
(2000) 12 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 36849 of 2000

T. Siddeshi

APPELLANT

Vs

The Deputy Commissioner, Davanagere and others

RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128

Citation : AIR 2001 Kar 297 : (2001) ILR (Kar) 488 : (2001) 2 KCCR 744

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Sri N.S. Prasad, for the Appellant; Sri M.G.S. Reddy, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. The petition filed seeking writ of certiorari for quashing the order of the Deputy Commissioner dated 11-9-2000 at Annexure-K the order of the Assistant Commissioner dated 20-10-1997 at Annexure-G and order of the Tahsildar dated 6-6-1995 at Annexure-F.

2. The dispute pertains to the entry of katha in respect of survey No. 97/IA-5 of Davanagere Village, measuring 1 acre 05 guntas. The land earlier part of survey No. 97 belonged to the father of the petitioner, who in the year 1970 is said to have sold the land by a registered sale deed in favour of the partnership firm of Adinarayana Setty and sons. The 4th respondent is son of Adinarayana Setty one of the partners of the firm. Subsequent to the sale, the name of Adinarayana Setty and sons came to be entered into katha registers.

3. It is the contention of the petitioner that, despite the sale, the possession of the land continued with them and that in the year 1983 when the first photo took place, the name of the father of the petitioner was entered in respect of the land in question. Subsequent to the demise of the father of the petitioner, the

petitioner entered into a partition with his brother under a registered partition deed and sought for change of katha in his favour in respect of the aforesaid land, which came to be granted, and the name of the petitioner continued in the katha registers till 1994-95. The 4th respondent in the year 1994 on the basis of partition that has taken place in his family made an application for katha change. The petitioner at that stage said to have submitted objections. The Revenue Authorities however granted the request of the 4th respondent and changed the mutation in his favour.

4. Being aggrieved, the petitioner filed an appeal before the Assistant Commissioner. After hearing the 4th respondent and the petitioner the Assistant Commissioner passed the impugned order at Annexure-G dismissing the appeal. The petitioner filed a writ petition against the order of the Assistant Commissioner in W.P. No. 33413 of 1997. The said writ petition came to be dismissed with a observation that, the petitioner has not exhausted the remedy in revision before the Deputy Commissioner. Accordingly, the revision was filed before the Deputy Commissioner, who after hearing the parties passed the impugned order at Annexure-KY, dismissed the revision and confirmed the change of katha in favour of 4th respondent. Being aggrieved by the said order, the present writ petition is filed.

5. The Counsel for the petitioner strenuously contended that despite the execution of the registered sale deed in favour of Adinarayana Setty and sons, his father during his life time and thereafter the petitioners have been in continuous and uninterrupted possession and enjoyment of the land. Therefore, by virtue of the change of khata their possessory rights over the land get affected and disturbed and in view of the continued possession, it is just and appropriate in law that the name of the petitioner be entered in the khata. I am unable to agree with the contention of the Counsel for the petitioner for the reasons that by entry of the name of the 4th respondent in khata cannot have any bearing or effect on the question of possession. The format of R.T.C. itself makes explicit provision for a distinct column to show the names of the khatedars at column (9) and regarding the possession and cultivation particulars are reflected in column (12).

6. The normal requirements in the Land Revenue Act as per the provisions of Section 128 any person who possesses title to the land in question has right to be shown as khatedar in the record of rights register and mutation registers. However, by such an entry no inference can be drawn regarding the title to the property. Since the entries in the revenue records are not documents of title and cannot be the sole basis to prove the title by itself. But the said entries may have a corroborative value for proving the title. In that view of the matter, it would be just and appropriate that the name of the title holder namely the 4th respondent who by virtue of the sale in favour of the partnership firm and subsequent thereto by a registered partition between himself and his brother has acquired title to the property, his name is to be entered. However, by entry of such name,

it cannot have any bearing on the possessory rights of the parties concerned. Whoever, in possession would continue to be in possession. The question of title and possession if any is in dispute the same is within the domain of the Civil Court to adjudicate. In that view of the matter, I do not find any merit in the writ petition.

Accordingly, the writ petition is dismissed.

7. The Government Pleader is permitted to file memo of appearance within four weeks.