(2002) 02 KAR CK 0099

In the Karnataka High Court

Case No : Writ Petition No. 1647 of 2001

Smt. Karibasamma and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136 (3), 140 (2)

Citation : (2002) 5 KarLJ 535 : (2002) 2 KCCR 1140

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : G. Venkatachala, for the Appellant; T.A. Ramachandraiah, High Court Government Pleader for Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—With the consent of the learned Counsel appearing for the petitioners and the learned Government Pleader appearing for respondents 1 to 3, this matter is taken up for hearing.

2. Heard the learned Counsels appearing for both the parties.

3. The learned Counsel appearing for the petitioners submitted that a partition was effected on 29-1-1972 amongst the members of the joint family and each son was given his share in the joint family property. After the partition Benakappa and Halappa sold an extent of 2 acres 26 guntas to a third party. Thereafter, Benakappa alone purchased the said property back under a registered sale deed. Pursuant to the said sale deed, mutation entries were effected and the name of Benakappa was entered in the relevant RTC extracts. After the death of Benakappa his L.Rs made partition amongst the family members and applied for change of entries. Pursuant to that, mutation was effected under MR No. 8/95-96 and entries were made in the names of petitioners 2 and 3 as per the sale deed.

4. When things stood thus, the 4th respondent aggrieved by the mutation

sanctioned in favour of the petitioners, has filed an appeal before the Assistant Commissioner in R.A. No. 56/98-99. The 2nd respondent after hearing both the parties and after considering the material records rejected the appeal on 31-3-1999 and confirmed the mutation sanctioned by the Tahsildar in favour of the petitioners. The 4th respondent aggrieved by the order dated 31-3-1999 passed by the 2nd respondent has filed a revision u/s 136(3) before the 3rd respondent. The 3rd respondent after hearing both the parties allowed the revision petition filed by the 4th respondent in part and set aside the orders of the Tahsildar and the Assistant Commissioner by order dated 20-6-2000 and further directed the Tahsildar to measure the entire land and take action in accordance with Section 140(2) of the Karnataka Land Revenue Act. Aggrieved by the said order passed by the 3rd respondent herein, the petitioners have filed this writ petition challenging the legality and validity of the same.

5. The principal submission canvassed by the learned Counsel appearing for the petitioners is that the impugned order passed by the Deputy Commissioner is one without jurisdiction on the ground that, the subject-matter before the Deputy Commissioner was whether the mutation sanctioned by the Tahsildar and confirmed by the Assistant Commissioner is in accordance with the relevant provisions of the Act. Instead of considering the same, the Deputy Commissioner has passed the order contrary to the relevant provisions of the Act with a direction to the Tahsildar to measure the land u/s 140(2) of the Karnataka Land Revenue Act as per the partition deed executed between the petitioners and other family members on 29-1-1972. It is also pointed out during the course of argument by the learned Counsel for the petitioners that already petitioners have filed the original suit for declaration and injunction in O.S. No. 181 of 1995 and 4th respondent had filed O.S. No. 124 of 1999 on the file of Civil Judge, Shimoga, which are pending for consideration. This fact is not at all taken into consideration by the 3rd respondent and he has not given any finding to that effect. Once the matter is seized by the Competent Civil Court, the 3rd respondent ought not to have gone into the merits and passed the order directing both the parties to work out their remedies before the competent Civil Court. Hence, he prayed that the writ petition may be allowed and the impugned order passed by the 3rd respondent may be set aside.

6. Per contra, the learned Government Pleader appearing for the respondents 1 to 3 inter alia justified the impugned order passed by the 3rd respondent on the ground that on the basis of the material records available with him, he has considered the same and passed the order and settled the matter once for all and gave direction u/s 140(2). But however he is unable to persuade this Court with regard to the direction issued by the Deputy Commissioner to the Tahsildar u/s 140(2) of the Karnataka Land Revenue Act to give effect to the partition dated 29-1-1972 between the family members of the petitioners.

7. The short question arises for consideration is whether the impugned order passed by the 3rd respondent is in accordance with law.

8. The learned Counsel appearing for the petitioners has rightly pointed out that the 3rd respondent ought not to have interfered with the concurrent finding given by both the authorities i.e., Tahsildar and Assistant Commissioner. After hearing both sides and further going through the entire material records disclose that the petitioners'' father was the purchaser of the said extent of land and mutation was sanctioned in pursuance of the sale deed and their names stand in the relevant revenue records and that has been confirmed by the Assistant Commissioner. The Deputy Commissioner instead of considering the case on merits with reference to the relevant provisions of the Act has allowed the revision petition on a different ground which is not the subject-matter before him. Further it is significant to note that the Deputy Commissioner ought not to have entertained the revision petition filed by the petitioners on the ground that the 4th respondent himself has filed O.S. No. 124 of 1999 on the file of the Civil Judge, Shimoga for declaration and injunction and the same is pending consideration and once the matter is seized by the competent Civil Court the Deputy Commissioner ought not to have exercised his revisional powers and passed the order contrary to the relevant provisions of the Act. Therefore, I do not find any justification to sustain the order passed by the 3rd respondent because the same was passed contrary to the relevant provisions of the Act and hence it is liable to be set aside.

9. Accordingly, the writ petition filed by the petitioners succeeds. The impugned order passed by the 3rd respondent-Deputy Commissioner in R.A. No. 1/99-2000, dated 20-6-2000 is hereby set aside. However, the setting aside the order of the 3rd respondent will not come in the way of the Civil Court to decide the case on merits. Without being influenced by the orders passed by the revenue authorities, the Civil Court is directed to pass appropriate orders in accordance with law. Parties to bear their own costs.

The Government Pleader is permitted to file memo of appearance within four weeks from today.

