

(2005) 11 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 22119 of 2004

Puttannaiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-11-2005

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136 (2), 136 (3), 163 (1)

Citation : (2005) ILR (Kar) 6043 : (2006) 1 KarLJ 378 : (2005) 4 KCCR 2860

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : B.N. Ananthanarayana, for the Appellant; Bharamagouda B. Goudar, HCGP for R-1 to R-4, S.P. Shankar for D.R. Nagaraj, for R-6 and R-7 and Patel D. Karegowda, for C/R-5, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ Petition by persons who claim right, title and interest to a piece of agricultural land measuring an extent of 15 acres 39 guntas in survey No. 71 of Dodderi Village, Tavarekere Hobli, Bangalore South Taluk, in terms of a sale deed dated 19-8-1942 where under one N.S. Gurappa under whom the petitioners claim had purchased the property in question in a Court auction sale, a sale deed said to have been executed in the course of execution of a mortgage suit in OS No. 401/1935-36 in terms of the Judgment and Decree dated 21-8-1936 though described as an ex parte decree said to be obtained by fraud etc., as averred by the respondents, but, nevertheless, which had attained finality.

2. The only one prior development that may be incidental and which may be necessary to be noticed here is, it appears even earlier, in so far as the land in question is concerned, there was a revenue entry in respect of this land indicating it as phada as the owner of the land who had mortgaged the land in favour of the decree holder in the suit, had defaulted in paying the land revenue to the State and after certain proceedings under the Mysore Land Revenue Code,

1888 (for short "the Code") as it prevailed at the relevant point of time, the land had been forfeited to the State and the revenue entry was indicated to be as "phada". It appears the Court proceedings went to oblivious of this development. The present petitioners claiming under the sale transaction of the year 1942, it appears had applied to the Tahsildar praying for changing the revenue entries from the entry as "phada "to the name of the petitioners on the strength of the sale transaction dated 19-8-1942.

3. It appears, the fifth respondent had also filed an application before the Tahsildar for restoration of his name instead of phada, taking advantage of the Government Notification dated 29-4-1995, pursuant to the introduction of second proviso to sub-section (1) of Section 163 of the Karnataka Land Revenue Act, 1964 (for short, the Act), where under the action by the Tahsildar declaring any such occupancy or alienated holding to be forfeited in favour of the State for arrears of land revenue is an action to be taken only in a situation where the arrears of land revenue exceeds Rs 10,000/- and not otherwise and as a follow-up action, this notification was issued indicating that even in respect of the earlier forfeitures, where the forfeiture was for arrears of land revenue less than Rs. 10,000/-, such persons may seek for cancellation of the forfeiture and for restoration of the original entry in their favour. The Tahsildar while allowing the application filed by the fifth respondent, who had claimed under the continuation proceedings of the year 1942, rejected the application of the present writ petitioners.

4. The Writ petitioners being aggrieved by this order of the Tahsildar had preferred an appeal to the Assistant Commissioner u/s 136(2) of the Act and met with success. The Assistant Commissioner on noticing that the petitioners were claiming restoration of the entries to their names not only under the sale transaction but also based on the judgment in a civil litigation between the parties viz., OS No 243 of 1994, a suit filed by the fifth respondent for declaration of title that he is the only person who is entitled for restoration of the revenue entry in respect of the land after removing the entry "phada" and for cancellation of the sale deed under which the petitioners claim right, title and interest and for other consequential reliefs, having failed in the suit, in the sense the suit having been dismissed, and the further appeal also having been dismissed, thought it fit to take note of these developments for restoring the entry in favour of the petitioners and at the cost of fifth respondent, allowed the appeal, directed setting aside the revenue entries in the name of fifth respondent and further directed the parties to approach the Special Deputy Commissioner for further entries in respect of phada entry.

5. Fifth respondent did not obviously being aggrieved by this order, approached the Deputy Commissioner invoking his revisional jurisdiction u/s 136(3) of the Act and met with success. The Deputy Commissioner purporting to have examined the records and the contentions urged, ultimately allowed the revision petition, set aside the order passed by the Assistant Commissioner. It is

aggrieved by this order of the Deputy Commissioner persons claiming under the purchaser under the Court auction sale of the year 1942, have filed the present writ petition.

