Power of Attorney is compulsorily registerable document as per Section 17 of the Registration Act, 1908 and 5th respondent who is the power of attorney holder had no saleable interest to transfer the property in favour of the petitioner, as he was not the absolute owner of the property as on 31-3-1995. Therefore, the Assistant Commissioner and the Deputy Commissioner are right in recording the findings by holding a detailed enquiry. The Deputy Commissioner has clearly held that respondent 5 has no right to execute sale deed in favour of the petitioner as he is not the owner and the power of attorney is null and void and the Tahsildar has no jurisdiction to issue Annexure-RI when the writ petition is pending before this Court. Therefore, the order is one without any jurisdiction. At any stretch of imagination the

 

Tahsildar cannot direct the change of katha in the name of the petitioner by sitting over the judgment of the Deputy Commissioner. Hence, the respondents 1 to 3 prays for dismissal of the writ petition.

4. The learned High Court Government Advocate appearing on behalf of respondent 9 also filed a detailed statement of objection. The Government of Karnataka in its Circular No. RD 124 TRM 95(P), dated 10-7-1995 has directed to review the transaction related to GPA holder in the light of instructions contained in the circular. As such the Deputy Commissioner was competent to review such transactions brought to his notice and might instruct the Assistant Commissioner to consider it as an appeal. Sy. No. 16 of Varamallenahalli with an extent of 6 acres 37 guntas of land was a shanbhogue inam land re-granted to late C.S. Narayana Rao under the provisions of KVOA Act in No. HOA(N) 12/81-82, dated 29-6-1991 of the Tahsildar, Chickballapur. Since late C.S. Narayana Rao, his wife and their sons have executed a General Power of Attorney in favour of M.R. Krishna, S/o. M. Ramakrishnappa, Madarahalli Village, Chintamam Taluk on 26-9-1994 and M.R. Krishna, the General Power of Attorney holders have sold the lull extent of disputed land to the petitioner under registered deed No. 12 of 1995-96, dated 3-4-1995 and the General Power of Attorney is not registered deed as required u/s 17 of the Registration Act. Hence, respondent 9 prays for dismissal of the above writ petition. The orders under challenge passed by the Deputy Commissioner and the Assistant Commissioner is not in accordance with law.

5. Heard the arguments of learned Counsel for the petitioner, learned Counsel for respondents 1 to 3 and learned High Court Government Pleader for respondents 6 to 11.

6. During the course of argument, learned Counsel for the petitioner contended that the General Power of Attorney executed by late C.S. Narayana Rao, wife and children i.e., deceased respondent 1 and respondents 2 to 5 in favour of respondent 5 on 26-9-1994 authorising respondent 5 to execute the sale deed bequeathed the property by way of gift to mortgage on their behalf and to receive the amount as per Condition 1 of Annexure-Bl and etc., and it is contended that the agreement of sale Annexure-B came to be executed by late Narayana Rao, deceased respondent 1 and respondents 2 to 5 and agreed to sell the said item of the land for a sum of Rs. 65,000/, therefore it is not proper on the respondents to contend that respondent 5 has executed agreement of sale in favour of the petitioner and so also executed the sale deed is incorrect. It is contended that late Narayana Rao and his wife and sons executed power of attorney Annexure-B on 26-9-1994, but the agreement of sale is executed by them on the very same day. Therefore the Revenue Authority is right in effecting the mutation and registering the sale deed in favour of the petitioner. It is contended that the suit was got filed through the sisters of respondents 2 to 4 knowing fully well that they have executed agreement of sale and power of attorney in favour of 5th respondent. After registering sale deed mutation was

 

effected and name of the petitioner was entered in the revenue records. Therefore, the Deputy Commissioner passed an order as per Annexure-R without looking into the contents of the registered sale deed, the power of attorney and its conditions, wrongly came to the conclusion. The katha has not been changed in the name of 5th respondent, the power of attorney ought to have been executed is totally incorrect. In support of this contention learned Counsel for the petitioner as relied on a decision in Syed Abdul Khader Vs. Rami Reddy and Others, , wherein, the Hon''ble Apex Court held that:

Head Note (B): Registration Act, 1908 (16 of 1908), Sections 58 and 17 - Power of attorney - Not compulsorily registrable - Donors of power who executed it known to Registrar - Non-mention of that fact on deed does not invalidate it.

