

(2006) 06 KAR CK 0064
In the Karnataka High Court
Case No : Writ Petition No. 25937 of 2001

R. Govinda Naika

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 03-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) ILR (Kar) 3308 : (2006) 2 KarLJ 605

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

Bench : Single Bench

Advocate : S.P. Shankar, for A.N. Hegde and G.R. Guruprakash, for the Appellant; G. Chandrashekaraiyah, AGA for R1 to R3 and K. Chandan, A/S for R4-16, R-17 and 18, for the Respondent

Final Decision : Allowed

Judgement

V.G. Sabhahit, J.—This writ petition under Articles 226 and 227 of the Constitution of India is filed by the petitioner being aggrieved by the order passed by the Assistant Commissioner, Kollegal Sub-division, Kollegal in R.A.No. 37/2000-01 dated 8th June 2001, wherein on the complaint filed by Smt. Nagamadamma and 12 others, the same is treated as an appeal and the appeal is allowed and MR No. 2/1999-2001 is set-aside and is directed to file an appeal against the decree passed in O.S.No. 329/1998 and 189/1997 and to hold an enquiry in terms of the directions issued in Writ Petition No. 6954/1997 passed by this Court.

2. It is the case of the petitioner that the petitioner was not made as a party to the proceedings before the Assistant Commissioner and the mutation entry which has been made in favour of the petitioner on the basis of a valid decree by the Civil Court has been set-aside without notifying the petitioner and the said order is wholly without jurisdiction and is liable to be set-aside.

3. Objections statement have been filed by respondents-4 to 16 contending that

the case made out by the petitioner is false and decree has been obtained by making misrepresentation and wherefore, the Assistant Commissioner admitted the complaint as an appeal and has rightly set-aside the MR.No. 2/1999-2000 and has only directed that an appeal shall be preferred against the decree in O.S.Nos. 329/1998 and 189/1997 and to comply with the direction issued in Writ Petition No. 6954/1997 dated 30th July 1998 and wherefore, the impugned order does not call for interference in this writ petition.

4. I have considered the contentions of the learned Counsel appearing for the parties.

5. The learned Senior Counsel appearing for the petitioner submitted that the petitioner had filed a suit in O.S.No. 329/1998 against Sri T.S. Shivaswamy for declaration of his title and the same was decreed on 7th December 1998 and the suit filed by Sri T.S. Shivaswamy in O.S.No. 189/1997 was dismissed on 14th November 1997 and mutation entry has been made as per the decree and wherefore, the Assistant Commissioner on the basis of the complaint filed before him could not have treated the complaint as an appeal and without notifying the petitioner who was the plaintiff in the suit could not have passed an order setting aside the mutation entry and directing filing of appeal against the judgment and decree.

6. On the other hand, the learned Counsel appearing for the respondents-4 to 16 submitted that the decree and the order before the revenue authorities have been obtained by misrepresentation; and the order passed by the Assistant Commissioner on the basis of the complaint filed is justified.

7. I have considered the contention of the learned Counsel appearing for the parties. It is clear from the perusal of the material on record that the fact that the petitioner had filed O.S.No. 329/1998 against Sri T.S. Shivaswamy and the same was decreed on 7th December 1998 and mutation entry has been registered on the basis of said decree and the fact that O.S.No. 189/1997 filed by Sri. T.S. Shivaswamy was dismissed are not been disputed. It is also clear from the perusal of the record that the proceedings before the Assistant Commissioner has been initiated by treating the complaint as an appeal which is clearly erroneous. If the Assistant commissioner had received any complaint regarding the mutation entry made, the same ought to have been forwarded to the competent authority in order to take fresh steps according to law, after notifying the affected parties including the petitioner. Even otherwise, it is clear that if the petitioner is not made as a party, the mutation entry made in favour of the petitioner could not be set-aside without affording an opportunity to him to substantiate his contention and further in view of the fact that mutation entry has been made on the basis of a decree passed by a competent Court, unless the decree is set-aside in an appeal, the entry could not be set-aside by the Assistant Commissioner. Under those circumstances, it is clear that the order passed by the Assistant Commissioner is wholly without jurisdiction and suffers from error apparent on the face of the order and is liable to be quashed. However, the

quashing of the order would not preclude the Assistant Commissioner to pass fresh orders on the complaint received after following the procedure in accordance with law and after notifying the petitioner. Accordingly, I pass the following order:

ORDER

i) The writ petition is allowed.

ii) The order dated 8th June 2001 passed by the Assistant Commissioner, Kollegal Sub-Division, Kollegal in R.A.No. 37/2000-01 is quashed.

(iii) However, the quashing of the impugned order would not preclude the Assistant Commissioner to pass fresh orders on the complaint filed by respondents-4 to 16, in accordance with law, after notifying the petitioner.