6. Submission of Sri Anantha Narayana, Learned Counsel for the petitioners is that the Deputy Commissioner could not have exercised his revisional jurisdiction by revising the order passed by the Assistant Commissioner particularly when the Assistant Commissioner had examined the matter and if the parties had any further grievance, it was open to them to approach the Civil Court and is the legal position as the matter is only required to be pursued before the Civil Court by the aggrieved person and the Deputy Commissioner should not have exercised his jurisdiction by revising the said order at that stage, but should have relegated the parties to avail the forum of Civil Court. It is also the submission of the Counsel that the Assistant Commissioner having acted only after noticing the developments before the Civil Court in the suit as between the very parties, there was no occasion for the petitioners to go before the Civil Court yet again; that the Deputy Commissioner should not have interfered in such a situation and mere issue of a circular by the Government in the year 1995 could not have made much difference on this aspect, particularly as even under the provisions of the Act, it is only the determination by the Civil Court that can put a finality to such disputes and not orders of the revenue authorities and therefore the Deputy Commissioner should not have interfered with the order of the Assistant Commissioner when the very order of the Assistant Commissioner was based on the determination by Civil Court in a suit between the very parties.

7. Per contra, submission of Sri S.P. Shankar, Learned Senior Counsel, appearing for respondents 6 and 7, as also Sri Patel D Karegowda, Learned Counsel appearing for the respondent No. 5, is that the litigation before the Civil Court on which reliance was placed by the Assistant Commissioner was not one of comprehensive determination of the rights of parties inter se; that not all necessary parties had been joined and at any rate it is urged that the dismissal of the suit as claimed by the fifth respondent for declaring a positive relief in favour of the plaintiff therein does not necessarily mean such a relief is given in favour of the defendants; that unless the present petitioners have a declaration in their favour by the Civil Court on examining such a question, the mere dismissal of the respondents' suit before the Civil Court cannot place the petitioners in such a vantage point position and therefore it is not as though the matter has attained real finality before the Civil Court.

8. Whether or not by a judgment and decree of the Civil Court and on examination of disputes, the tendency on the part of litigant parties, it appears, is to give more importance only to the revenue entries and not for proper determination of the rights by the Civil Court. That is how such matters are before this Court day in and day out only questioning the validity of orders of the revenue authorities relating to the revenue entries virtually avoiding better determination by Civil Courts.

9. It has been the experience of this Court that though the matters are agitated right from the stage of Tahsildar and reaches this Court and many a times such matters are even remanded on finding fault with such orders, it never attains finality and keeps on circulating! in such a situation it is only a proper determinations by the Civil Court in terms of the provisions of Section 136(2) of the Act and can provide the finality to such disputes.

10. There is no doubt that there was a lis as between the parties before the Civil Court and that had ended in favour of the present petitioners. However, it is contended by the respondents that it is not a conclusive and comprehensive determination. Even assuming for argument's sake, there is only a small gap left in that, in the interest of petitioners, it is to be ensured that even such gaps are filled up and for such purpose the petitioner can avail of the forum of Civil Court and seek for a comprehensive declaration of their rights, title and interest of their claims in respect of the property and by impleading necessary parties and where upon, on such determination can definitely seek for modification or correction of the revenue entries to bring them in consonance with the determination by the Civil Court.

11. Though Sri B.N. Anantha Narayana, Learned Counsel for the petitioners has expressed apprehension that as to whether one more suit if is contended as being hit by the principles of res judicata etc., in the light of the contention taken up by the respondents, it will definitely not open to the respondents to contend that such a suit is barred on the principles of res judicata. It is not open for the respondents to put forth such defence and even otherwise as the earlier litigation had never given a definite positive declaration in favour of the petitioners, the petitioners can always seek for such relief before the Civil Court.

12. It is because of this possibility that I am not inclined to interfere with the order of the Deputy Commissioner irrespective of the quality of this order and even if the matter warranted correction. Non- interference is not because of the legality or very correct nature of the order, but an interference even if done, will not resolve the dispute between the parties, particularly as it is one relating to the title, which dispute is essentially to be resolved only by Civil Court and even if there is some scope for a little dispute conclusively one way or the other, that also is a matter to be resolved before the Civil Court and not by the revenue authorities.

13. It is for such reason, I am not inclined to exercise the writ jurisdiction for interference with the impugned order, but while the writ petition is dismissed in consonance with the observations made, liberty is reserved to the parties to workout their rights before the Civil Court and the present entries made in the revenue records cannot be of any significance or evidentiary value for the purpose of such determination before the Civil Court as between the parties and further the revenue authorities are again required to correct the revenue entries in consonance with the determination by the Civil Court in such a suit by the interest party impleading all necessary parties. Except for this observation and

liberty, this writ petition is dismissed.