He has also relied on another decision of this Court in Mahesh v. Deputy Tahsildar, Nadakaeheri Dambal and Ors. 2003(1) KCCR . 3, wherein this Court has held that:

Sections 127 to 129 of the Karnataka Land Revenue Act, 1964 - Kamataka Land Revenue Rules, 1960 - The Revenue Courts is prevented from recording statement of the parties and their depositions, the question of establishing the genuineness of the sale deed would not arise. Therefore the Revenue Court has no jurisdiction to go into the genuineness of the sale deed executed by the 5th respondent in favour of the petitioner.

He has also relied on a Division Bench decision of this Court in the case of H.M. Hanumantharaju and Ors. v. State of Karnataka and Ors. 2000(8) Kar. LJ. 58 : ILR 2001 Kar. 3445, wherein this Court has held:

Karnataka Land Revenue Act, 1964 (Karnataka Act No. 12 of 1964), Section 128 - Karnataka Land Grant Rules, 1969, Rule 9(1)(i) and (v) - Grantees sold the lands in contravention of the clause prohibiting alienation - Deputy Commissioner ordered to strike off the names of the purchasers from the Revenue Records - Order of the Deputy Commissioner set aside - Proper procedure is to take action for cancelling the grant.

He has also relied on another decision of this Court in the case of T. Siddeshi Vs. The Deputy Commissioner, Davanagere and others, , wherein, it has been held that:

Any person who possesses title to land has light to be shown as Khatedar in record of rights register and mutation registers - Question of title and possession if any in dispute, same within domain of Civil Court to adjudicate.

Therefore, learned Counsel for the petitioner submits that the order under challenge passed by the Deputy Commissioner and the Assistant Commissioner as per Annexures-L and R are liable to be quashed and register the mutation Entry No. 5/95-96 as per Annexure-E in her favour,

7. As against this, Advocate for respondents 1 to 3 submitted that the Assistant

 

Commissioner as well as the Deputy Commissioner who passed the orders Annexures-L and R is in accordance with law and directed the Tahsildar to register the original entry in favour of respondents. It is contended that there was a condition that the land shall not be alienated for a period of 15 years from the date of regrant. The General Power of Attorney came to be executed by C.S. Narayana Rao in favour of respondent 5 who has executed agreement of sale in favour of the petitioner who is none other than his mother with a mala fide intention to grab the property, that the power of attorney is not coupled with interest and it is not registered. The petitioner who has claimed title to the property on the basis of the alleged sale deed executed by the power of attorney holder 5th respondent, viz., the Assistant Commissioner and Deputy Commissioner are right in dismissing the appeal and the revision petition filed by the petitioner. In support of this contention the learned Counsel for respondents 1 to 3 relied on a decision of this Court in the case of Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and Others, , wherein this Court has held:

Merely making statement that defendant did not execute sale deed despite notice being issued - Do not satisfy mandatory requirement of Section 16(c) of Specific Relief Act, 1963 - Particularly, when notice was served upon power of attorney holder of defendant which was already revoked to knowledge of plaintiff - And the power of attorney was not registered one and holder was not competent to execute registered sale deed.

He has also relied on another decision of this Court in the case of Company Bank, Bangalore Vs. Lalitha H. Holla and Others, , wherein it has been held that:

Power of attorney simpliciter authorising execution of acts does not create equitable assignment - Unless agency coupled with interest in favour of agent created or recognised, power of attorney not irrevocable though called so - Assignment of debt does not require registration, assignment of rents requires registration - Power of attorney creating equitable assignment of rents, if not registered void and unenforceable.

