(2006) 09 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 13476 of 2007

Smt. Shivagangavva — APPELLANT

Vs

The Deputy Commissioner and Others — RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128, 136 (2), 136 (3)
Karnataka Land Revenue Rules, 1966 — Rule 43
Succession Act, 1925 — Section 63, 64

Citation : (2007) ILR (Kar) 4542 : (2007) 4 KCCR 338 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Manjunath Meled, for the Appellant; G. Chandrashekaraiah, AGA for R1-3 and Umesh R. Malimath, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—The petitioner, assailing the correctness of the impugned order dated 15.2.2005 passed by third respondent in No. RTDC:CR:9:2004-05; order dated 17.1.2006 passed by second respondent bearing No. RTS:AP:159:2004-05 and order dated 7.7.2007 passed by first respondent bearing No. RTS:RA:CR:77:2005-06 vide Annexures-A,B and C respectively, has presented this writ petition.

2. The grievance of petitioner in this writ petition is that, petitioner is a widow of Bhimappa, who was the owner of lands bearing Sy Nos. 38/2,103/2 and 16/1+2, totally measuring about 18 Acres 07 Guntas, situate in Kubihal village. The said lands were ancestral properties of late Sri. Bhimappa, who died intestate on 17.12.2003 leaving behind the petitioner and daughter Bangarewwa as legal heirs. 4* respondent after the death of Sri. Bhimappa has filed an application before the Village Accountant for sanction of mutation regarding his claim, in the relevant record of rights and other revenue records on the strength of an alleged registered Will dated 9.10.2003 executed by late Sri. Bhimappa. After the receipt

of the notice, petitioner has filed objections disputing the execution of Will and requested not to effect mutation based on the said Will. The 3rd respondent without considering the objections filed by petitioner properly and without taking a decision in strict compliance of the relevant provisions of the Karnataka Land Revenue Act and Rules, has accepted the application filed by 4th respondent and passed the impugned order vide Annexure-A dated 15.2.2005. Assailing the correctness of the order passed by 3rd respondent dated 15.2.2005 vide Annexure-A, petitioner has filed an appeal before the 2nd respondent- The Assistant Commissioner, Dharwad District, Dharwad, under Sub-Section-2 of Section 136 of the Karnataka Land Revenue Act. The said matter had come up for consideration before the 2nd respondent on 17.1.2006. The 2nd respondent has dismissed the appeal and confirmed the order passed by 3rd respondent. Being aggrieved by the impugned order passed by respondents-2 and 3, petitioner herein has filed a revision , before the first respondent-the Deputy Commissioner, Dharwad District, Dharwad, under Sub-Section-3 of Section 136 of the Karnataka Land Revenue Act in proceeding No. RTS:RA:CR:77:2005-06. The said matter had come up for consideration before the first respondent on 7.7.2007. The first respondent has dismissed the revision petition filed by petitioner and confirmed the order passed by 2nd respondent. Being aggrieved by the impugned orders passed by all the three authorities as referred above, petitioner felt necessitated to present this writ petition, seeking appropriate relief.

3. I have heard learned Counsel appearing for petitioner, learned Counsel appearing for 4th respondent and learned Additional Government Advocate for respondents 1 to 3.

4. The principal submission canvassed by learned Counsel appearing for petitioner is that, 4* respondent cannot claim as a matter of right on the basis of the alleged Registered Will to certify the mutation and to record his name in the record of rights and other relevant revenue records. Further, learned Counsel appearing for petitioner has submitted that, petitioner has appeared and filed objections before the 3rd respondent. The 3rd respondent without conducting proper enquiry and without following the relevant provisions of the Act and Rules, has proceeded to allow the application. The said order passed by the 3rd respondent has been confirmed by respondents-1 and 2 contrary to the relevant provisions of the Act and Rules and the same cannot be sustained. To substantiate his submission, he placed reliance on the Full Bench decision of this Court, in the case of C.N. Nagendra Singh Vs. The Special Deputy Commissioner and Others, and he specifically placed reliance on Paragraphs-8 and 9 of the said judgment and submitted that, in view of the well settled law laid down by the Full Bench of this Court, the decision of the Revenue Court has to be necessarily based on the undisputed facts and the Revenue Court cannot go into the disputed questions of relationship, status of the parties title to the property or genuineness or otherwise of a document or challenge to the documents on the ground of fraud, undue influence, misrepresentation or mistake. Paragraphs-8 and 9 of the aforesaid judgment reads thus:

8. Rule 43 of the Karnataka Land Revenue Rules deals with settlement of disputes. It states every case entered in register of disputed cases shall be enquired into and decided by Sheristedar or by any officer of the Revenue Department equal or superior in rank to him on an appointed day of which due notice shall be given to the parties concerned. It categorically states the proceedings of the enquiry shall be oral and held in the public and there shall be no recording of statements and depositions. The only record shall be the decision of the officer holding the enquiry, in the register itself, which shall contain a brief summary of the facts elicited during the enquiry and the grounds for the decision. Of course, an appeal is provided against such decision to the Assistant Commissioner in charge of the Sub-Division whose decision shall be final. Therefore, it becomes clear every revenue officer who is authorized to hold an enquiry in respect of disputed cases is a revenue Court. The very fact he is prohibited from recording the statements and depositions of the parties makes it clear that no substantial rights of the parties in respect of the disputed property can be gone into by such revenue Court. If title or right set up by one party to an immovable property is disputed by the other party such title to the property cannot be enquired into by the revenue Courts much less any decision be rendered for any purpose whatsoever. In the first place the revenue Court constituted under the Act can only go into questions of assessment, recovery of land revenue and land revenue administration and it has no jurisdiction to go into the question of title in respect of an immovable property which exclusively vests in the Civil Court.

