

(2013) 03 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 10866 of 2012 (KLR-RR/SUR)

Sri H. Channahanumaiah

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128(1), 128(3), 128(4), 129

Citation : (2013) ILR (Kar) 3565 : (2013) 5 KarLJ 596 : (2013) 3 KCCR 2539

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Jayakumar S.Patil, for Sri M. Prabhakar, for M/s. M.P. Associates, for the Appellant; M.C. Nagashree, HCGP for R1 to R4 and Sri H.N. Umashankar, Advocate for R5 (A-E), for the Respondent

Judgement

Ashok B. Hinchigeri, J.—The petitioner has called into question the second respondent Deputy Commissioner's order, dated 28.03.2012 (Annexure-A) restoring the order of the fourth respondent Tahsildar for effecting the mutation entry in respect of the land measuring 1 acre 1 gunta at Sy. No. 34 of Kodige Thirumalapura Village, Hesaraghatta Hobli, Bangalore North (Additional) Taluk in favour of the respondent No. 5. The facts of the case in brief are that the land at Sy. No. 34 totally measured 6 acres 37 guntas including 1 gunta of phot kharab land. The respondent No. 5 purchased 1 acre 1 gunta of the said lands by a registered sale deed, dated 15.10.1958. The petitioner purchased the balance extent of 5 acres 35 guntas of land by a registered sale deed, dated 20.07.1972. The respondent No. 5 sought the mutation entry in respect of the land measuring 1 acre 1 gunta in his favour. The Special Tahsildar, acting on his request effected M.R. No. 24/2008-09. This was challenged by the petitioner by way of appeal before the Assistant Commissioner. The Assistant Commissioner passed the order, dated 13.06.2011 (Annexure-M) by setting aside the Tahsildar's order of M.R. No. 24/2008-09. This order was challenged by the respondent No. 5 by filing Revision Petition No. 110/2011-12 before the Deputy Commissioner. The Deputy Commissioner by his order, dated 28.03.2012 (Annexure-A) set aside the

Assistant Commissioner's order and directed the Special Tahsildar to continue the mutation/khata of the land in question in the name of the fifth respondent.

2. It is this order which is being assailed before this Court by Sri Jayakumar S. Patil, the learned Senior Counsel appearing for Sri M. Prabhakar of M/s. M.P. Associates for the petitioner.

3. He submits that the mutation entry was sought in 2008 based on the sale deed stated to have been executed in 1958. The parties cannot seek the mutation entry rising up after nearly 50 years. In the long intervening period, the purchaser may have lost his right. He brings to my notice this Court's decision in the case of Sri Anna Rao and Others Vs. Sri Gundareddy and Others, wherein it is held that it is not permissible for the revenue officer to order for the correction of the entries in the record of rights and pahanies by deleting the names of the petitioners in that case and in their place by entering the name of the State Government after 43 years from the date of the entry made in the revenue records.

4. He has also relied upon this Court's decision in the case of S. Shivanna Vs. The Special Tahsildar and Others, wherein the change of khata made in 2001 based on the sale deed of 1924 was disapproved. He read out paras 13, 15, 17 and 19 which are extracted hereinbelow:

13. It is precisely here that I notice the usurpation of the functioning of the Civil Court by the Tahsildar. It is not the function of the Tahsildar for the determination of the rights of parties like a Civil Court with regard to the interest the fourth respondent could still claim under the sale deed of the year 1924 and it is a matter essentially for the Civil Court and not for the Tahsildar. Likewise the change of the name in the revenue records if at all was made in favour of the petitioner in the year 1965 and as concocted by the fourth respondent, it is by playing fraud etc. or with concocted documents or otherwise, even such allegations of fraud etc. is a matter that should be made good before a Civil Court and not before the revenue authorities. Authorities like Tahsildar, totally lack jurisdiction to render finding or make a determination either in respect of an act of fraud or for declaring the rights in favour of any parties under a sale deed etc.

