

(2010) 09 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 28533 of 2010

N. Vasudevaraju and Smt. Vijaya

APPELLANT

Vs

Deputy Commissioner, Ramanagaram District and Others

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 133, 135, 136 (3)

Citation : (2010) 09 KAR CK 0022

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : T.S. Amar Kumar, for Lawyers Inc, for the Appellant; D.S. Jayaraj, for C/R-5 and R. Om Kumar, AGA for Respondents 1 to 3, for the Respondent

Judgement

A.S. Pachhapure, J.—The Petitioners have challenged the orders passed by the first and second Respondent namely the Deputy Commissioner and the Assistant Commissioner Ramanagaram, directing to enter the names of Respondents 5 and 6 in the records of the land bearing R.S. No. 37/2 of Billakempanahalli Village, Ramanagaram Taluk.

2. The facts reveal that one Hanumanthaiah son of Basappa was the absolute owner in possession of the land bearing R.S. No. 37/2 measuring 3 acres 5 guntas including 4 guntas of kharab land. The said Hanumanthaiah alongwith the family members sold the land to the extent of 3 acres and 3 guntas in S. No. 37/2 in favour of one Venkatalakshmamma under the sale deed dated 11.5.1993. The remaining extent of 0.2 guntas in the same survey number was sold by Hanumanthaiah and his family members in favour of Venkatalakshmamma under a registered sale deed on 12.5.1993. So the said Venkatalakshmamma became the absolute owner in possession of the property measuring 3 acres and 5 guntas in S. No. 37/2.

3. Subsequently, Smt. Venkatalakshmamma sold an extent of 2 acres 4 guntas in favour of Respondent No. 4 herein under two separate sale deeds dated 24.10.1994. Pursuant to these sale deeds, the mutations were made in the

records vide MR No. 41/94-95. The first Petitioner herein purchased one acre of land in R.S. No. 37/2 under the sale deed dated 17.8.1985 from Respondent No. 4 and on the same day. Respondent No. 4 also sold another extent of 1 acre of land excluding 0.2 guntas of kharab land in favour of the second Petitioner.

4. Subsequent to the purchase of these properties, the names of the Petitioners were entered in the mutation register as per MR No. 17/94-95 and MR No. 1/95-96 in the year 2002. The lands purchased by the Petitioners was surveyed and new sub numbers were assigned. The land belonging to the first Petitioner was numbered as S. No. 37/5, whereas that of second Petitioner was numbered as S. No. 37/4. They also claim that some portion of the land has been acquired by the Government for widening the Mysore-Bangalore High Way.

5. The Respondents 5 and 6 claiming to be the children of one Hanumanthappa filed an appeal before the Respondent No. 2 - Assistant Commissioner in R.A. No. 149/2006-07 challenging the mutation proceedings in Mr. No. 42/94-95, 17/95-96 and MR No. 1/96-97 in the year 2006. The learned Respondent No. 2 - the Assistant Commissioner without issuing notice to the Petitioners passed an order on 19-09-2008 setting aside the mutation proceedings and remitted the matter to the Tahsildar to hold a fresh enquiry. Aggrieved by the said order, the Petitioners approached the Respondent No. 1 - the Deputy Commissioner in R.P. No. 58/2009-10. The Deputy Commissioner after hearing the parties dismissed the revision petition vide his order dated 25-08-2010 and further directed the Respondent No. 3 - Tahsildar to enter the names of Respondents 5 and 6 without any enquiry. Aggrieved by the order, the instant petition has been filed.

6. I have heard the learned Counsel for the Petitioners and the counsel for Respondent No. 5 and the AGA for Respondents 1 to 3.

7. It is the contention of the learned Counsel for the Petitioners that the first Respondent - Deputy commissioner has no jurisdiction to declare the sale deed as invalid and therefore, the order passed by the Respondents 1 and 2 are illegal and void. So also, it is his submission that there are sale deeds since from 1993 onwards and the Petitioners have purchased the property in the year 1995 and Respondents 5 and 6 kept quite all along till the year 2006 and filed an appeal before the Assistant Commissioner and this itself would go to show that the Respondents have no bonafides in initiating the proceedings. He has produced the copy of the sale deeds at Annexures-A to E including the mutation entries and it is his submission that in view of these documents, the entries were effected all along whenever there was a registered sale transaction and that the revenue authorities have no jurisdiction to decide the title or the validity of the sale deeds. In these circumstances, it is his submission that as the orders are without jurisdiction, will have to be set aside.

