

(1992) 12 KAR CK 0024
In the Karnataka High Court
Case No : Writ Appeal No. 1357 of 1992

S. Halappa

APPELLANT

Vs

Assistant Commissioner, Shimoga Sub-division, Shimoga and
Others

RESPONDENT

Date of Decision : 01-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 1 KarLJ 82

Hon'ble Judges : K. A. Swami, Acting C.J.;N. D. V. Bhat, J

Judgement

K.A. Swami, Actg. C.J.-Though this appeal has come up for orders, having regard to the fact that it can be disposed of on a short point it is heard for final disposal.

2. This appeal is preferred against the order dated 24-2-1992 passed by the learned single Judge in Writ Petition No. 4654 of 1992.

3. The learned single Judge has rejected the writ petition. Hence, the petitioner in the writ petition has come up in this appeal.

4. In the writ petition, the petitioner sought for quashing the order dated 7-1-1992 bearing No. P.D.A. 107/1990-91 passed by the Assistant Commissioner, Shimoga Sub-Division. Shimoga and the order dated 15-10-1990 bearing No. NADA.RR.TCR.59:90-91 passed by the Deputy Tahsildar, Nada Kacheri, Kallihal, Bhadravathi Taluk. The proceeding was initiated before the Tahsildar, Nada Kacheri by the appellant/petitioner for mutating his name in respect of S. No. 82/2 on the death of his ancestor. That was objected to by the fourth respondent on the ground that an extent of 1 acre 30 guntas comprised in S. No. 82/2 was sold by the ancestor of the appellant under a registered sale deed dated 13th March, 1972. The Tahsildar found that though the sale deed mentioned S. No. 82/1, however it related to S. No. 82/2 because the ancestor of the appellant had no right to sell any portion comprised in S. No. 82/1, therefore the sale deed should be construed as pertaining to S. No. 82/2, as such, no right or interest had remained with Eshwarappa, in the land bearing S. No. 82/2 to be succeeded

to by the appellant/petitioner on the death of Eshwarappa. Consequently, he dismissed the application.

5. In the appeal preferred before the Assistant Commissioner under Section 136(2) of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the Act") the Assistant Commissioner also came to the conclusion that the land that was mentioned in the sale deed was S. No. 82/1 but as the vendor had no right, title or interest in S. No. 82/1 but, he had right, title and interest in S. No. 82/2, therefore the sale deed should be construed as the one relating to S. No. 82/2. Accordingly, he held that the mutation entry should be rectified so as to remove the mistake. Hence, he dismissed the appeal.

6. The learned single Judge has dismissed the writ petition on the ground that if the appellant/petitioner is aggrieved, it is open to him to file a suit.

7. In the normal course the opinion rendered by the learned single Judge holds good and there cannot be any two opinions in view of a Division Bench decision of this court in *Srimanmaharaja Niranjana Jagadguru Mallikarjuna Murugarajendra Mahaswami Matadipathy v Deputy Commissioner, Coorg*, 1986(1) Kar. L.J. 373: ILR 1986(2) Kar. 1059 and also in *Payappa Nemanna Huded v Chamu Appayya Huded and Others*, 1969 Mys. L.J. 198. But, this is a case in which the Tahsildar and the Assistant Commissioner have tried to usurp the jurisdiction of a Civil Court and determine that the land that has been sold under the sale deed is S. No. 82/2 and not 82/1. Thus they have tried to go behind the apparent tenor of the sale deed and find out as to whether it was S. No. 82/1 or S. No. 82/2 that was sold under the sale deed consequently resulting in deciding the question of title of the parties to a particular land. The authorities exercising the jurisdiction under Chapter XI of the Act have no jurisdiction to decide the title relating to an immovable property vide decision in *Rajasab Husseinsab Mulla v Inayuthullakhan*, 1990(4) Kar. L.J. 496: ILR 1992(2) Kar. 1649. If really there is a mistake in mentioning the survey number in the sale deed, it is open to either of the parties to seek rectification of the sale deed under Section 26 of the Specific Relief Act or to have the title to the land declared by the court. But, it is not open to the revenue authorities to go into that matter and determine that the land that has been sold under the sale deed is comprised in S. No. 82/2 and not S. No. 82/1 as mentioned in the sale deed. That would amount to usurping the jurisdiction of a civil court. Therefore, we are of the view that this case is not governed by the decision in *Srimanmaharaja Niranjana Jagadguru's* case. Whenever the authority exercises the jurisdiction not vested in it, it becomes the duty of this court to interfere with the order passed without jurisdiction and keep the authorities and the Tribunal's within their bounds. This is sufficient to allow the writ appeal.

8. In a case like this we are of the view that the interest of both the sides should be safeguarded because the fact that Eshwarappa sold the land to fourth respondent under a sale deed dated 13-3-1972 is not in dispute. The only question that is in dispute is as to whether he has sold the land comprised in S.

No. 82/1 or 82/2. As per the order of the Tahsildar there was a mistake committed while mentioning the Survey Number in the sale deed as 82/1 instead of 82/2. Therefore for the purpose of seeking rectification of the sale deed or for the purpose of seeking any other relief in this connection open to the parties under law, the period of limitation shall be computed from the date of the order of the Tahsildar i.e. 15-10-1990 because the Tahsildar has recorded a specific finding that the mistake has occurred in the sale deed in mentioning the S. No. as 82/1 instead of 82/2. As such the mistake regarding mentioning of the survey number in the sale deed must be held to have been discovered on 15-10-1990.

9. Accordingly, the writ appeal is allowed. The order dated 24-2-1992 passed in Writ Petition No. 4654 of 1992 is set aside. The writ petition is allowed. The order dated 7-1-1992 bearing No. P.D.A. 107 of 1990-91 and the order dated 15-10-1990 bearing No. NADA.RR.TCR. 59:90-91 are quashed. However, we make it clear that in any suit filed by either of the parties the mistake that they claim to have crept in the sale deed regarding mentioning of the survey number must be held to have been discovered only on 15-10-1990. We direct respondents 1 to 3 to mutate the name of the petitioner in respect of the land bearing S. No. 82/2 subject to the right of the fourth respondent to have his title determined or the sale deed rectified.

Sri Gupta, learned Government Advocate is permitted to file his memo of appearance on behalf of respondents 1 to 3 in six weeks.