

(2004) 10 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 27034 of 2001

Smt. Shantamma

APPELLANT

Vs

Bangalore Mahanagar Palike and Others

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Citation : (2005) 1 KarLJ 63 : (2004) 4 KCCR 2896

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G. Papi Reddy, for the Appellant; B.V. Muralidhar, for Respondents 1 and 2, M. Raghavendra and D. Aswathappa for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This writ petition is filed by a person, who claims to be legal heir of the owner of the property in respect of which property disputes have arisen for the purpose of entering the names of the present owner of the property in the records of the Corporation, precisely to indicate the name of the owner in the folios of the Corporation records.

2. The 1st and 2nd respondents-Corporation Authorities having effected the name of the 3rd respondent in the revenue records as the kathadar in respect of house property bearing old Survey Number 5/1 present katha number 34-A situated at Ramakrishna Mutt Layout, Gavipuram Guttahalli, Kempegowda Nagar, Bangalore 19, in terms of endorsement vide Annexure-L, dated 28-6-2001, petitioner has approached this Court claiming that the Corporation Authorities have acted in an arbitrary and biased manner in giving such an endorsement in favour of the 3rd respondent, is seeking for quashing the endorsement Annexure-L, dated 28-6-2001 and for a further direction to the Corporation Authorities to register the katha of the said property in the name of the petitioner.

3. This writ petition was admitted on 17-7-2001 and this Court had granted an interim order staying the operation of the endorsement dated 28-6-2001.

4. Respondents have entered appearance through Counsel. 1 and 2nd respondents are represented by learned Counsel Sri Muralidhar, and have also filed their statement of objections. Likewise the 3rd respondent is represented by Sri Aswathappa, learned Counsel and has also filed the statement of objections.

5. I have heard the learned Counsels appearing for the parties and perused the pleadings in this petition, as well as the record that is placed before the Court by Sri Muralidhar, learned Counsel appearing for the Corporation. A few undisputed facts leading to the petition are that the disputed property, it appears forms part of a bigger area of the property in the same Survey Number 5/1 of Bangalore Sough Taluk, which was originally owned by one Andanappa. It is a portion of this property, which was sold by the said Andanappa measuring 25 ft. x 80 ft. in terms of a sale deed dated 18-3-1965 to one B. Ramu. It is also the common case of the parties that from out of the land purchased from Andanappa, Ramu in turn sold an extent of 21 ft. x 27 ft. in favour of H.C. Hanumantaiah in terms of sale deed dated 28-2-1972.

6. It is the claim of the 3rd respondent herein that this extent of land, which had a house property in the area measuring 21 ft. x 27 ft. had been in turn sold in her favour on 24-5-1972 and it is also the case of the 3rd respondent the sale deed has been duly registered etc.

7. Petitioner is the wife of the said H.C. Hanumantaiah and it appears that the petitioner along with Hanumantaiah had resided in a portion of the property and other parts had been tenanted. While, it is the claim of the petitioner, that the petitioner apart from living in a portion of this property is collecting rents from the tenants, this aspect is disputed by the learned Counsel for the 3rd respondent, who submits that in respect of the other portions in occupation of the tenants, other than the portion occupied by the petitioner, it is the 3rd respondent who is collecting the rents. It also transpires that the said Hanumantaiah under whom the 3rd respondent claims as a purchaser of the property under the sale deed dated 24-5-1972 and under whom the petitioner claims as a successor, pursuant to his death on 13-4-1981, had not taken steps immediately after the respective events viz., either after 1972 by the 3rd respondent or after 1981 by the petitioner to have the katha of the property changed to their respective names. It appears that the 3rd respondent had initiated eviction proceedings against the petitioner by filing HRC No. 1820 of 1983 before the Court of Small Causes Judge at Bangalore, and the matter having come up to this Court in CRP No. 4338 of 1986 it was remanded to the Trial Court. Ultimately it came to be dismissed in terms of an order dated 21-1-1992 holding that there was no jural relationship between the landlord and tenants, i.e., between the 3rd respondent and the petitioner. In the first round also the Small Causes Court had held likewise in terms of its order dated 3-9-1986, while dismissing the petition and revision to this Court was by the 3rd respondent claiming to be the landlady of the property.

8. It is after such proceedings, it is claimed by the petitioner that an application

dated 20th May, 1987 had been given to the Corporation Authorities for effecting the transfer of katha to her name as she is the legal heir of late Hanumantaiah, being his wife and after his death the katha should reflect her name as the owner of the property.