15. In the circumstance, I am of the clear view that the Tahsildar had exercised the Jurisdiction not within him in terms of Section 128 of the Act, but on the other hand had acted in an unreasonable manner in trying to give effect to or to act on the sale deed of the year 1924 by effecting the mutation in the year 2001 and such power is not in the Tahsildar even in terms of Section 128 of the Act, as one indication in the very provision is that a person who acquires right should seek the change within three months and thereafter within one year on payment of such penalty and therefore the provision cannot be understood as one which can go on like for an unlimited period.

17. Even if the statute does not prescribe a period of limitation, any power

should be exercised within a reasonable time. Law is very settled [See: The State of Gujarat Vs. Patil Raghav Natha and Others, Mansaram Vs. S.P. Pathak and Others, , Venkatagiriappa Vs. The State of Karnataka Revenue Development, and The Bangalore Development Authority Vs. Smt. Sumitradevi, Exercise of power after lapse of a long time as held to be unreasonable.

19. In fact even in respect of immovable properties, a period of 12 years is sufficient even for a stranger to perfect his title, and if so, it is not the business of revenue authorities to act under a sale deed of the year 1924 for recognizing a right under this sale deed of the year 1924 in the year 2001. Definitely much water has flown under the bridge in between these years. It is for this reason I am holding that the order passed by the Tahsildar is not legal and without jurisdiction and it calls for interference. The affirmation orders suffer the same defect.

5. Sri Jayakumar S.Patil submits that as per the provisions contained in Section 128(3) of the Karnataka Land Revenue Act, 1964 (the said Act" for short), a report regarding the acquisition of the land has to be made within an outer limit of three months. The said provisions read as follows:

128(3) If any person makes a report under sub-section (1) or sub-section (2).-

(a) after the period of three months but within the period of one year from the date of acquisition of the right, the report shall be received on payment of a penalty of two rupees;

(b) after a period of one year from the date of such acquisition, the report shall be received on payment of a penalty of not less than two rupees but not exceeding ten rupees, as may be ordered.

6. He submits that going by the prescription of late fee for reporting the acquisition of right in a land, no report can be received after the expiry of five years, three months from the date of the acquisition of the right.

7. He has also relied upon the Apex Court's judgment in the case of The State of Gujarat Vs. Patil Raghav Natha and Others, to advance the submission that even if a statute does not prescribe any period of limitation to exercise the power, it has to be exercised within the reasonable time. He submits that the records of rights in Annexure-E series show the name of the petitioner in respect of the entire extent of 6 acres 37 guntas. The column No. 11 of the record of rights clearly indicates that the entire extent of 6 acres 37 guntas was mortgaged to a bank for the purpose of obtaining the financial assistance. He submits that the encumbrance certificate at Annexure-F also shows that the entire extent of 6 acres 37 guntas belongs to the petitioner. The certificate of the land holdings of the petitioner, as given by the Village Accountant, also shows the extent of the land as 6 acres 37 guntas. All these materials go to show that the land measuring 1 acre 1 gunta is also a part of 6 acres 37 guntas belonging to the petitioner.

8. Smt. M.C. Nagashree, the learned High Court Government Pleader for the respondent Nos. 1 to 4 submits that the impugned order is absolutely sustainable, as the same is based on the registered sale deed.

9. Sri Umashankar, the learned counsel for the respondent No. 5 submits that the respondent No. 5 has purchased 1 acre 1 gunta of the land by the registered sale deed, dated 15.10.1958 (Annexure-R3). He submits that as per the sale deed executed in favour of the petitioner by the legal representatives of Channappa, what is purchased by the petitioner measures only 5 acres 35 guntas. He submits that even in the schedule of the sale deed, dated 20.07.1972, executed in favour of the petitioner, there is reference to the selling of the land measuring 1 acre of land to the respondent No. 5.

10. Sri Umashankar submits that the wrong entry was made in the revenue records in 1977 showing that the entire extent of 6 acres 37 gunas is purchased by the petitioner. The respondent No. 5 sought its rectification in 1997. After making numerous requests, he made an application for showing his name in the records in respect of 1 acre 1 gunta of land on 06.02.2009. The Special Tahsildar rightly passed the order for effecting the mutation entry in favour of the respondent No. 5 in respect of 1 acre 1 gunta. He submits that the rights accruing to a party under the sale deed cannot be defeated only because of the delay on his part in seeking the change of khata. He submits that if a party acquires the right by virtue of a registered document, he is not even required to give the report. There is a statutory obligation placed on the revenue authorities to bring the revenue entry in conformity with the registered instrument. He read out the second proviso to Section 128(1) of the said Act, which is extracted hereinbelow:

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the Prescribed Officer.

