(2013) 03 KAR CK 0128

In the Karnataka High Court

Case No : Writ Petition No. 18822 of 2010 (LB-BMP)

Smt. R.M. Pushpa APPELLANT

Vs

Bruhat Bangalore Mahanagara Palike and Others RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 114-A

Citation : (2013) 3 KarLJ 73

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

Bench : Single Bench

Advocate : M.S. Purushothama Rao, for the Appellant; Sriyuths S.N. Prashanthchandra and S. Channaraya Reddy, for the Respondent

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 1-4-2004 passed by the respondent 2 in M.R. No. 105/2004-05. The petitioner is in furtherance thereto seeking that the khatha be entered based on the judgment passed in R.F.A. No. 206 of 1997. The case of the petitioner is that the property bearing Sy. No. 43 of Yeshwanthpur Village which is now within Ward No. 7 of Yeshwanthpur originally belonged to Smt. Lakshmamma i.e., the mother-in-law of the petitioner. In that regard, initially Smt. Lakshmamma had filed a suit in O.S. No. 4553 of 1998 seeking declaration and permanent injunction in respect of the said property. Though the suit was initially dismissed, an appeal in R.F.A. No. 206 of 1997 was filed. During the subsistence of the appeal, Smt. Lakshmamma died and the legal representatives including the petitioner had come on record and thereafter the appeal was allowed and a declaration had been granted that the legal representatives through Smt. Lakshmamma have acquired right to the said property. It is in that circumstance, the petitioner contends that the husband of the petitioner being one of the legal representative was entitled to the property and therefore the petitioner has also claimed right in respect of the same.

2. The grievance put forth in the instant petition is that the respondent 3 who is

the wife of Sri B.R. Nanjundappa i.e. the brother of the husband of the petitioner has illegally secured the revenue entry in her name. It is therefore contended that such revenue entry cannot be sustained. The petitioner in that regard had filed a review petition as contemplated u/s 114-A of the Karnataka Municipal Corporations Act, 1976. The Reviewing Authority had dismissed the said review petition. When the petitioner was before this Court in W.P. No. 4200 of 2009, this Court was of the view that since the review petition filed was beyond the period of three years as contemplated under the provisions, the authority was justified in rejecting the same. However, an observation has been made by this Court that the merits of the decision rendered therein in any event would not bind the parties as it was without jurisdiction when it was beyond time. It is in that circumstance, the petitioner is presently before this Court assailing the very entry made in favour of the respondent 3 herein vide M.R. No. 105/2004-05, which is impugned at Annexure-B to the petition.

3. The learned Counsel for the petitioner while assailing the said mutation entry made in favour of the respondent 3 would contend that the Revenue Authorities were not justified in accepting the claim made by the respondent 3, more particularly when the petitioner is claiming under a judgment passed in R.F.A. No. 206 of 1997. It is therefore contended by the learned Counsel for the petitioner that the revenue entry which has been obtained in such manner cannot be allowed to be retained. If at all the respondent 3 claims any right, it is for the respondent 3 to establish the same before a appropriate forum. Hence, it is contended that as per the right declared in favour of the husband of the petitioner in R.F.A. No. 206 of 1997, the revenue entries would have to be maintained. It is therefore contended that petitioner is justified in seeking for setting aside of the revenue entries.

4. On the other hand, the learned Counsel for the respondent 3 would seek to justify the action of the Revenue Authorities. It is contended that though the petitioner claims certain right under the judgment passed in R.F.A. No. 206 of 1997, the third respondent''s husband claimed right under the will executed by the mother. Further, the Power of Attorney also empowered the sale made to the third respondent. Be that as it may, the averments made in the instant petition would indicate that though the Power of Attorney dated 26-8-1994 is admitted, it is contended that the said Power of Attorney was executed only for the purpose of conducting the case and not for executing any document which is not correct as it is contrary to Clause 8 of the Power of Attorney.

5. In the light of the rival contentions, what requires to be noticed is that the parties are before this Court seeking that a decision be rendered with regard to the revenue entry that has been maintained. The petitioner contends that the revenue entry made in the year 2004 in favour of the respondent 3 is not justified and in that regard, the judgment passed in R.F.A. No. 206 of 1997 is relied upon. It is no doubt true that during the pendency of the said R.F.A. No. 206 of 1997, the original appellant-Smt. Lakshmamma had died and both the

husband of the petitioner and the husband of the respondent 3 were impleaded as the legal representatives of the deceased appellant. Thereafter, the appeal has been allowed and the suit has been decreed on 28-2-2001. The respondent 3 is claiming right under the sale deed said to have been executed by the husband of the respondent 3. To that extent, the Power of Attorney dated 26-8-1994 is also relied upon. The manner of right claimed by the parties, the question as to whether the Power of Attorney had empowered sale or the entries which has been made was valid and when the entry has remained in existence from the year 2004, these factual aspects of the matter in any event cannot be decided in a writ petition. Therefore, the ownership right to the property even subsequent to the judgment passed in the earlier RFA in the manner in which the exclusive right is claimed in any event could be decided only in a appropriate civil proceedings, if such proceedings are initiated. In the meanwhile, though the name of the respondent 3 is entered in the khatha register, it would be still open for the parties to request that the number of the suit be entered to indicate that there is a dispute in respect of the property on filing the suit. Ultimately, the khatha entry in any event would only be for the purpose of maintenance of records and for the payment of tax which will yield to the right to be decided in a civil proceedings.

6. Therefore, either of the parties claiming absolute right can only seek for such right before a Civil Court. Hence, if any proceedings are initiated, the Civil Court while deciding the same will not rely upon the khatha entry to decide the right, but would decide the right based on the other evidence that would be tendered before the Civil Court. Therefore, in such circumstances, when the factual determination cannot be made in a writ petition, I am of the opinion that this Court cannot pass any orders in that regard to cancel the revenue entry which has been subsisting from the year 2004. Thus reserving liberty to the parties to avail their legal remedy in an appropriate civil proceedings, the petition stands disposed of. No costs.