

(2011) 08 KAR CK 0072

In the Karnataka High Court

Case No : Writ Petition No"s. 18060-62 of 2011

Sri. B.P. Channa Keshwava Shetty

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 67 (2), 67 (3)

Citation : (2011) 5 KarLJ 206

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

Bench : Single Bench

**Advocate : T.C. Shashidhara, for M/s. In-curia Law Chambers, for the Appellant;
R. Omkumar, AGA, for the Respondent**

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar

1. Persons who are fighting for immovable property, in the present case, an extent of 1 acre 9 guntas of land in Sy. No. 117/4 which the Petitioner claims to be ancestral property is said to have been used by the school committee for the purpose of playground of the students studying in the school and in this background, it appears the school committee had also filed a suit before the civil court for the relief of injunction. The suit having been decreed and further appeal by the writ Petitioner having been dismissed, Petitioner had approached this Court by filing second appeal in RSA No. 182/2000. The second appeal came to be allowed by this Court as per judgment dated 29.01.2004 on the technical ground that while the subject school was a Government school, a person who had filed suit on behalf of the school is only a member of the betterment committee and this Court taking the view the person was not competent to maintain the suit on behalf of the Government school and having re-framed the original substantial question of law which was,

Whether the court below can grant permanent injunction when it has refused to

grant the declaratory rights of the Plaintiff?

into

1. Whether the appellate court erred in holding that Plaintiff has proved possession. The assessment and interpretation of evidence is perversely contrary to the law and evidence on record. Therefore grant of permanent injunction is bad in law?

2. Whether the Plaintiffs have locus-standi to maintain the suit?

and having answered both questions in favour of the Appellant - Defendant, allowed the appeal and set aside the judgment and decree of the appellate court.

2. It appears thereafter a suit in OS No. 42 of 2008 had been filed by the Government Boys Higher Primary School, Belur, by the Headmaster as first Plaintiff and the Chief Secretary, Government of Karnataka as second Plaintiff, for declaration and permanent injunction against the very Petitioner. This suit having been dismissed though learned Judge of the trial court found that the Plaintiffs had proved that the students of Government Higher Primary Boys School for using the suit schedule property as playground, education department, conducting taluk level sports, local administration celebrating Independence Day, Republic Day, the members of the different association of Belur conducting sports, the political parties using this playground for public meeting in the school field along with the suit property, nevertheless, has dismissed the suit as per judgment dated 6.8.2010.

3. It is encouraged by dismissal of the suit that the Petitioner approached the Tahsildar, Belur Taluk, Belur, by giving a representation dated 14.3.2011 for changing the revenue entries in respect of 38 guntas of land in Sy. No. 117/4 out of 1 acre 9 guntas of land in this subject survey number to the name of the Petitioner from the name of the Government, on the premise that when the records were computerised, it is by mistake shown in the name of the Government, has sought for quashing of the order dated 19.12.2000 copy at Annexure-K passed by the Deputy Commissioner, Hassan District, Hassan and also the order dated 1.9.1993 [copy at Annexure-H] passed in RRT 30/92-93 by the Assistant Commissioner, Sakleshpur Sub-division, Sakleshpur, where under the Assistant Commissioner purporting to act u/s 67[2] of the Karnataka Land Revenue Act, 1964 [for short "the Act"] and on the basis of the report of the Tahsildar, Belur, in Ha. Ba 1176/92-93 dated 22.1.1993 in respect of survey No. 117/4 [1 acre 9 guntas] of Belur Village, to the effect that subject land 1 acre in Sy. No. 117/4 had been acquired for the purpose of Government High School way back in the year 1962 or before along with adjacent survey numbers and vide Mr. 761/61-62 dated 30.3.1962, the revenue entries had also been mutated in favour of the Government in respect of an extent of 1 acre 9 guntas and therefore a subsequent entry from 1964-65 and 1984-85 in the name of Puttabasappa Shetty - father of the Petitioner was not proper nor based on any supporting documents and proceedings and therefore the entry needs to be

corrected and the Assistant Commissioner after holding an inquiry and on recording a finding that the writ Petitioner had totally failed to establish any right, title and interest over the land of 1 acre 9 guntas in Sy. No. 117/4, ordered that the land, in fact, stands vested in the Government as per order dated 1.9.1993.

4. It was this order which was subject matter of further appeal u/s 49 of the Act before the Deputy Commissioner which came to be dismissed as per order dated 19.12.2000 [copy at Annexure-K]. Very strangely, thereafter, instead of Petitioner approaching civil court if he wanted to have any right established over the subject property, it appears the betterment committee of the school became active for filing a suit whether duly authorized or otherwise, defective or otherwise, but nevertheless, the learned Judge of the trial court having noticed the facts, decreed the suit in favour of the school committee. A further appeal also came to be dismissed by the learned Judge of the lower appellate court, but it appears the Petitioner met with success when he filed a second appeal as noticed above, a learned Judge, Justice K. Sreedhar Rao allowing the appeal as noticed above.

5. It is thereafter the Government also joined the school for filing a suit and to get it dismissed as per judgment and decree dated 6.8.2010 [copy at Annexure-M].

6. Though there was no representation for the writ Petitioner for the past two days" though the matter was called twice during the course of two days, fortunately, Mr. Shashidhara, Learned Counsel has appeared today and made his submissions.