8. Per contra, the learned Counsel appearing for Respondent No. 5 and the learned AGA submitted that there is an efficacious remedy available for the Petitioners under the provisions of Section 135(2) of the Karnataka Land

Revenue Act, 1964 (hereinafter called as "the Act" for short) and that the Petitioners have to approach the Civil Court seeking the relief of declaration and possession and that a writ petition challenging the orders of the Deputy Commissioner passed u/s 136(3) of the Act is not maintainable. So also, it is their submission that all these sale transactions said to have been executed are not executed by the owners of the land of which Respondents 5 and 6 are successors and a sale deed executed by a person who is not a owner is void abinitio and therefore, it is for the Petitioners to approach the Civil Court for the relief. It is their further claim that Respondent No. 5 has inherited this property from their ancestors and therefore, the Deputy Commissioner was right in directing to enter their names in the records.

9. The counsel for both the parties have relied upon certain decisions which will be referred to hereafter.

10. Now, so far as the facts are concerned, they reveal that one Hanumanthaiah sold 3 acres and 3 guntas of land in S. No. 37/2 under a registered sale deed dated 11.5.1993 in favour of Venkatalakshamma and also sold 2 guntas of land to her under registered sale deed dated 12.5.1993. Thereby, Venkatalakshamma became the owner of the property on the basis of these two sale deeds for S. No. 37/2 measuring 3 acres 5 guntas. Subsequently, Venkatalakshamma sold an extent of 2 acres 4 guntas of the land bearing S. No. 37/2 in favour of Respondent No. 4 under two separate sale deeds dated 24-10-1994. Pursuant to the sale deeds, the mutation was carried out In the name of the Respondent No. 4 vide MR No. 41/94-95. Thereafter, Respondent No. 4 sold an extent of 1 acre in favour of Petitioner No. 1 and another extent of 1 acre excluding 02 guntas of karab in favour of Petitioner No. 2 herein under sale deed dated 17-08-1995. So since from 17.8.1995 after the registration of these deeds, the names of the Petitioners are appearing in the record of rights.

11. So it is for the first time in the year 2006 that Respondents 5 and 6 after a lapse of about ten years filed an appeal to the Assistant Commissioner in RA(LKP)149/2006-07 and the learned Assistant Commissioner though stated in the order that the Respondents were informed of the appeal, set aside the mutation entry made in favour of the Petitioners and remitted the matter to the Tahsildar. This order of the learned Assistant Commissioner at Annexures-N was challenged before the Deputy Commissioner the first Respondent in Revision Petition No. 58/2009-10.

12. Now, as could be seen from the order of the Deputy Commissioner at Annexure-P, he states that Respondents 4 and 5 before him claim the properties as their ancestors property and their ancestors have not sold this property to any body and that the Petitioners have purchased this property from the persons who were not the owners and therefore, the sale deeds are invalid. This submission of Respondents 4 and 5 was accepted by the learned Deputy Commissioner who passed the order dismissing the revision petition of the Petitioners herein and directed to enter the names of Respondents 4 and 5 in the records of S. No. 37/2.

13. Here the question that arises for consideration is as to whether the revenue authorities have any jurisdiction or competency to hold an enquiry to find out as to whether the sale deeds executed are invalid or otherwise?

14. On this aspect of the matter, the learned Counsel for the Petitioners have relied upon a full bench decision of this Court reported in C.N. Nagendra Singh Vs. The Special Deputy Commissioner and Others, , wherein the Full Bench of this Court taking into consideration Articles 226 and 227 answered the question that was referred to the Full Bench for decision. The question was:

Whether the Revenue Officer is competent to hold an enquiry and decide the question of genuineness of the Will in a proceeding u/s 129 of the Land Revenue Act?