11. Sri Umashankar relies on the Division Bench's judgment in the case of Srinivas Ambaji Kulkarni Vs. The Assistant Commissioner, wherein it is held that the prescribed revenue officer has no jurisdiction to refuse to make the entry when the document of title is presented to him, merely because it is objected to as time-barred.

12. Nextly he sought to draw support from this Court's decision in the case of B.L. Somanna vs. State of Karnataka and Another reported in 1980(2) KLJ 286, wherein it is held that it is mandatory for the registering authority to make a report u/s 128(4) of the said Act. Further, u/s 129 of the said Act, it is mandatory for the prescribed (revenue) officer to enter in the register of mutations of any such report received from the registering authority. The failure on the part of the registering authority or the revenue officer cannot put the holders of the registered instruments to prejudice.

13. The learned counsel for the respondent No. 5 also relies on this Court's

decision in the case of Golappa Vs. Malakappa, He read out para 3 of the said decision. The same is extracted hereinbelow:

3. So far as the question of delay in filing the worthy is concerned, it may be stated here that when there is an acquisition of right in any land pursuant to a registered document, it is the duty cast upon the registering authority u/s 128 of the Act to make a report of such acquisition of right to the prescribed authority. In the present case it seems that no such report was made by the registering authority, or, if made, no notice thereof was taken by the revenue authority for initiating desired proceedings as provided u/s 129 of the Act. The duty on the part of the registering authority is mandatory as noticed by this Court in the case of N. Shivanna v. State of Karnataka and Another. Moreover, neither Section 128 nor Section 129 of the Act prescribes any period for filing an application seeking mutation in case of acquisition of a right That being the position, the reasoning given by the Tahsildar that the application was belated and therefore the same cannot be entertained is erroneous being based on extraneous ground. Further, since the execution of the sale deed at Annexure-A was not disputed by respondent No. 1 either before the revenue courts or before this Court, ex facie, for the purpose of the Act, it has to be taken that the document confers a good title on the petitioner; and, therefore it was incumbent upon the revenue authorities to enter the name of the petitioner in the owner's column, namely Column No. 4 of the record of rights.

14. He has also relied on this Court's decision in the case of N. Shivanna vs. State of Karnataka and Another reported in 1980(1) KLJ 419. Its relevant portions, relied upon by Sri Umashankar, are extracted hereinbelow:

4. The second proviso to sub-section (1) of Sec. 128 further provides that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the prescribed officer. Thus, it is clear that any person acquiring a right under a registered document, need not report to the prescribed officer of the village about the acquisition of right under the registered deed.

6. Thus, it is clear that at the time of registration of the document itself the necessary fees for making entries in the record of rights is collected by the registering authority. Further, a statutory duty is cast upon the registering authority to make a report of the acquisition of right to the prescribed officer. S. 129(1) thereof further provides that the prescribed officer shall enter in the register of mutations every report made to him under sub-Sec. (1) of Section 128 or received by him under sub-Section (2) or sub-Section (4) of the said Section. Thus, it is clear that in the case of acquisition of right under a registered document required to be entered in the record of rights under a register of mutations the person acquiring the right under such document need not make a report as per sub-Section (1) of Section 128 of the Karnataka Land Revenue Act, and it is incumbent upon the registering authority to make a report of the acquisition of right to the prescribed officer who shall, on receipt of such report,

enter in the register of mutations every report made to him. That being so, the failure on the part of the prescribed officer to make entries in pursuance of the report made by the registering authority of the acquisition of rights, cannot jeopardize the right acquired by the petitioner under a registered deed.

15. The submissions of the learned counsel have received my thoughtful consideration. The question that arises for my consideration is whether the fifth respondent's application for effecting the mutation entry in his favour in respect of 1 acre 1 gunta of land can be thrown out on the ground of delay?

