

(1982) 02 KAR CK 0035
In the Karnataka High Court
Case No : Second Appeal No. 355 of 1975

P. Ramalingappa	Vs	APPELLANT
State of Karnataka		RESPONDENT

Date of Decision : 11-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Karnataka Land Revenue Act, 1964 — Section 49, 61, 63

Citation : AIR 1983 Kar 22

Hon'ble Judges : G.N. Sabhahit, J

Bench : Single Bench

Advocate : D.L.N. Rao, for the Appellant; C.S. Kothavale, Government Advocate, for the Respondent

Judgement

1. This appeal by the plaintiff is directed against the judgment and decree dated 6-12-1974 passed by the Civil Judge, Bellary, in Regular Appeal No. 102 of 1973, on hsi file allowing the appeal and dismissing the suit holding that the Civil Court has no jurisdiction to entertain the suit.
2. The plaintiff instituted a suit for a declaration that the order of the Assistant Commissioner cancelling the grant of 31 sq. yds as per Exhibit P. 1 was one without jurisdiction and, as such, void in the eye of law.
3. The suit was resisted by the Government mainly on the ground that the notice under S. 80 of the Civil P.C. was not legal and proper and that the civil court has no jurisdiction to entertain a suit for such a relief.
4. The trail Court raised the following issues as arising from the pleadings :-
 - (1) Whether the plaintiff proves that the Assistant Commissioner has no power to cancel the assignment once granted?
 - (2) Whether the defendant proves that the Court has no jurisdiction to entertain the suit under the provisions of the Land Revenue Act?

(3) Whether the cancellation was done without any notice and the said order is null and void?

(4) Whether there was proper notice under S. 80 of the Code of Civil Procedure?

(5) To what relief the plaintiff is entitled?

5. The trial Court, on considering the evidence adduced before it, recorded its finding in the affirmative under Issue Nos. 1, 3 and 4. Under Issue No. 2 it held that the Civil Court has jurisdiction to entertain the suit. In that view, the trial Court decreed the suit of the plaintiff as prayed for. Aggrieved by the said judgment and decree, the defendant went up in appeal before the Civil Judge, Bellary in Regular Appeal No 102 of 1973, on his file. The only point that was pressed before the learned Civil Judge was that the trial court was in error in holding that the Civil Court has jurisdiction to entertain the suit. So, the learned Civil Judge raised only one point for his consideration viz. whether the Civil court has jurisdiction to entertain the suit. On consideration of the arguments addressed before him, he agreed with the learned counsel for the appellant before him and came to the conclusion that the Civil Court has no jurisdiction to entertain the suit of the present nature and, in that view, he allowed the appeal, set aside the judgment and decree of the trial court and dismissed the suit of the plaintiff. Aggrieved by the same, the plaintiff has come up with the above second appeal before this court.

6. It is not in dispute that the building site was granted in favour of the plaintiff by the Assistant Commissioner on 27-7-1968 for RS. 1,158/-. The grant is at Exhibit P.4. Thereafter, however, without notice to the plaintiff. The Assistant Commissioner reduced the area by 31 sq. yds by his order dated 4-8-1969 as per Exhibit P-1. It is that order which is challenged as one without jurisdiction before the Civil Court by the suit in question.

7. The contention that is raised before me is whether the Civil Court has no Jurisdiction to entertain such a suit.

8. The learned Government Advocates invited my attention to S. 61 read with S. 63 of the Karnataka Land Revenue Act, 1964, (hereinafter referred to as "the Act").

9. Section 61 of the Act reads inter alia:

(1) Save as otherwise provided in this Act, or any other law for the time being in force, a Revenue Court shall have jurisdiction to determine, decide or dispose of , any matter which it is by or under this Act, empowered to determine decide or dispose of and no Civil Court shall exercise jurisdiction as to any such matters".

Sub section (2) of that states: "Subject to the exception hereinafter specified, no civil court shall exercise jurisdiction as to any of the following matters, namely:-

xx xx xx xx"

section 63 of the Act reads:

"Plaintiff to exhaust his right of appeal before instituting a suit or other proceeding against Government.- No Civil Court shall entertain any suit or other proceeding against the state Government on account of any or omission of the State Government Revenue Officer, unless the plaintiff first proves that previously to the institution of the suit or other proceeding, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit or proceeding, it was possible to present".

10. The learned Government Advocate submitted that to give a grant or to cancel it, was within the powers of the Revenue Authorities. He further submitted that an appeal is provided against an order granting or canceling grant by the Assistant Commissioner to the next higher authority S. 49 of the Act.

11. In the plaint, the plaintiff has not averred whether he has proffered any appeal to the next higher authority against the order of the Assistant Commissioner cancelling part of the grant. Hence, the learned government Advocate submitted that no Civil Court shall entertain a suit against the State Government for canceling the grant.

12. As against that the learned counsel appearing for the appellant submitted that the prayer in the suit was for a declaration that the order passed by the Assistant Commissioner was void in the eye of law since he had not followed the principles of natural justice. In such circumstances, he submitted that there was no question of instituting any appeal and the jurisdiction of the Civil Court was never barred.

13. Where the Special Tribunal acts ultra vires or refuses to exercise its jurisdiction or acts mala fide or arbitrary or in violation of the fundamental principles of natural justice or reservedly in the exercise of its jurisdiction, the Civil Court has always power to interfere and set matters right, (vide: Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh, , Union of India (UOI) Vs. A.V. Narasimhalu, and Kamala Mills Ltd. Vs. State of Bombay,

14. In the instant case, the revenue authorities have no jurisdiction to give a declaration that the order passed by the Assistant Commissioner is void in the eye of law. Admittedly the Assistant Commissioner has not issued any notice to the present plaintiff/appellant, before reducing the area of grant. When once the grant is given the "Sanad" is issued, the grant becomes final. It cannot be arbitrarily and unilaterally cancelled by the Assistant Commissioner. Such an order would be void in the eye of law. It is for such a declaration that the suit is instituted and the trial Court, on enquiry, did hold, appreciating the evidence on record. that no notice was issued to the plaintiff before reducing the area of grant and, as such, the order was void in the eye of law.

15. The only point that was urged before the first appellate Court was that the Civil Court has no jurisdiction to entertain the suit.

16. For reasons stated above, I am satisfied that the present suit is maintainable as the order passed by the Assistant Commissioner is void in the eye of law, he having flagrantly violated the principles of natural justice and he having acted in an arbitrary manner in reducing the area of grant. Therefore, I am unable to bring myself to agree with the view taken by the first appellate Court that the suit could not be entertained.

17. As pointed out above , even where the order is made final and the jurisdiction of the Civil Court is in the normal course ousted, when the Special Tribunal created does not follow the principles of natural justice and acts arbitrarily, it acts without jurisdiction has to be got by instituting a suit before a regular court of law.

18. In the result, therefore, the appeal is allowed, the judgment and decree of the first appellate Court are set aside and those of the trial those of trial court are sustained and restored and the suit of the plaintiff is decreed.

19. No costs of this appeal.

20. Appeal allowed.