(2013) 02 KAR CK 0131

In the Karnataka High Court

Case No : Writ Petition No''s. 7929 and 9567 of 2010 (LB-BMP)

P.M. Rao alias P. Masthan Rao and Others — APPELLANT

Vs

The Commissioner, Bruhat Bangalore Mahanagara Palike and Others — RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:
Karnataka Municipal Corporations Act, 1976 — Section 114-A

Citation : (2013) 4 KarLJ 43

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

Bench : Single Bench

Advocate : K.K. Vasanth, for the Appellant; K.N. Puttegowda and H.S. Dwarkanath, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the order dated 22-6-2009 passed by the Additional Commissioner, which is impugned at Annexure-Q to the petition. The endorsement dated 7-9-2009 is also impugned as at Annexure-R to the petition. Heard the learned Counsel for the parties and perused the petition papers.

2. The case of the petitioners is that one B.K Suryanarayana Rao, had acquired the vacant site situate in Domlur Main Road, Domlur Village, measuring East to West 50 feet and North to South 30 feet under a registered sale deed dated 23-6-1956. Thereafter a house is said to have constructed therein and he was residing there with his wife Smt. B.S. Saroja. One half of the property had been sold by Sri B.K. Suryanarayana Rao on 14-11-1966. The issue in the instant case is in respect of other half measuring East to West 25 feet and North to South 30 feet. Petitioners 2 to 4 claim right under a Will said to have been executed by Late B.S. Saroja who died on 4-11-1996 leaving behind a Will dated 15-2-1984. Respondents 4 and 5 claim under a Will dated 12-8-1981 said to have been executed by Late B.K. Suryanarayana Rao who died on 8-10-1981.

3. In the circumstances, when there were rival claims with regard to the said property, petitioners 2 to 4 had sold the property to petitioner 1 under a sale deed dated 10-5-2006. The issue in the instant petitions relates only with regard to the khatha entries to be retained in respect of the said property. In that regard, in view of there being rival claims, at the first instance respondents 4 and 5 had objected to the change of khatha before the Assistant Revenue Officer. In that view, the petitioners and respondents 4 and 5 have thereafter negotiated amongst themselves and respondents 4 and 5 are stated to have executed a Deed of Confirmation dated 2-2-2008 as at Annexure-L. By the said Confirmation Deed, the petitioners claim that the Will executed in favour of petitioners 2 to 4 by late Saroja as also the sale deed executed by petitioners 2 to 4 in favour of petitioner 1 have been confirmed. Hence, the right as claimed by petitioner 1 has been confirmed under the said document is the contention of the petitioners. In such circumstance, the petitioners claim that when there is no dispute with regard to the ownership of the property, they are entitled to retention of khatha in the name of petitioner 1 who has subsequently purchased the property. In that regard, the grievance of the petitioners is that respondent 2 could not have by order dated 22-6-2009 stayed the khatha and thereafter relegated the parties to the Civil Court. Hence, the consequent endorsement issued based on such order is also assailed.

4. The contention on behalf of petitioners as advanced by the learned Counsel is that when the title with regard to the property was not in dispute at that stage, more particularly in a circumstance where respondents 4 and 5 even by issue of legal notices subsequent to execution of the confirmation deed have only sought for payment of certain amounts which according to them was to be received under the confirmation deed, their claim would remain limited only to recover the said amount. Therefore, when the confirmation deed itself is not questioned by them, respondent 2 could not have considered the matter as if there is a dispute with regard to ownership to arrive at a conclusion that the khatha made in favour of petitioner 1 is to be stayed, in such circumstance, it is contended that respondent 2 was not justified in the manner in which the order has been passed. The learned Counsel has also taken me through the order to point out that respondent 2 himself has taken note of the confirmation deed. Therefore, the ultimate order passed by respondent 2 is not justified.

5. Learned Counsel for the contesting respondent would however seek to justify the order. It is pointed out that when the transaction under which the confirmation was executed, it is only confirming an earlier transaction and that document itself is not a title document to rely upon. In such circumstance, when the parties are claiming right under the Will and a confirmation deed was executed in that regard and the negotiated settlement had not been completed, it would not be open for the petitioners to contend that the right is limited only to recover the amount when the transaction itself being in dispute, it would still remain open as a dispute relating to title. Therefore, respondent 2 was justified is the contention.

6. Further, having referred to the order passed by respondent 2, it is pointed out that even at this stage respondent 2 has not set aside the khatha but, has only kept in abeyance by grant of stay order, relegating the parties to the Civil Court since respondent 2 was conscious that a dispute relating to the right of the parties cannot be decided in a revenue proceedings. Hence, it is contended that the order is justified and the same does not call for interference.

7. In the light of the rival contentions, at the outset, a perusal of the impugned order passed by respondent 2 would indicate that respondent 2 has referred to the entire transaction under which both the parties have claimed right to the property. Respondent 2 has also taken note of the confirmation deed which had been executed. In that circumstance, having noticed that respondents 4 and 5 had already lodged objections before the ARO with regard to change of khatha and thereafter the confirmation deed has been executed and with regard to the said confirmation deed, since the legal notices had been exchanged, the authority was of the view that the khatha entry in the name of petitioner 1 is to be stayed and the parties should have their dispute resolved in a civil proceedings to consider the correctness of such contentions. Though there is no dispute with regard to the execution of the confirmation deed dated 2-2-2008, the manner in which the respondents have issued the notice wherein certain amounts had been demanded would disclose that there are certain disputes between the parties with regard to terms which they had agreed upon while executing the confirmation deed.

8. In that circumstance, if it is taken into consideration that with regard to the very document based on which petitioner 1 now claims that all earlier issues relating to the right claimed under the Will and the sale deed executed by petitioners 2 to 4 in favour of petitioner 1 had been settled, in view of the objection which has been put forth, such contention cannot be accepted at this juncture since the dispute between the parties cannot be considered as concluded one.

9. Therefore, in such circumstance, when respondents 4 and 5 had objected and there were issues with regard to the manner of right claimed by the parties, respondent 2 in fact was justified in putting on hold the entry which had been made and relegating the parties to the Civil Court. In any event, the law is well-settled that when such disputes were put forth, in a proceedings u/s 114-A of the Karnataka Municipal Corporations Act, 1976, respondent 2 could not have decided the issue relating to title one way or the other to come to a conclusion that either of the parties had established a right in that regard.

10. Furthermore, respondent 2 in fact has not set aside the khatha entry but has allowed the parties to have their dispute resolved in a Civil Court. Therefore, for all these reasons, I do not find any reason to interfere with the order impugned in the instant petition. Accordingly, these petitions are disposed of, reserving liberty to the parties to have their dispute adjudicated in accordance with law and thereafter approach the Revenue Authorities in that regard. All contentions

are left open.

