
(2003) 02 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 24230 of 2002

Rayanagouda

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54

Citation : (2003) 4 KarLJ 450

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; K. Shantharaj, High Court Government Pleader for Respondents-1, 10 and 11 and Chandrashekar P. Patil, for Respondents-2 to 5, for the Respondent

Judgement

N. Kumar, J.—The petitioner in this writ petition is challenging the order dated 1-6-2001 passed by the first respondent as per Annexure-D, by which mutation entry has been made in favour of respondents 2 to 5 on the basis of the compromise decree entered into between the parties in the Civil Court.

2. The first ground of attack is that the said order is" against the petitioner showing him to be dead. Secondly, it is contended that by the impugned order mutation entry has been made in the names of respondents 2 to 5 in respect of property bearing Sy. No. 110/2, when actually the said property has not fallen to their share. Thirdly, on the ground that though the right of respondents 3 to 5 to the properties in dispute is not in question, admittedly, they are not in possession of those properties and therefore their names could not have been entered in Column 12 of RTC. If only the petitioner had been served with a notice, he would have appeared before the Deputy Commissioner and would have brought to the notice of the Deputy Commissioner the aforesaid facts, in which event, order adverse to his interest would not have been passed. Therefore, it is contended that the impugned order passed by the Deputy Commissioner is liable to be set aside.

3. In fact, the impugned order was challenged before this Court in W.P. No. 24457 of 2001 by respondents 6 to 9. After contest, the said writ petition came to be dismissed by a considered order. The facts set out in the said order would indicate how a suit filed for partition in the order 1944 though it was decreed, in the year 1947, the plaintiffs have been kept away from property by the defendant in the said suit on some pretext or the other and therefore when finally justice has been done to them by the Deputy Commissioner, this Court declined to interfere in the said order. As petitioner in this writ petition was not party to the said writ petition, he is not bound by the said order and therefore he has preferred this writ petition and the contentions urged by him have to be considered independent of the said order.

4. Learned Counsel appearing for the respondents fairly conceded that respondents 3 to 5 have no right in the property bearing Sy. No. 110/2 and they have not put forward any claim in the said property. In fact, it is a mistake which has crept in, in the Deputy Commissioner's order. He has produced before me the M.E. No. 1986 which has been up held by the Deputy Commissioner. That order discloses that the Tahsildar ordered for mutation entry in name of respondents 3 to 5 in respect of lands bearing Sy. Nos. 71/1, 108/2, 108-A/2 and 113/3. Therefore, mentioning of Sy. No. 110/2 in the order of the Deputy Commissioner is clearly a mistake. Once that mistake is corrected and it is declared that in the mutation order, it is only in respect of Sy. No. 71/1, 108/2, 108/A-2 and 113/2 the name of respondents 3 to 5 is ordered to be entered and 110/2 belongs to petitioner, the petitioner's interest is protected and on that ground there is no necessity to set aside the order of the Deputy Commissioner.

Insofar as the contention of the petitioner that he has shown to have been dead in the proceedings before the Deputy Commissioner and therefore the order is vitiated is concerned, once his interest is protected in the aforesaid manner by this Court, the said objection loses its substance. Therefore, on that ground, the order of the Deputy Commissioner cannot be set aside.

5. Insofar as the contention of the petitioner that though the petitioner have right in the aforesaid properties, as they are not put in physical possession of the property by the revenue authorities, in Column 12, their name cannot be entered is concerned, the same has no substance. As stated earlier, the suit for partition was filed in the year 1944. The said suit was decreed on 19-8-1947 declaring that the plaintiffs in the said suit are entitled to 1/3rd share in all the suit schedule properties. After the said decree, matter was referred to the Deputy Commissioner u/s 54 of the CPC for effecting partition by metes and bounds, who in turn sent the papers to the Assistant Commissioner. As there was delay by the revenue authorities in actually effecting the partition, the parties by consent, entered into a compromise and filed the compromise petition before the Court which passed the decree setting out the properties which has fallen to the respective shares and also to the effect that they have been put in possession of the respective portions. Once, parties by consent files a compromise petition

before the Civil Court, giving particulars of the properties which has fallen to their share, in terms of the preliminary decree and declares that they have been put possession of those properties, it cannot be said that the parties are not in possession of the respective shares in spite of the said order. Once the share of respondents 3 to 5 who are plaintiffs in the suit is declared and affirmed in appeal and by agreement the parties divide the plaint schedule property by metes and bounds and allot themselves the respective shares and declare that they have put in possession, the revenue authorities were fully justified in making mutation entries on the basis of the said compromise and also entering the name of those persons in Column 12 showing that they are in cultivation of the said land.

6. Under these circumstances, the grievance of the petitioner that the name of respondents 3 to 5 should not be mentioned in Column 12 as persons cultivating the land, has no substance. In that view of the matter, I do not find any merit in this writ petition. Accordingly, the writ petition is disposed of with the above said observations.