9. The submission of Sri Papi Reddy, learned Counsel for the petitioner is that the applicant had given the supporting documents to substantiate her claim to recognise her as the legal heir of the erstwhile owner of the property. It is also the submission of Sri Papi Reddy, learned Counsel for the petitioner that this application has not been ordered by the Corporation Authorities till date. It appears that the 3rd respondent also gave an application on 20-10-2000 seeking for change of katha in the sense to enter her name in the katha corresponding to the property as the present owner of the property under the sale deed dated 24-5-1972 executed by Mr. Hanumantaiah in her favour and which has been registered.

10. Writ petitioner on coming to know of the filing of such an application by the 3rd respondent had filed her objections inter alia contending that she does not admit the sale deed dated 24-5-1972 said to have been executed by her husband; that the 3rd respondent has no right and title to the property; that there is no justified ion in seeking for katha etc., and that the application should be rejected and katha transferred to her name.

11. The submission of Sri Muralidhar, learned Counsel for the respondents 1 and 2 is that the Corporation Authorities had held an enquiry in the context of the application filed by the 3rd respondent and had also recorded statements of the parties. The precise statement of the petitioner recorded on 8-3-2001 in this proceeding to effect the changes is that the sale deed dated 24-5-1972 under which the 3rd respondent claims is disputed, not admitted and katha should not be changed to the name of the 3rd respondent pursuant to such a sale deed.

12. Corporation Authorities after holding such enquiry have issued endorsement dated 7-6-2001 passed by the Revenue Officer.

13. Sri Muralidhar, learned Counsel appearing for the Corporation Authorities has produced records containing this order. It transpires that the Corporation did not have any records of this property and that the property had only a survey number. The order indicates that the Corporation had collected improvement charges and other taxes from the 3rd respondent for issuing katha in her name. The order also indicates that the authorities were satisfied with the sale deed in favour of the 3rd respondent executed by Hanumantaiah and had issued the order for effecting the katha in the name of the 3rd respondent. It is this endorsement which is challenged in this writ petition and is sought for being quashed.

14. Submission of Sri Papi Reddy, learned Counsel for the petitioner is that the endorsement in favour of the 3rd respondent is illegal, not valid; that the Corporation Authorities could not have issued any endorsement in favour of the

3rd respondent; that the very sale deed said to have been executed by Hanumantaiah is disputed under which the 3rd respondent is claiming title to the property; that the earlier civil litigation had clearly indicated that the petitioner was in possession of the property in her own right and not even as a tenant under the 3rd respondent; that the authorities could never have acted on the application of the 3rd respondent for issuing the endorsement of the nature challenged in the writ petition.

15. It is the further submission of the Sri Papi Reddy, learned Counsel for the petitioner that the petitioner herself had applied for effecting katha in her name in terms of her application dated 20th May, 1987. It was incumbent upon the authorities to have acted on such an application, inaction on their part coupled with overt act action to pass orders on a much later application of the 3rd respondent which was given in the year 2001 clearly indicates arbitrary and biased action on the part of the respondents 1 and 2-Authorities. It is also the submission of Sri Papi Reddy, learned Counsel for the petitioner that the authorities have conveniently ignored the documents that had been produced by the petitioner before them and have chosen to rely upon the sole document i.e., the sale deed dated 24-5-1972, which is hotly contested by the petitioner as the basis for issuing the endorsement in favour of the 3rd respondent.

16. The further submission is that the Corporation Authorities are not Competent Authorities to adjudicate the validity of the sale deed in one way or the other, when it was the subject-matter of proceedings in HRC case and had been disputed by the petitioner even in such a proceeding.

17. On the other hand, Sri Aswathappa, learned Counsel for the 3rd respondent submits that the authorities have acted in a proper and legal manner, that it is a fact that the 3rd respondent has purchased the property from the husband of the petitioner in terms of the sale deed dated 24-5-1972; that the sale deed is a registered sale deed in accordance with the relevant statutory provisions. The Corporation Authorities are bound to act on a valid sale deed of this nature and acting on such premise, if have issued endorsement in favour of the 3rd respondent, no exception can be taken. It is also the submission of the learned Counsel for the 3rd respondent that the petitioner except for merely disputing the sale deed dated 24-5-1972 have not taken any further action to question the same by filing any civil suit and in such circumstances, if the authorities have acted on the said sale deed, action on the part of the 1st and 2nd respondents cannot be faulted.

18. Sri Muralidhar, learned Counsel for the Corporation Authorities also submitting on the same line contends that the issue of katha in the name of 3rd respondent is in accordance with the statutory provisions; that the 3rd respondent had a registered sale deed in her favour and the Corporation Authorities were bound to act on the registered sale deed and have acted accordingly. Learned Counsel submits that the action is justified; that the order and endorsement were passed after giving ample opportunity and after hearing

parties and also after recording the statement and accordingly prays for dismissal of the petition.