16. To answer this question, it is necessary to refer to the relevant statutory provisions. Section 128(4) of the said Act reads as follows:

128(4) No document by virtue of which any person acquires a right in any land as holder, occupant, owner, mortgagee, landlord or tenant or assignee of the rent or revenue thereunder, shall be registered under the Indian Registration Act, 1908 (Central Act 12 of 1908), unless the person liable to pay the registration fee also pays to the Registering Authority such fees as may be prescribed for making the necessary entries in the Record of Rights and registers referred to in Section 129; and on the registration of such a document, the Registering Authority shall make a report of the acquisition of the right to the Prescribed Officer.

17. A perusal of these provisions reveals that unless a party, who is liable to pay the registration fees, also pays the fees prescribed for making the necessary entries in the Record of Rights and the registers referred to in Section 129 of the said Act, the document would not be registered at all. In the instant case, it is nobody's case that the respondent No. 5 has not paid the prescribed fees or has not got the sale deed registered. Therefore, it was incumbent on the registering authority to send the report of the registration of the sale deed to the revenue officer.

18. Nextly, the provisions contained in Section 129 of the said Act are required to be noticed. They read as follows:

129, Registration of mutations and register of disputed cases,--(1) The prescribed officer shall enter in the Register of Mutations every report made to him under sub-section (1) of section 128 or received by him under sub-section (2) or sub-section (4) of the said section.

19. A perusal of these provisions shows that it was incumbent on the revenue officer to effect the mutation entry once the registering authority makes a report of the acquisition of right to the revenue officer. If the registering authority fails to send the report or if the revenue officer fails to act in accordance therewith, the holder of a registered document cannot be penalized.

20. To comprehend the scheme of Chapter XI of the said Act in its proper perspective, it is also useful to refer to the second proviso to Section 128(1) of the said Act. It reads as follows:

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the Prescribed Officer.

21. It is thus clear that the holder of a registered document is under no obligation to give wardi or report to the revenue officer.

22. As held by the Division Bench in the case Srinivas Ambaji Kulkarbu (supra), the apparent tenor of the registered document should be given effect to, leaving the party contending otherwise to seek his remedy in a civil court. If the petitioner has perfected his title by way of adverse possession or on the basis of any other development, he has to file a duly constituted civil suit in the competent civil court.

23. This Court's decision in the case of Anna Rao (supra) has no application for the facts of the present case. In Anna Rao's case (supra), what fell for consideration was the exercise of inherent power u/s 25 of the said Act. In the present case, the Court is concerned with the exercise of power under Sections 128 and 129 of the said Act. In Anna Rao's case (supra), the name of the State Government was entered deleting the name of the private parties. In the present case, it is a feud between the two private parties.

24. The decision in the case of S. Shivanna (supra) also does not come to the rescue of the petitioner in any way, as the said decision was rendered without noticing the Division Bench's judgment in the case of Srinivas Ambaji Kulkarni (supra).

25. To sum up, the failure on the part of the registering authority to send the report or of the revenue officers to act thereupon cannot put the interests of the respondent No. 5 in jeopardy. It is incumbent upon the revenue authorities to enter the name of the respondent No. 5 in the owners' column in the record of rights. As held in Golappa's case (supra) neither Section 128 nor Section 129 of the Act prescribes any period for filing an application seeking the mutation in case of acquisition of a right. Ex facie, a registered document confers a good title on a person. Therefore I answer the question as follows: The application for the change in the revenue entries can not be rejected on the ground of delay, if the claim for such a change is based on the registered document.

26. If the petitioner has acquired any right over the property of which the fifth respondent is the recorded owner, the same has to be agitated in a duly constituted civil suit. The showing of the petitioner's name for the entire extent of 6 acres 37 guntas in the revenue records, encumbrance certificate, the land-holdings certificate issued by the Tahsildar, his mortgaging the entire extent of 6 acres 37 guntas (including 1 acre 1 gunta) can be of some value for the petitioner, if he files the suit. Similarly, it shall also be open to the respondent No. 5 to resist such pleas with such defences as are tenable in law. The revenue entries are always to be brought in conformity with the judgment and decree, which a party obtains from the competent civil court. In the result, this petition is

dismissed but subject to the observations made and the liberties reserved hereinabove. No order as to costs.