He has also relied on other decision of the Apex Court in the case of The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, , wherein the Apex Court has held:

The right to catch and carry away the fish being a "profit a prendre" i.e., a profit or benefit arising out of the land, it has to be regarded as Immovable property within the meaning of the Transfer of Property Act, 1882 read in the light of Section 3(26) of the General Clauses Act, 1897. If a ''profit a prendre'' is tangible Immovable property, its sale has to be by means of a registered instrument in case its value exceeds Rs. 100/- because of Section 54 of the Transfer of Property Act. If it is intangible, its sale is required to be effected by a registered instrument whatever its value. Therefore, in either of two situations, the grant of the ''profit a prendre'' has to be by means of a registered instrument. Accordingly, the transaction of sale of the right to catch and carry away the fish if not effected by means of a registered instrument, would pass no title or interest.

Therefore, learned Counsel for respondents 1 to 3, prays for dismissal of the writ petition.

8. On the other hand learned High Court Government Pleader submitted that in order to avoid the execution of sale deed by a power of attorney holder the Government of Karnataka by its Circular dated 10-7-1995 directed to review the transactions related to General Power of Attorney holder. Therefore, the Deputy Commissioner was competent to review such transactions brought to his notice and might instruct the Assistant Commissioner to consider it as an appeal. Therefore, both the Assistant Commissioner and the Deputy Commissioner are right in setting aside the order of the Tahsildar. Therefore, the present writ petition is to be dismissed as the General Power of Attorney is a compulsorily registered one and the katha of the land in question was not standing in the name of the 5th respondent.

9. Having heard the arguments of learned Counsel for both the parties, now I proceed to see whether the impugned order under challenge Annexures-L and R is a violation of principles of natural justice and to decide the rights of the parties and the revenue records have bared to decide the title of the parties in respect of moveable properties. As could be seen from the records that late C.S. Narayana Rao husband of deceased 1st petitioner and father of respondents 2 to 4 were in need of money. Therefore on 26-9-1995 they also executed Power of Attorney as per Annexure-B1 in favour of 5th respondent. It does not lie in the month of the respondents to say that 5th respondent has executed an agreement of sale in favour of his mother. If the respondents 2 to 5 have not executed either power of attorney or agreement of sale in favour of the petitioner they ought to have joined as plaintiffs with their sisters in filing the civil suits to declare that the sale deed executed by respondents 2 to 5 in favour of the petitioner is null and void. It is clear from the material placed on record that the suit came to be filed through the sisters of respondent 2 to 5, which clearly indicates that they wanted to go back on the execution of agreement of sale and the General Power of Attorney executed in favour of 5th respondent. Therefore, the impugned order under challenge passed by the Assistant Commissioner and the Deputy Commissioner as per Annexures-L and E when once the registered sale deed is executed in favour of the petitioner, the course available for the petitioner and the Tahsildar is to invoke the provisions of Sections 127 and 129 to change the mutation and other entries. Therefore viewed from any angle 1 do not find any good reasons to hold that the Tahsildar viz., respondent 7 has violated any procedural laws of the provisions of Kamataka Land Revenue Act in changing the katha as per M.R. No. 5/94-95 in the name of the petitioner. That the circular if any issued by the Revenue Authorities will not overcome or supersede the Karnataka Land Revenue Act and Rules. Therefore, the findings recorded by the Assistant Commissioner and the Deputy Commissioner are totally incorrect and illegal, knowing fully well that the suit for declaration of sale deed which is null

 

and void is still pending.

Hence, the writ petition is allowed and the impugned orders Annexures-L and R passed by the Assistant Commissioner and the Deputy Commissioner is set aside and the Revenue Authorities are directed to restore the Mutation Entry No. 5/94-95 as per Annexure-E.

 