
(1995) 08 KAR CK 0033
In the Karnataka High Court
Case No : Writ Petition No. 28937 of 1995

Smt. Shankarawwa and Another	Vs	APPELLANT
Devendrappa and Another		RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128

Citation : (1995) 6 KarLJ 133

Hon'ble Judges : Tirath Singh Thakur, J

Judgement

1. The Assistant Commissioner has in appeal set aside the mutation attested on the basis of a decree passed in O.S. No. 119 of 1984, on the ground that the procedure prescribed for attesting the mutation was not followed by the Tahsildar.

2. Learned Counsel for the petitioner has made a two-fold submission against the aforesaid order passed by the Appellate Authority. In the first place he submits that since the mutation had been attested on the basis of a decree passed by the Civil Court, the procedure prescribed by Sections 128 and 129 of the Karnataka Land Revenue Act was inapplicable. Secondly he argues that the Appellate Authority ought to have remanded the matter back to the Tahsildar for a fresh order in accordance with law rather than simply setting aside the same without any further directions.

3. Insofar as the first limb of the petitioner's argument is concerned, the provisions of Section 129 of the Karnataka Land Revenue Act, 1964 do not make any exception insofar as mutations attested on the basis of the Court decrees are concerned. As a matter of fact, Section 128 of the Karnataka Land Revenue Act does not exhaustively enumerate different modes of acquisition of title by the persons claiming a mutation entry in their favour. The said provision reads thus:

Acquisitions of rights to be reported,-

(1) Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant,

owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the prescribed officer of the village within three months from the date of such acquisition, and the said officer shall at once give a written acknowledgment of the receipt of the report to the person making it:

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make report to the Prescribed Officer:

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the Prescribed Officer".

The term "otherwise" appearing in the provision would include a decree passed by a Civil Court also thereby making the procedure prescribed by Section 129, applicable even in cases where the mutation is claimed on the basis of a decree.

4. That apart, decrees may be collusive, or may be passed on compromise entered into by the parties excluding the rights of the legitimate owners. The very fact therefore that a decree of the Civil Court has been passed would not ipso facto mean that the mutation Attesting Authority need not issue notice to all those who would be entitled to such a notice under Section 129 if the transfer of title was not by a decree but by some other mode. The first ground of attack urged by the learned Counsel therefore fails.

5. Insofar as the second submission is concerned, even though the impugned order passed by the Assistant Commissioner does not remit the matter back to the Tahsildar for fresh orders, yet, the same does not mean that the Tahsildar is prevented from passing fresh orders on the application after following the procedure prescribed. It is true that the Assistant Commissioner having interfered with the mutation order on the ground that the prescribed procedure had not been followed ought to have remitted the matter specifically to the Tahsildar for fresh orders, yet the impugned order does amount to a remission to the Tahsildar, keeping in view the reason for which the mutation order has been interfered with.

6. Consequently, it is open to the petitioners to approach the Tahsildar for fresh orders on the subject who would in turn be entitled to pass such orders in accordance with the law after following the procedure prescribed. In the circumstances, there is no reason for this Court to interfere with the impugned order.

With these observations, this writ petition fails and is dismissed.