(2012) 08 KAR CK 0161

In the Karnataka High Court

Case No : Writ Petition No. 25802 of 2012 (Klr-Rr/Sur)

Sri. Chikkachowdappa	APPELLANT
Vs	
The Assistant Commissioner, The Tahsildar and Sri Lakshmanappa	RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:
Karnataka Land Revenue Act, 1964 — Section 136 (2), 136 (3)

Citation : (2012) 08 KAR CK 0161

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Kalyan R. Adv, for the Appellant; R.B. Sathyanarayana Singh, G.P. For R1 and 2, for the Respondent

Judgement

B.S. Patil

1. Learned Government Pleader takes notice for respondents 1 & 2. In this writ petition, order dated 17.06.2011 passed by the Assistant Commissioner, Bangalore North Sub-Division, Bangalore, allowing the appeal filed by the 3rd respondent and setting aside the mutation entry effected vide MR. No. 19/2008-09 by the Tahsildar is called in question. In fact, the petitioner had earlier filed a revision petition before the Deputy Commissioner. The said revision petition having been dismissed, she had approached this Court in W.P.No. 18556/2012. The said writ petition was allowed on 13.06.2012 setting aside the order passed by the Deputy Commissioner holding that he had no jurisdiction u/s 136(3) of the Karnataka Land Revenue Act, 1964 (for short, the Act'') to revise the order passed by the Assistant Commissioner u/s 136(2) of the Act. However, liberty was reserved to the petitioner to challenge the order passed by the Assistant Commissioner. It is in this background, petitioner has approached this Court challenging the order passed by the Assistant Commissioner.

2. I have heard the learned counsel for the parties. By the impugned order, the Assistant Commissioner having referred to the contentions of the respective

parties, has held that the previous mutation entry in MR. No. 16/1980-81 was effected and certified by the Tahsildar based on a registered Sale Deed executed in the year 1974 and therefore the Tahsildar could not have effected the impugned mutation entry on 06.01.2009 in MR. No. 19/2008-09 without following the rules. Therefore, he has set aside the impugned mutation entry and has issued a direction to the Tahsildar to effect entries in the revenue records as per the Sale Deed dated 20.12.1974.

3. It is seen from the impugned order passed by the Assistant Commissioner that the petitioner herein had taken up a specific contention stating that from 1977-78 up till 2008-09, the name of the petitioner herein was entered in the revenue records and that it is he who was in possession of the property. Although it was urged by the petitioner that the Sale Deed executed in the year 1974 was a bogus document, the assertion made by the petitioner that the entries from 1977-78 were recorded in his name has not been adverted to by the Assistant Commissioner. Though the revenue authorities cannot go into the validity of the Sale Deed, the fact remains that the basis for the entries from 1977-78 up till 2008-09 is not addressed by the Assistant Commissioner.

4. Though he has rightly held that the Tahsildar did not follow the rules inasmuch as no notice had been issued to the 3rd respondent before effecting the mutation entry in MR. No. 19/2008-09, the Assistant Commissioner erred in not remitting the matter back to the Tahsildar after setting aside the impugned mutation entry.

5. It is for the Tahsildar to examine the matter afresh after notifying both parties and only after hearing them, he has to pass a fresh order. The Assistant Commissioner, in my considered view, ought to have remanded the matter for fresh consideration to the Tahsildar, instead of finally disposing of the proceedings. In the result, this writ petition is partly allowed modifying the impugned order passed by the Assistant Commissioner only to the effect that the Tahsildar shall reconsider the matter after issuing notice to the petitioner and the 3rd respondent and as also to any other persons interested in the land and thereafter pass a fresh order by hearing both the parties.

Learned Government Pleader is permitted to file memo of appearance within three weeks from today.