9. Considering Rule 43 when a person claims title to a property under a Will for the purpose of getting a mutation entry in the revenue records before any such entry is made the Revenue Court should prima facie be satisfied that the said documents is genuine and valid even in the absence of any dispute as the said Will comes in the way of natural succession. By virtue of Section 128 when the owner of the land dies, the title to the said property passed on to the legal heir by succession or survivorship or inheritance and the property vests with such a legal heir without there being any document and purely based on the relationship of the deceased with the legal heir. A Will can come into operation only after the death of the executant. If a Will is set up to deprive a legal heir who had acquired title to the property either by succession, survivorship or inheritance, the person claiming under the Will has to show better title. If the Will is disputed strict proof of Will as required under Sections 63 and 64 of the Succession Act is to be provided. When the revenue Court is prevented from recording the statement of the parties and the depositions, the question of establishing the genuineness of the Will for any purpose whatsoever before the revenue Court in an enquiry would not arise. Under these circumstances, the revenue Courts have no jurisdiction to go into the genuineness or validity of the Will or to the question of title in respect of the land in dispute. The decision of the revenue Court has to be necessarily based on the undisputed facts. The Revenue Court cannot go into the disputed questions of relationship, status of the parties title to the property

or genuineness or otherwise of a document or challenge to the documents on the ground of fraud, undue influence, misrepresentation or mistake. As such, the petitioner cannot take advantage of Rule 43 in the case of Will.

Therefore, learned Counsel appearing for petitioner has submitted that, in view of the law laid down by the Full Bench of this Court as stated supra, 4 respondent cannot take advantage of the Will and hence, the impugned orders passed by respondents-1 to 3 are liable to be set aside.

5. Per contra, learned Counsel appearing for 4th respondent, Inter-alias contended and substantiated the impugned orders passed by respondents-1 to 3 and submitted that, they are in consonance with the relevant provisions of the Karnataka Land Revenue Act and Rules and on the basis of the registered Will, the claim of the 4th respondent has been certified. Further, learned Counsel appearing for 4th respondent has submitted that, petitioner is claiming that she is the wife of the deceased Late Sri. Bhimappa, but she has not produced any documents to show that she is the legally wedded wife of late Bhimappa and in view of the statement made in the written submissions, the authorities have rightly considered and passed the orders and interference by this Court is not justifiable.

6. Learned Additional Government Advocate appearing for respondents-1 to 3 has submitted that, the impugned orders passed by all the authorities cannot be sustained in view of the well settled law laid down by the Full Bench of this Court as referred above. Further, he submitted that, when the petitioner is disputing the alleged registered Will, the only option for the 4th respondent is to produce better title after obtaining Succession Certificate from the competent Civil Court and then only the authorities can exercise their powers under the relevant provisions of the Karnataka Land Revenue Act and Rules. After careful perusal of the judgment of the Full Bench of mis Court as referred above, learned Additional Government Advocate has made the said submission.

7. After having heard learned Counsel appearing for petitioner, learned Counsel appearing for 4th respondent and learned Additional Government Advocate for respondents-1 to 3 and after careful perusal of the impugned orders passed by all the three authorities, it is manifest on the face of the orders that, all the three authorities have committed an error of law, much less illegality and material irregularity in passing the orders exercising their powers and contrary to the relevant provisions of the Karnataka Land Revenue Act and Rules. Even before the 2nd respondent-Assistant Commissioner, Dharwad District, Dharwad, 4th respondent has represented through his counsel and it is his specific case that, petitioner is the wife of late Sri. Bhimappa and petitioner and her daughter have got strained relationship with Late Sri. Bhimappa and they have given lot of trouble and created problem to him and late Sri. Bhimappa had given police complaint and therefore, he has executed the Will in his favour. When the said statement has been made by 4th respondent that itself is sufficient for the revenue authorities and they ought not to have proceeded to pass the impugned

orders by exercising their power and they might have directed the parties to workout their remedy before the competent Civil Court as envisaged under the Karnataka Land Revenue Act and Rules and in the light of the Full Bench decision of this Court as referred above. Neither the first respondent nor the respondents-2 and 3 have conducted proper enquiry and taken appropriate decision in accordance with law. In view of non conducting proper enquiry and non considering the relevant provisions of the Land Revenue Act and Rules, and in view of the well settled law laid down by the Full Bench of this Court as referred above, the orders passed by respondents-1 to 3 cannot be sustained and they are liable to be set aside. 4th respondent has to produce better title to establish that he is the absolute owner of the land in question on the basis of the alleged Will and he has obtained necessary succession certification and declaration from the competent Civil Court. Therefore, I am of the considered view that, the impugned orders passed by 3rd respondent and confirmed by respondents- 2 and 1 cannot be sustained and they are liable to be set aside.

8. Having regard to the facts and circumstances of the case as stated above, the writ petition filed by petitioner is allowed.

The impugned order dated 15.2.2005 passed by the third respondent in No. RTDC:CR:9:2004-05; order dated 17.1.2006 passed by the second respondent bearing No. RTS:AP: 159:2004-05 and order dated 7.7.2007 passed by the first respondent bearing No. RTS:RA:CR:77:2005-06 vide Annexures-A,B and C respectively, are hereby set aside and matter stands remitted back to the 3rd respondent for reconsideration afresh, with a direction to take appropriate decision, in accordance with law and in the light of the law laid down by the Full Bench of this Court as referred above and after affording opportunity to both the parties.