7. Submission of Sri. Shashidhara, Learned Counsel for the Petitioner is that even when the school committee or Government is unable to produce any records worth its name to prove the ownership of the subject property in respect of extent of 1 acre 9 guntas in Sy. No. 117/4 and even when the Government failed before the trial court and thereafter representation having been given to the Tahsildar to effect revenue entries in the name of the Petitioner, that having not been made, a writ of mandamus should be issued to compel the Tahsildar to act on the representation of the Petitioner.

8. Learned Counsel for the Petitioner also submits that in the wake of the dismissal of the suit filed by the Respondents before the civil court, it is proper this Court sets aside the orders passed by the Assistant Commissioner and affirmed in appeal by the Deputy Commissioner and also to set aside the RRT proceedings etc., and therefore Petitioner has approached this Court seeking the following reliefs:

a) Call for the records in R.A. 25/93-94 passed by the Deputy Commissioner, Hassan and also call for records in RRT 30/92-93 passed by the Assistant Commissioner, Sakaleshpura Sub-Division, Sakaleshpura, Hassan District.

- b) Set aside the order dated 19.12.2000 passed in R.A. 25/93-94 Vide Annexure "K" passed by the Deputy Commissioner of Hassan District and
- c) Set aside the order dated 01.09.1993 passed in RRT 30/92-93 passed by the Assistant Commissioner Sakaleshpura Sub-Division, Sakaleshpura, Hassan District vide Annexure "H"
- d) Issue a Writ of Mandamus directing the Thasildhar Belur to consider the representation dated 14.03.2011 vide Annexure "N".
- e) Pass such other orders that this Hon"ble Court deems fit to grant in the facts and circumstances of case in the interest of Justice and Equity.

9. Sri. R. Omkumar, learned Additional Government Advocate, who has been favoured with advance copy of the writ petition, points out that the writ Petitioner having allowed the orders passed by the Assistant Commissioner and the Deputy Commissioner as it is and having not questioned the same, the present writ petitions are too belated effort to get over these orders; that as against the orders passed by the revenue authorities, the Petitioners had the option to file civil suit as indicated in Section 67[3] of the Act, reading as under:

67. Public Roads, etc., and all lands which are not the property of others belong to the Government.

(3) Any person aggrieved by an order made under Sub-section (2) or in appeal or revision therefrom may institute a civil suit contesting the order within a period of one year from the date of such order and the final decision in the civil suit shall be binding on the parties.

10. One another submission is that dismissal of the suit filed by the Respondents on some technical grounds or other will not confer rights in favour of the writ Petitioner and if the writ Petitioner was keen on getting his rights determined, he should have filed a suit and not to take shelter under the dismissal order passed by the trial court in the suit filed by the Respondents.

11. It is also pointed out that even while dismissing the suit, the learned Judge of the trial court has recorded a finding of fact that possession of the subject land has been with the Respondents since long and the subject property is being put up to public use all along and not in the possession or enjoyment of the Plaintiff etc., and it is therefore submitted that the writ petitions only deserve to be dismissed as the effort on the part of the Petitioner is only to take undue advantage of the proceedings and using the orders passed by the court against others though Petitioner was a party to the proceedings etc.

12. A perusal of the entire development up to the present writ petitions are nothing but a tell tale story of how not only the revenue entries have been manipulated but even the court proceedings is being used by the Petitioner in collusion with the revenue authorities and may be even the school authorities for suffering orders adverse to the interest of the Government and the school.

13. It is nothing short of a brazen effort on the part of the writ Petitioner to misuse and abuse the process of this Court also not only for seeking for quashing of the orders passed by the revenue authorities, but also trying to get further relief on the basis of adverse order suffered by the Respondents in the suit filed by them even when Petitioner had not made any effort to get his rights or interest determined by the civil court in a positive manner.

14. A dismissal of injunction suit or even a suit for declaration and injunction never confers rights on the Defendant in any manner. The Defendant neither becomes the owner of the subject property nor can claim an order of injunction to have been granted in his favour. Petitioner's position is not any better. Insofar as the prayer for quashing orders passed by the Assistant Commissioner and Deputy Commissioner are concerned, it is a very belated effort and as rightly pointed out by learned Additional Government Advocate, a person who has not filed a suit cannot approach this Court after a lapse of eleven years for such relief in writ jurisdiction.

15. In fact, the observation of the Deputy Commissioner in the order at Annexure-K for proceeding against the erring revenue officials who had manipulated the revenue records to interpolate name of the Petitioner in the revenue records without any basis or documents is very significant. It turns out that the Petitioner is a busy body trying to manipulate not only the revenue authorities but also the process of this Court by employing dilatory tactics. Such tendency on the part of the Petitioner should be discouraged strongly as otherwise such petty, frivolous causes and petitions can flock this Court to deny space and time to bonafide litigants who might have suffered adverse orders at the hands of public authorities.

16. It is therefore, these writ petitions are dismissed levying exemplary cost of 25,000/- on the Petitioner in favour of the second Respondent.

17. Cost to be deposited before this Court within six weeks from today, failing which the registry to issue certificate in favour of the second Respondent - Deputy Commissioner, Hassan District, Hassan, for realizing the amount as arrears of land revenue.

18. Cost to be utilized for the benefit of the school and the Deputy Commissioner of Hassan District is hereby directed to ensure that if necessary the school committee is revamped so that the committee can protect and not sacrifice the interest of the school and its students.