19. The narration as indicated above on the sequence of events can impress upon a lay person also that there is a dispute and that there is a very strong contest between the parties as to who is the owner of the property. Ultimately it may be one or the other person the owner, but, as of now there is no clarity about it. While the petitioner claims as a legal heir of Hanumantaiah, pursuant to his death in the year 1981; the 3rd respondent is claiming as a purchaser of the property from the said Hanumantaiah and under the sale deed of the year 1972. No doubt the sale deed is claimed to have been registered, but circumstances definitely indicate as to whether it has been acted upon all along or not is not a matter free from doubt. The seller continue to remain in possession in a portion of the property and it is the fact that even today is in physical possession of a portion of the property and with regard to the other portions which are said to be tenanted, there is a dispute as to who is the owner to assert possession also, while it is the claim of the petitioner that she has been in possession and collecting rents from the tenants, it is the claim of the 3rd respondent that she is in possession in respect of other portion of the property and is collecting the rents.

20. These are facts which were very much before the Corporation Authorities, when two applications were made for effecting the katha in favour of the petitioner and the 3rd respondent, this was sufficient material for the Corporation Authorities not to venture upon to give a finding as to who is more probable or likely to be the owner and on such premise to effect katha. It is of significance to notice here that the katha had never been issued by the Corporation Authorities in respect of the property. The property had a revenue survey number and originally stood in the name of Andanappa in the revenue records. If that is so, when there is such hot contest for ownership in respect of a portion of this survey number, it was more appropriate for the Corporation Authorities to keep their hands off and to have directed the parties to get their rights determined before a Civil Court and for consequential directions for issue of katha etc.

21. This Court has time and again impressed upon the Corporation Authorities that it is not the function of the Municipal Authorities to examine such disputed facts, it should be left to Civil Court to pronounce upon the validity of the title and whenever there is a bona fide dispute as to the ownership, the Corporation Authorities or the Municipal Authorities should not be very adventurous in effecting changes or indicating the proper ownership by issue of kathas etc.

22. The sequence of events as narrated above and the developments that have taken place clearly indicate that the respondent-authorities, who are very casual in respect of the application filed by the petitioner, became rather active in respect of the application filed by the 3rd respondent. While the application of the petitioner was pending from the year 1987 and they had not taken any action on it, suddenly they became active on the application of the 3rd

respondent filed as later as on 20-10-2000 and ventured upon to issue endorsement dated 28-6-2001 in favour of the 3rd respondent, i.e., the authorities have acted within a span of about eight months, whereas the application of the petitioner continues to languish before them for a period of over 13 years even before the application of the 3rd respondent came to be filed. It is a clear indication that there is something wrong with the Corporation Authorities in disposing of such applications which come up before them for orders. The Corporation Authorities have been showing undue haste in certain cases while they are totally dormant in respect of other applications. 1st and 2nd respondents-public authorities are expected to act in a fair and even-handed manner and not to give scope for accusation of favouritism or nepotism. The action on the part of the 2nd respondent-Assistant Revenue Officer in issuing such an endorsement is clearly not justified in law, more so because in the present case, 2nd respondent if at all has acted with uncalled for haste and biased manner in issuing the endorsement.

23. I cannot help noticing that the Corporation Authorities have indulged in such illegal and biased action and are passing such orders in spite of repeated warnings and notices by this Court not to act in situations where title is disputed, parties are putting conflicting claims for the purpose of issue of katha or change of katha. This Court has time and again impressed upon the Municipal Authorities to direct the disputing parties to approach the Civil Court to get their rights determined and seek for a suitable declaration and for consequential directions. Katha is not one, which confers any title on any person. It is only a piece of evidence to evidence the ownership. If that ownership itself is doubtful, not clear, disputed, an entry in the katha does not come into existence. The action on the part of the respondent-Corporation Authorities is clearly one, which calls for adverse notice and remedial action at the hands of this Court. It is high time the Corporation Authorities realise their responsibilities and learn their lessons.

24. The impugned endorsement at Annexure-L, dated 28-6-2001 is hereby quashed by issue of writ of certiorari. The Corporation Authorities are directed not to issue katha in the name of any party, pending a proper determination by the contesting parties to have their rights determined by a Civil Court. It is open for the parties to approach the Civil Court to get their rights determined and seek for effecting the changes in the records of the Corporation Authorities in terms of a determination by the Civil Court.

25. Writ petition is allowed, levying exemplary costs on the respondent-Authorities in a sum of Rs. 5,000/-. The Corporation is permitted to recover the cost from the erring officer, who was responsible for issue of the endorsement at Annexure-L, dated 28-6-2001.

26. Rule made absolute.

27. Parties are free to have their rights determined before the Civil Court irrespective of any observations made in the course of this order.