

(2002) 04 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No's. 37904 and 37905 of 2000

Nagendrappa and Another

APPELLANT

Vs

Deputy Commissioner, Davanagere and Others

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Evidence Act, 1872 — Section 65

Citation : (2002) ILR (Kar) 2670 : (2002) 4 KarLJ 122 : (2002) 3 KCCR 1633

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : C. Shivakumar, for the Appellant; V. Bychappa, High Court Government Pleader for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

S.R. Bannurmath, J.—Heard the learned Counsel for the petitioners and the learned High Court Government Pleader.

2. The land in dispute is Sy. No. 5 measuring 5 acres of Kelagote Village, Jagalur Taluk. After coming into force of the Kamataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the "KPTCL Act") the alleged original grantees, Rangappa and Marappa, respondents 3 and 4 (now by their L.Rs.) appear to have filed an application before the Assistant Commissioner under the provisions of the Act to declare the transfer of the land in favour of the petitioners as void being contrary to the prohibitory restrictions under the Act and the Land Grant Rules as well as a prayer for resumption and return of the land to the original grantees. This application was opposed by the petitioners inter alia contending that they have purchased the land from one Sukur Sab in the year 1971 and 1968 respectively to an extent of 2 acres 20 guntas each; that said Sukur Sab got the right and title in the land in an auction purchase in the year 1966 and as such the sale in their favour could not be declared as void. It is also contended that since they have purchased the land in the year 1971 and 1968 respectively and the original

sale was of the year 1966, they are in possession and enjoyment adversely to respondents 3 and 4 for more than 12 years. Even on that ground, the sale could not be declared as void or resumption order could be passed. Considering the rival contentions after recording the statements of the parties, the Assistant Commissioner by the impugned order dated 16-10-1999 held that as the land was granted to the original grantees in the year 1940 and as per the relevant rules then in existence the prohibition of transfer being absolute and permanent, the sale in favour of Sukur Sab in the year 1966 and the later sale in turn by Sukur Sab in favour of the petitioners are in violation of the conditions of the grant and as such provisions of KPTCL Act are applicable. Accordingly, he ordered for resumption and return of the land to the grantees. Even in the appeal before the Deputy Commissioner, same was the result and the Deputy Commissioner by the order dated 3-10-2000 dismissed the appeal. Hence, the present writ petition.

3. On going through the impugned orders as well as the records made available, at the outset it is to be noted that without first verifying as to the actual grant as laid down by this Court in the case of *Pedda Reddy Vs. State of Karnataka*, merely relying upon the alleged mutation entry, the authorities have proceeded to hold the enquiry on the presumption that there is a grant made in favour of the respondents in the year 1940, and has held in favour of the grantees. It is to be noted that time and again this Court has laid down that before considering the application under KPTCL Act, the authorities are required to look into the original grant order or Dharkast order and if, for the reasons of efflux of time or otherwise, the original order is not available, it has to look into the contemporaneous document like the Register maintained for this purpose what is known as the Land Grant Register. As is well-known, the entries in the revenue records by way of mutation are made by the Village Accountant, and most of the time without notices to the concerned parties and as such same cannot be straightaway believed or accepted. Without making any such efforts or even mention as to the availability or not of the grant order or the Register concerned, the authorities by merely relying upon such mutation entries cannot proceed to hold the enquiry. This Court in the case of *Dundappa v. Deputy Commissioner, Shimoga* and Ors. 1991(4) Kar. L.J. 761 has in this regard laid down that when the grant of land in question is admitted and not in dispute, it is open to the authority to refer to the proceedings or the certified copy of the order produced by the Tahsildar along with his report disclosing the proceedings and the conditions of the grant. In other words, if the grant of the land in question is admitted, then applying Section 65 of the Indian Evidence Act, particularly referring to Clause (g) of that section, it is open to the Assistant Commissioner to accept the extract of the proceedings. Conversely when the nature of the grant is disputed as in the present case, it is for the authorities to subjectively satisfy themselves first as to the nature of the grant to the person to whom it is made and the conditions laid down thereunder. Since the Assistant Commissioner without taking pain in this regard has badly depended upon the alleged mutation entry even without there being any report in this regard by the Tahsildar as to

the availability or not of the grant order or the Register concerned, in my view, the findings arrived at by relying upon only the mutation entry is incorrect and impermissible in law. Since the same mistake is carried over by the Deputy Commissioner, the writ petition is liable to be allowed only on that count. It is not necessary to go into the question as to the adverse possession as now the Court is of the view that the matter requires to be remitted back to the Assistant Commissioner for fresh consideration.

4. In the result, these writ petitions are allowed. The impugned orders dated 16-10-1999 and 3-10-2000 passed by the Assistant Commissioner and the Deputy Commissioner respectively are hereby quashed. The matter stands remitted to the Assistant Commissioner, Harapanahalli for fresh consideration. The Assistant Commissioner is directed to issue notice to all the parties concerned and as noted earlier after subjectively satisfied as to the grant, proceed to pass appropriate order in accordance with law and the observations made on. As the matter is old, the Assistant Commissioner is directed to dispose off the case expeditiously within the time frame of 10 months from the date of receipt of the order or production of copy of the same by the parties.

5. In the facts and circumstance, there shall be no order as to costs.

6. Learned High Court Government Pleader is directed to remit back the records to the Assistant Commissioner forthwith for consideration.