The Full Bench held as under:

When the Revenue Court is prevented from recording the statements of the parties and the depositions, the question of establishing the genuineness of the Will would not arise. Hence, the Revenue Courts have no jurisdiction to go into the genuineness of the Will or questions of title.

The Full Bench further observed that when the Revenue Court is prevented from recording the statement of the parties and the depositions, the question of establishing the genuineness of the Will for any purpose whatsoever before the revenue Court in an enquiry would not arise. Under these circumstances, the Revenue Courts have no jurisdiction to go into the genuineness or validity of the Will or to the question of title in respect of the land in dispute. So, under these circumstances, it was held that the revenue courts have no jurisdiction to decide the title.

15. So also, he relied upon a Division Bench judgment of this Court reported in ILR 1997 KAR 1133 (Srinivas Ambaji Kulkarni S/o. Arnbaji Kulkarni v. The Assistant Commissioner, Belgaum) wherein it has been held by this Court as under:

...The order of the Assistant Commissioner that the Tahsildar acted as if it were a Civil Court was itself misconceived. Therefore, the Assistant Commissioner's order cannot be sustained and requires to be set aside.

16. So from these facts it is very much clear that the Revenue Courts have no jurisdiction to invalidate the sale deeds executed by the parties and decide the question with regard to the title and it is exclusively within the jurisdiction of the Civil Courts.

17. It is in this context that the learned Counsel appearing for Respondent No. 5 submitted that the writ petition itself is not maintainable and that the Petitioners have to approach the Civil Court for the relief of declaration. On this aspect of the matter, he has relied upon the decision reported in Hanumappa Bhimappa Koujageri Vs. Bhimappa Sangappa Asari, wherein this Court taking into

consideration the provisions of Section 135 of the Act held that when the Plaintiff's title is denied, he is entitled to file a suit for declaration of his rights and title in accordance with the provisions of the Specific Relief Act and the Civil Court is competent to entertain such suit and in case, if the Court finds that the Plaintiff is entitled to the declaration when there is a person who on the basis of wrong entry is trying to deny the title of the real tenure holder i.e., of the Plaintiff in the suit, the Court can direct the authorities to amend such entry in accordance with the declaration made by the Court. He also relied upon the decision reported in 1983 (2) KLJ 191 (Dasappa Shetty U.K. by L.Rs. v. K.N. Thammanna Gowda and Anr.) wherein this Court considering the provisions of Section 135 of the Act held that though in view of Section 135 of the Karnataka Land Revenue Act, the Court cannot give a direction as such by way of consequential relief to the Revenue Officers to amend the entry, it is incumbent upon the Plaintiff to get a declaration of title and take steps in accordance with Section 135.

18. Further, this Court in a decision reported in Stumpp Scheule and Somappa (P) Ltd. Vs. Chandrappa, considering the provisions of Section 135 held that a suit for declaration of title and consequential rectification of entries in the record of rights is maintainable and is one of the remedies provided under the Karnataka Land Revenue Act, 1964.

19. He also relied on the decision reported in Jana Bai Vs. Deputy Commissioner, wherein this Court while considering the provisions of Section 135 of the Act, held that the order passed by the Deputy Commissioner in revision u/s 136(3) is final and the only remedy available to party aggrieved by order in revision is to file suit as provided in proviso to Section 135 of the Act and the petition under Article 226 of the Constitution is not maintainable.

20. The Apex Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, has held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals and when there is no question of jurisdiction, it held that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. But any how, it is relevant to note that the Apex Court in this decision has held that an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. So placing reliance upon these decisions, the learned Counsel submitted that only way left open for the Petitioners is to approach the Civil Court.

21. So far as the Single Bench judgment of this Court reported in ILR 1996 (2) Kar.L.J. 68 (Smt. H. Jana Bai v. Deputy Commissioner, Mandya District, Mandya and Ors.) is concerned, there is no discussion or reference in the said decision so far as the jurisdictional errors of the revenue Courts. The decision of the Apex Court on this aspect of the matter has not been taken into consideration. In these circumstances when the Apex Court in many decisions referred to supra

held that alternative remedy is not a bar to file writ petition, I am of the opinion that the petition is very much maintainable in case if the Petitioners are able to establish that the order passed by the revenue courts are without jurisdiction.

