(2006) 03 KAR CK 0074

In the Karnataka High Court

Case No : Writ Petition No. 26441 of 2004

Sri Vittal Shetty APPELLANT

Vs

The Deputy Commissioner, The Assistant Commissioner and Smt. Gulabi Shetty RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Revenue Act, 1964 — Section 135

Citation : (2006) 6 KarLJ 305

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Pundikai Eshwaur Bhat, for the Appellant; G. Chahdrashakaraiah Aga, for R1-2 and K. Rambhat, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—This is a writ petition filed by the petitioner-Vittal Shetty under Articles 226 and 227 of the Constitution of India to issue a Writ of Certiorari or any other appropriate writ quashing the order dated 9/2/2004 passed by the Deputy Commissioner-respondent No. 1 in file No. C.Dis: RAP/234/2002-03 Annexure-A.

2. Brief facts leading to this case are that, the land bearing Sy. No. 129 measuring 1 acre 65 cents situated in Kolambe village of Mangalore Taluk, is the family property of the petitioner. The petitioner is governed by the Aliyasanthana Law of Inheritance, Originally, the revenue records were standing in the name of Manjaiah Shetty, who was the senior most member and Yajman of the Aliyasanthana family of the petitioner. After his death, Thyampanna Shetty become the Yejaman of the joint family of the petitioner, who was the senior most member of the said family. Accordingly, after the death of Manjaah Shetty, revenue records have been changed in the name of Thyempanna Shetty. Thyamapanna Shetty died in the year 1947 and after his death Ramu Shetty,

then senior most member of the family became the Yejaman and the revenue records are also changed in his name, Ramu Shetty died in the year 1966 and after his death, the names of Gangu Hengsu, wife of Dasu Rai, Veeramma wife of Kodu Shetty, Subbu- wife of Beda Poonja and Rukku, wife of Nakara Shetty were entered in the revenue records as per Annexure-B. The record of rights for the year 1968 till 1982 clearly disclose their names and the said entries continued till 1996. But, in 1996 the name of 3rd respondent has been entered on her request made before the revenue inspector of Gurupur, which has been challenged by the petitioner mainly on the ground that change of mutation was effected without notice to the petitioner. So he has challenged the said order before the Assistant Commissioner. Accordingly, the Asst. Commissioner set aside the order and remanded the matter before the Tashildar for enquiry, After fresh enquiry, the Tashildar held that it is a family property of the petitioner and they are governed by Aliyasanthana Law of Inheritance and the katha of the said property was standing in the name of senior most member of the family. The 3rd respondent who has challenged the said order before the Asst. Commission, the Asst. Commissioner dismissed the appeal by its order dated 10/12/2002 as per Annexure-G. Again 3rd respondent challenged it before the Deputy Commissioner-1st respondent in No. C.Dis.RAP:234/02-03 and the Deputy Commissioner in turn held that the said property is self acquired property of late Ramu Shetty and partition suit No. 261/00 was pending in the Civil Court. Therefore, the Deputy Commissioner allowed the revision petition filed by the 3rd respondent. Therefore, the petitioner herein is before this Court in this writ petition with prayer to quash the impugned Order under challenge.

3. After appearance, the 3rd respondent filed detailed objections, contending that the land Sy. No. 129 measuring 1 acres 65 cents was originally the Government Land and it was granted to one Manjanna Shetty. The said Manjanna Shetty as per Sale Deed dated 4/4/ 1930 has conveyed the said property in favour of Thyamppanna Shetty. In fact Thyamppanna Shetty has mortgaged the same for a sum of Rs. 75/- in favour of Santhan Rodrigus for want of funds. The brother of Thyamppanna Shetty by name Ramu Shetty the father of 3rd respondent repaid the said mortgage loan. Therefore Thyamppanna Shetty transferred the property in the name of Ramu Shetty. Since the 3rd respondent is the only legal heir to succeed the property of the deceased, she has acquired right and title over the property. The suit filed by one Bhoojanga Poonja in O.S. No. 261/2000 on the file of the 3rd Additional Civil Judge (Jr. Dn.), Mangalore, seeking for declaration and partition against the 3rd respondent came to be dismissed. Therefore, the property in question is the self acquired property of her father. Therefore, Revenue inspector has rightly entered her name and so also the 3rd respondent for the year 1996 by making some mutation entries. Hence, writ petition is not at all maintainable.

4. Heard the arguments of learned Counsel for the petitioner, learned Counsel for 3rd respondent and learned High Court Government Pleader for Respondent NOS. 1 and 2.

5. It is contended by the learned Counsel for the petitioner that, the land in question is the ancestral property and he has drawn the attention of this Court to the recitals of the Genealogical tree produced at Annexure-C. He contended that, the land in question belongs to Thyampanna Shetty, one of the brother of Ramu Shetty, Therefore, it becomes the joint family property and the mutation was effected only in the name of Yejaman of the joint family who is the senior most member. After the death of Thyampanna Shetty the property said to have been transferred in the name of Ramu Shetty. Since 3rd respondent is none other than the daughter of Ramu Shetty, she alone is not entitled to succeed to the estate of her father''s joint family property, that too after 30 years of death of Ramu Shetty, It is further contended that, the application said to have been filed by 3rd respondent and on the guise of the said application, mutation was effect in the name of 3rd respondent, is incorrect. The Asst. Commissioner has rightly passed the order holding that it is ancestral property. Therefore, it is submitted that even after remand the Tashildar ought not to have made the entries in the name of 3rd respondent. Therefore, the mutation entry made at Annexure-C in the name of 3rd respondent by the revenue inspector is incorrect and so also the order passed by the Deputy Commissioner by setting aside the order of Asst. Commissioner is illegal. However, it is contended that O.S.No. 261/00 filed by Thyampanna Shetty for declaration and transfer though dismissed, but the appeal filed by Ramu Shetty is still pending. Therefore, the entry made after 30 years of death of Ramu Shetty and the change of mutation made after 30 years is illegal and incorrect. The 3rd respondent who filed a suit under the provisions of Section 135 of the Karnataka Land Revenue Act, claiming that, she is the only legal heir of deceased Ramu Shetty and she is alone entitle to succeed the self acquired property of her father. In support of his contention, learned Counsel for the petitioner relied on a decision of this Court in the case of Dasappa Betty, H.K. By L.Rs CA. K.N. Thammanna Gowda and Anr. reported in 1983(2) Kar. L.J. 191, wherein it has been held that:

