
(2009) 08 KAR CK 0088
In the Karnataka High Court
Case No : Writ Petition No. 17809 of 2008

Sri Chandan Mal

APPELLANT

Vs

The Special Deputy Commissioner and Others

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128

Citation : (2009) 08 KAR CK 0088

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

Bench : Single Bench

Advocate : K. Raghavendra Rao, for the Appellant; R.B. Sathyanarayana Singh, HCGP for R1-R3, for the Respondent

Judgement

A.S. Bopanna, J.—The petitioner is calling in question the order dated 11.12.2008 passed by the first respondent-Deputy Commissioner in Revision (P) No. 68/08-09 which is impugned at Annexure "D" to the petition.

2. The petitioner herein claims to be the purchaser of the property bearing Sy. No. 112/2 measuring 1 acre 16 guntas of Kodigehalli Village. The said property is said to have been purchased from the fourth respondent under a sale deed dated 29.12.1995. Pursuant thereto, the petitioner is said to have secured the mutation order for the purpose of change of revenue entries and the same was ordered in M.R. No. 22/97-98. The contesting respondent Nos. 7 and 8 claim to be aggrieved by the said mutation entry. They contend that the revenue entries made in their names vide M.R. No. 2/1994-95 is the appropriate entry, since they have a right to the property in question and in this regard, reference is also made to the earlier transaction keeping in view the total extent of the land in the said survey number and the acquisition as well as the other transactions which have taken place in respect of the said property.

3. Considering that in the instant case, the issue is limited only to the question of mutation orders for the purpose of revenue entries and further, since the parties are litigating before the Civil Court, a detailed reference with regard to the

nature of right claimed to the property need not be considered, as otherwise any of the observations made herein is likely to affect the interest of the parties.

4. Therefore, limiting to the said aspect of the matter, the sequence in the present case would indicate that respondent Nos. 7 and 8 in that regard, being aggrieved by the mutation order in M.R. No. 22/97-98 had questioned the same before the Assistant Commissioner in case R.A. No. 122/2000-01. The Assistant Commissioner after considering the matter in detail had dismissed the said appeal. As against the order dated 12.02.2002 passed by the Assistant Commissioner, respondent Nos. 7 and 8 were before the Deputy Commissioner. The Deputy Commissioner by his order dated 11.12.2008 which is impugned in this petition has directed that the mutation entries be retained in the names of respondent Nos. 7 and 8 herein also vide M.R. No. 2/94-95. The petitioner therefore claims to be aggrieved by the order passed by the Deputy Commissioner.

5. In order to consider this aspect of the matter, the only relevant facts to be noticed at this juncture is that respondent Nos. 7 and 8 claim right to the property based on an earlier unregistered sale deed as well as the partition said to have been effected between the family members. In this regard, presently a suit in O.S. No. 304/2004 is pending. It is also noticed that at an earlier point in time, the vendor of the petitioner Sri K.N. Ramachandra had filed the suit in O.S. No. 4582/1993 and the same had been decreed exparte on 07.09.1993. The judgment of the said suit though attained finality, had culminated in a proceedings before the Hon"ble Supreme Court in a Civil Appeal and though the exparte judgment was not interfered with, the Hon"ble Supreme Court had made it clear that respondent Nos. 7 and 8, who were the appellants therein would have liberty to file an appropriate suit to establish their title in respect of the property in question.

6. It is in that context, the present suit in O.S. No. 304/2004 is filed. In the said suit, respondent Nos. 7 and 8 in addition to seeking declaration of their title have also sought for a judgment to declare the sale deed dated 29.12.1995, under which the petitioner claims title, as null and void. This would indicate that the entire gamut of consideration with regard to the rights of the parties is still at large before the Civil Court. Keeping this aspect in view, the limited aspect is to consider as to which of the entries should remain on record and the nature of protection of right of the parties until the suit is disposed of and the right as declared by the Civil Court is acted upon.

7. To the said extent, since in any event, the vendor of the petitioner had earlier filed a suit and the same had reached finality to the extent of possession and in any event, as of now, there is registered sale deed dated 29.12.1995 which remains valid and since based on such registered sale deed, the mutation entry in M.R. No. 22/1997-98 has been effected as contemplated u/s 128 of the Karnataka Land Revenue Act, I do not see any reason to set aside that mutation entry at this stage and therefore, to the said extent, the order passed by the

Deputy Commissioner is not sustainable and accordingly, the same stands quashed

8. Having said so, the question would also arise with regard to the nature of protecting the interest of the parties and in this regard, it is made clear that even though the mutation order in M.R. No. 22/1997-98 shall remain in force until the matter is resolved before the Civil Court, the Tahsildar is directed to make an entry in Column No. 11 of the RTC to indicate the pendency of the said suit and to point out that there is a civil dispute between the parties in the Civil Court relating to the property regarding which the mutation entry is entered. Such entries shall remain in force till the civil dispute attains finality and the parties shall thereafter re-approach the Tahsildar with the copy of the judgment seeking for necessary corrections in the matter. It is also made clear that the said revenue entry as well as the endorsement shall remain, subject to all other proceedings and in the civil proceedings, the revenue entry shall not form the basis to decide the title or the right of the parties and the Civil Court will render an independent finding based on the other evidence that may be available on record.

In terms of the above, the petition stands disposed of. No order as to costs.