(2013) 09 KAR CK 0129

In the Karnataka High Court

Case No : Writ Petition No''s. 27708 and 27709 of 2013 (KLR-RR/SUR)

Smt. K.N. Geetha and Another — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

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

Citation : (2013) 6 KarLJ 266

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Y.R. Sadasiva Reddy, for the Appellant; E.S. Indiresh, High Court Government Pleader and Sri Madhusudhan Rao, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the order dated 19-6-2013 passed in R.A. No. 71/2010-2011. The order is impugned at Annexure-B to the petition. The private respondents have filed their objection statement opposing the instant petition and justifying the order passed by the Deputy Commissioner. Heard the learned Counsel for the parties and perused the petition papers.

2. The facts in brief are that the petitioners herein contend that they are the absolute owners of 5 acres 20 guntas in Survey No. 130 situate at Chikka Thirupathi Village, Lakkur Hobli, Malur Taluk, having purchased the same under a sale deed dated 17-11-2003 from one Sri Robert D. Almeda. The said vendor of the petitioners is stated to have purchased the said property from one Sri Doddabbaiah under the sale deed dated 26-6-1992. Pursuant thereto, the petitioners are stated to have secured the mutation orders and revenue entries in the name of the petitioners vide M.R. No. 50/04-05. The private respondents herein claiming to be aggrieved by the same, have filed appeal u/s 136(2) of the Karnataka Land Revenue Act, 1964 (''the Act'' for short) in R.A. No. 321/2006-07. The Assistant Commissioner by the order dated 27-11-2010

(Annexure-A) had dismissed the appeal. The private respondents herein claiming to be aggrieved by the same had filed a revision petition u/s 136(3) of the Act before the Deputy Commissioner in R.A. No. 71 of 2010-11 which was disposed of on 19-6-2013, allowing the revision and ordering reversal the revenue entries.

3. The claim of the petitioners herein is that since the entries have been made pursuant to the registered sale deeds executed by their vendor and when the earlier revenue entries which stood in the name of Sri Doddabbaiah and subsequently in the name of Sri Robert D. Almeda had not been called in question, the private respondents could not have assailed the revenue entries made in favour of the petitioners herein. Even otherwise, it is contended that the Assistant Commissioner having taken note of these aspects and also the fact that there was civil litigation, has dismissed the appeal. It is contended that the Deputy Commissioner without taking into consideration that aspect of the matter has proceeded to reassess the matter and the rights of the parties has been decided which is beyond the scope of consideration u/s 136(3) of the Act.

4. Learned Counsel for the respondents would however contend that the Deputy Commissioner in the instant case has taken note of the fact that at an earlier point, the mutation entry as per Annexure-R1 which is produced herein was relating to Survey No. 62 vide M.R. No. 12/1988-89 but in the orders column Survey No. 130 was inserted as seen from Annexure-R2 produced along with the objection statement. The same was incorporated to Survey No. 130 in M.R. No. 22/1990-91 and IHR No. 62/1990-91 though the said land are apart as per the plan at Annexure-R3. In that circumstance, the Deputy Commissioner has taken into consideration that while seeking change of mutation entries, certain insertion with regard to survey numbers has been made and in that circumstance, the Deputy Commissioner has only taken into consideration the correctness or otherwise of revenue entries in the record and has not decided the title relating to the property nor the validity of the sale deed and therefore, the order does not call for interference. It is contended that the scope of consideration u/s 136(3) of the Act has been considered by this Court in the case of W.S. Insulators of India Limited now called as W.S. Insulators of India Ltd. Now called as W.S. Industries (India) Ltd., Trala Electromech Systems Pvt. Ltd. (formerly known as Transmission Line and Accessories Pvt. Ltd.) and Sri V. Srinivasan represented by Sri Dwarakanath Iyer Vs. The Chief Secretary Government of Karnataka and Others, and if the position of law enunciated therein is perused, the Deputy Commissioner has not committed any error and the same does not call for any interference.

5. In the light of the above, at the outset, what requires to be noticed is that though there can be no dispute whatsoever with regard to the legal position enunciated by this Court and the provisions contained in Section 136 of the Karnataka Land Revenue Act, notwithstanding the decision cited to supra, what is necessary to be noticed in the instant case is that the proceedings before the Assistant Commissioner initiated by the private respondents herein is during the

year 2006-07 as per the number and year depicted in the order (Annexure-A) but it is referred to as R.A. No. 170/2004-05 in the plaint. Whichever be the relevant year, keeping in view the two references which have been made in the order of the Deputy Commissioner and the averments made in the plaint, what cannot be lost sight is that the suit between the parties had been filed in the year 2005 in O.S. No. 305 of 2005. Therefore, the pendency of the suit between parties when the revenue appeal and revision were considered in my opinion makes a distinction for consideration in the instant facts.

6. In that view, a perusal of the plaint as at Annexure-C to the petition would indicate that the declaration that has been sought by the private respondents herein, who are plaintiffs therein is in respect of the property bearing Survey No. 130, measuring 21 acres 15 guntas less 1 acre 36 guntas. The suit therefore includes the portion of the property to which the petitioners herein are contending that they have purchased the same under a registered sale deed. Hence, when the extent of the property to which the petitioners herein are claiming right is also a part of the consideration in the said suit in O.S. No. 305 of 2005, the right to the ownership of the property in any event, would have to be declared by the Civil Court before which the suit is pending. If this aspect of the matter is kept in view, the date on which the order was passed by the Assistant Commissioner, i.e., on 27-11-2010 would be relevant inasmuch as on the said date the suit was pending and as on the date of consideration of the revision petition by the Deputy Commissioner also, the suit was pending and continued to remain pending. Though the learned Counsel for the private respondents contend that the Deputy Commissioner has only referred to the manner in which mutation entries were got changed and there being variation with regard to Survey No. 62 and thereafter being shown as Survey No. 130, the right of the private respondents herein to claim title to property bearing Survey No. 130 in any event would be considered in the civil suit.

7. In that circumstance, despite the order of the Deputy Commissioner referring to these aspects of the matter it would impliedly indicate that certain rights relating to the said property is decided by the Deputy Commissioner inasmuch as based on the same only the Deputy Commissioner can ultimately arrive at the conclusion with regard to revenue entries. When that be the position, while considering the matter, any observation of the Deputy Commissioner and order passed if allowed to remain in force it will be an aspect to be kept in view when the suit is ultimately decided by the Civil Court as it would be relied in evidence. Therefore, for the said reasons, I am of the opinion that the Deputy Commissioner was not justified, more particularly in the circumstance when it was brought to the notice of the Deputy Commissioner that the suit between the parties was pending before the Civil Court. In that view, the order dated 19-6-2013 is set aside. The Tahsildar is directed to retain the revenue entry in the same manner in which it had existed prior to the order dated 19-6-2013 passed by the Deputy Commissioner. The Tahsildar is further directed to enter the suit number as pending between the parties in the revenue register and also

indicate the suit number O.S. No. 305 of 2005 as and when the extracts of the Revenue documents are issued to the parties. The same shall however remain subject to the result of the suit and appropriate changes shall be made thereafter. It is further made clear that the Civil Court while deciding the suit shall not be influenced by the revenue entries which are subsisting in the name of the parties, but shall independently consider the title to the property based on the evidence that would be tendered before the Civil Court. If there are any interim orders, that are subsisting in the Civil Court, the same would also bind the parties.

In terms of the above, the writ petition stands disposed of.