In view of Section 135 of the Karnataka Land Revenue Act, the Court cannot give a direction as such by way of consequential relief to the Revenue Officers to amend the entry, it is incumbent on the plaintiff to get a declaration of title and take steps in accordance with Section 135.

6. Per contra, learned Counsel for 3rd respondent contended that it is not a joint family property, it is a Government Land granted in favour of one Manjanna Shetty and Manjanna Shetty in turn conveyed the said property in favour of Thyamppanna Shetty. Thyamppanna Shetty has mortgaged the property for Rs. 75/- in favour of Santhan Rodrigus for want of funds and the father of 3rd respondent repaid the mortgaged loan and in consideration for repayment of the loan, Thyamppanna Shetty redeemed the property in the name of Ramu Shetty. Therefore, it becomes the absolute property of Ramu Shetty but not the joint family property of the petitioner. Further, it is submitted that the 3rd respondent herein who filed an application before the Revenue Inspector to effect the katha standing in her father''s name has been changed and her name has been

entered. Accordingly, her name was rightly entered in the year 1996. It is contended that Bhoojanga Poonja has filed a suit O.S. No. 261/2000, seeking for declaration and partition, which was dismissed. Of course the appeal came to be filed, which was pending before the Civil Court. Therefore, when once the Civil Court declares that it is a self acquired property of father of 3rd respondent and mutation entry made in the name of 3rd respondent cannot be changed, the petitioner or any person who has right over the property can approach the civil Court to declare that it is joint family property.

7. Therefore, the present writ petition is liable to be dismissed. In support of his contention learned Counsel for 3rd respondent relied on a recent decision of this Court in the case of Neria Estates Rural Industries Association Private Limited Vs. State of Karnataka and Others, wherein this Court has held in regard to challenge of Revenue entries, writ jurisdiction is not necessary for the High Court to examine the matter in detail by determining the rights of the parties, Dispute of this nature has to be resolved by a competent Civil Court and not under Articles 226/227 of the Constitution of India. Therefore, he prays for dismissal of the writ petitioner has not maintainable.

8. Per contra, learned High Court Government Pleader appearing for Respondents-1 and 2 contended that the Deputy Commissioner was right in passing the order, as the 3rd respondent being the daughter of late Ramu Shetty, succeeded to his estate. Hence it is not proper to entertain the writ petition.

9. I have carefully examined the material placed on record. Of course the petitioner has challenged the order passed by the Revenue Inspector initially before the Asst. Commissioner and the Asst. Commissioner has set aside the mutation entry passed by the Revenue Inspector and directed to hold a fresh enquiry. After enquiry the Tashildar passed an order that it is an ancestral property and the 3rd respondent alone is entitled to succeed to the estate of her father, which has been challenged by 3rd respondent. The 3rd respondent has not seriously disputed the relationship and genealogical tree produced by the petitioner at Annexure-C. The Asst. Commissioner has dismissed the appeal filed by the petitioner. Initially the katha of land in question was standing in the name of Ramu Shetty the father of 3rd respondent. After his death only the name of 3rd respondent was entered by the revenue authorities and the Asst. Commissioner has allowed the appeal filed by the petitioner on the ground that it is a joint family property, in the meanwhile one Bhoojanga Foonja filed a suit claiming declaration and partition to the extent of 1/6th rights in the plaint schedule property before the 3rd Addl. Civil Court (Jr. Dn.,) since she was unable to prove that it is ancestral property i.e., joint family and the petitioner herein has not seriously disputed about the contention taken by 3rd respondent before the authorities viz., Deputy Commissioner and Asst. Commissioner and in the suit O.S. 261/00 filed by Bhoojanga Poonja before the m Add. Civil Judge (Jr. Dn.) Mangalore, Prior to that Bhoojanga Poonja had filed O.S.758/97 on the file of the Prl Civil Judge (Jr. Dn.,), Mangalore seeking for an order of injunction,

which was dismissed. Therefore, he filed suit for declaration and partition O.S.261/00. Even in the said suit, the so called family member of Manjayya Shetty failed to prove before the Civil Court that it is ancestral property but not self acquired property of father of 3rd respondent. Therefore, it could be said that since the matter has already been pending before the Civil Court, it is for the petitioner to Approach the Civil Court for declaration of title in respect of the property in question, but not the 3rd respondent, She being the only legal heir to succeed to the estate of her father, filed an application for change of mutation after 30 years, she will not loose her right or claim the said property in question to change the katha in her name. Therefore, the Deputy Commissioner''s order under challenge, does not require any interference as there is no violation of principles of natural justice or any factual findings.

10. Therefore, under these circumstances when the matter is pending adjudication before the Civil Court, it is not proper to entertain this writ petition under Articles 226 and 227 of the Constitution to upset the orders passed by the Deputy Commissioner. Therefore, the writ petition is dismissed at the stage of admission.