22. Now, as could be seen from the Record of rights that have been produced and also the sale deeds from 1993 to 95, the names of the purchasers were entered in the record of rights all along whenever the transactions took place. Even so far as the sale deeds in favour of Petitioners 1 and 2, they were registered on 17.8.1995 and the names of the Petitioners 1 and 2 continued in the record of rights till 2006 wherein for the first time, the Respondents 5 and 6 challenged these entries claiming the title to the property. So when the title is acquired under the registered sale deeds under different transactions from the year 1993 to 95, these all sale deeds cannot be invalidated by the revenue courts as they do not have any jurisdiction to decide the question of title or to set aside the sale deed or to say that the sale deed is invalid or otherwise. So far as Respondents 5 and 6 are concerned, they have kept quiet since from 1993 to 2006 though their names were not appearing in the record of rights and at once after ten years of the mutation entry in favour of the Petitioners challenged the same before the Assistant Commissioner and though the limitation has been provided to file an appeal to the Assistant Commissioner, the learned Assistant Commissioner - Respondent No. 2 without even considering the question of condonation of delay passed the order at Annexure-N and that too without notice. He remanded the matter by setting aside the mutation entries in favour of the Petitioners and this order was challenged by the Petitioners before Respondent No. 1 - Deputy Commissioner, who states in his order that the sale deeds executed in favour of Petitioners are not valid. So this finding of the Deputy Commissioner cannot be accepted as the Revenue Courts have no jurisdiction to record the statement of the witnesses as it is a formal enquiry done by the revenue authorities and they cannot decide the title or set aside the sale deed on the ground that it is invalid and therefore, in my considered opinion, the order of the Assistant Commissioner and the Deputy Commissioner at Annexures N and P are illegal as the learned Deputy Commissioner invalidated the sale deed executed in favour of the Petitioners. In such circumstances, the orders of Respondents 1 and 2 cannot be sustained.

23. Furthermore, the other question that arises for consideration is as to who has to approach the Civil Court as provided under the proviso to Section 135(2) of the Act. So far as the Petitioners are concerned, as could be seen from the history of transactions, the first transaction took place in the year 1993. The property was purchased by one Venkatalakshamma from Hanumanthaiah and later, the said Venkatalakshamma sold an extent of 2 acres 4 guntas in favour of fourth Respondent herein under two separate sale deeds dated 24.10.1994. Thereafter, Petitioner No. 1 herein purchased an extent of 1 acre from fourth Respondent under sale deed dated 17.8.1995 and Petitioner No. 2 purchased 1 acre excluding 2 guntas of karab land from fourth Respondent under sale deed dated 17.8.1995. In pursuance of these transactions, their names have been

entered in the records. So since from the date of the transactions, a presumption arises u/s 133 of the Act that they were in possession of the property acquiring title on the basis of sale deeds and these sale deeds cannot be questioned before the Revenue Courts and it is for the first time that in the year 2006, the Respondents 5 and 6 challenged the mutation entries certified in favour of the Petitioners. It is they who are claiming title to the property on the ground that their ancestors have not sold this property and that the sale deeds are not valid. In the circumstances, it is for Respondents 5 and 6 to approach the Civil court to seek a declaration of title. In that view of the matter, I am of the opinion that the petition has to be allowed.

24. Hence, the petition is allowed. The order of the Respondent No. 2 - Assistant Commissioner at Annexure-N in No. R.A.(LKP) 149/2006-07 dated 19-09-2008 and the order of the Deputy Commissioner at Annexure-P in Revision Petition No. 58/2009-10 dated 25-08-2010 are quashed directing Respondents 1 to 3 to continue/enter the names of the Petitioners in the records of S. Nos. 37/4 and 37/5 as it was earlier to the proceedings.

The petition is accordingly disposed of.