

(2006) 03 KAR CK 0117
In the Karnataka High Court
Case No : Writ Petition No. 1538 of 2006

Smt. Padmaja S. Hegde

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Citation : (2006) 3 KCCR 1650

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : B.N. Shetty, for the Appellant; S. Shekar Shetty, for Respondents 3 to 7 and G. Chandrashekhariah, A.G.A. for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—Though this matter has come up for preliminary hearing with consent of both Counsel the matter is heard and disposed of with the following order.

2. This is a writ petition filed by the Petitioner to quash the impugned order dated 23.1.2006 passed by the second Respondent at Annexure-A mainly on the ground that the order of the Assistant Commissioner directing the Tahsildar to include the name of the Respondents-3 to 7 in the R.O.R. is illegal and without any jurisdiction.

3. The brief facts leading to this case are that the Petitioner, Respondents-3, 5 and 6 are the children of late K. Anthayya Shetty who, under a deed of settlement, has bequeathed all his properties in favour of his daughter Smt. Padmaja S. Hegde, the Petitioner herein, on 6.9.2004. After the death of Anthayya Shetty, Respondents-3 to 5 filed O.S. No. 79 of 2004 against the Petitioner herein challenging the execution of the settlement deed in respect of the entire properties bequeathed in favour of the Petitioner. Respondents obtained the order of temporary injunction from the Civil Court, and the

Petitioner, who has been arrayed as Defendant before the Civil Court, given an undertaking that she will not transfer or create any charge over the bequeathed properties till the disposal of the suit. Further she has also undertaken not to cut the standing trees. On the basis of the undertaking given by her temporary injunction was granted in favour of Respondents-3 to 7 stands vacated. But the Petitioner approached the Tahsildar to effect mutation entry in her name on the basis of the registered settlement deed said to have been executed by her father. On the basis of the settlement deed Tahsildar effected the mutation without notice to the Respondents. Therefore the Respondents herein have challenged order of Tahsildar before the Assistant Commissioner. The Assistant Commissioner after hearing both parties held that since the settlement deed executed only in favour of the Petitioner even though other children are alive and the said settlement deed has been challenged by the Respondent before the Civil Court, the Assistant Commissioner allowed the appeal and directed the Tahsildar to enter the names of the Respondents in the kathedars column.

4. The learned Counsel for the Petitioner contended that on the basis of the registered settlement deed the revenue authorities are bound to carry out the mutation. In support of his contention he has relied on a decision reported in the case of P.K. Vasudevan v. Deputy Commissioner of Kodagu District and Ors. ILR 2002 Kar 4637.

5. On the other hand the learned Counsel for the Respondents-3 to 7 submitted that when once the matter is pending before the Civil Court the revenue authorities have no jurisdiction or power to make entries in the R.O.R. Further the Tahsildar has made entries in the R.O.R. without giving notice to the Respondent, which is illegal and violative of principles of natural justice. Therefore, the present writ petition is liable to be dismissed.

6. Heard the learned Counsel for the Petitioner, Respondents-3 to 7 and the Government Advocate for Respondents-1 and 2.

7. It is an undisputed fact that the Petitioner and Respondents-3, 5 and 6 are children of late K. Anthayya Shetty. He had vast immovable property apart from the properties he had executed through settlement deed on 6.9.2004 in favour of the Petitioner. Within three days of executing the settlement deed he had passed away. Therefore, disputes started in between the children of the K. Anthayya Shetty. After coming to know about the execution of the settlement deed in favour of the Petitioner alone Respondents-3 to 7 have approached the Civil Court challenging the alleged deed. When once the Petitioner appeared before the Civil Court and given an undertaking as per Annexure-C stating that she will not alienate, transfer or sell or cut and remove the standing tress, etc., it is not fair on her part to approach the Tahsildar for getting mutated her name in the R.T.C. When the dispute between the parties are pending before the Civil Court the revenue authorities have no jurisdiction or power to make any entries in the R.T.C. records. But in the instant case the Petitioner has approached the Tahsildar when the matter was pending before the Civil Court that she will not

transfer or alienate the property, still she had approached the Tahsildar for mutating her name in the R.T.C. which is not correct. Further the Tahsildar has also committed an error in mutating her name in the records without giving notice to the Respondents-3 to 7, which is illegal and against principle of natural justice. On an appeal against the order of the Tahsildar, the Assistant Commissioner has rightly allowed the appeal and ordered for restoration of previous entries. At present the title of properties is yet to be decided by the Civil Court. Therefore, the order of mutation passed by the Tahsildar, without giving notice to the Respondents-3 to 7, is illegal and incorrect. Hence, writ petition is liable to dismissed.

8. Accordingly, present writ petition is dismissed as devoid of any merit.