(2007) 10 KAR CK 0078

In the Karnataka High Court

Case No : Regular First Appeal No. 775 of 2006

The State of Karnataka — APPELLANT

Vs

Smt. H.J. Shakunthalamma — RESPONDENT

Date of Decision : 25-10-2007

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 49, 61

Citation : (2008) 1 KarLJ 79 : (2008) 1 KCCR 16

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : R.K. Hatti, H.C.G.P, for the Appellant; Mamtha Shetty, for Prabhuling Navadgi, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—The appellants were the defendants before the trial court in O.S.No. 84/1994 find being aggrieved by the trial court allowing the suit filed by the respondent-plaintiff for declaration and injunction, the present appeal is filed.

2. The brief facts of the case are to the effect that the respondent-plaintiff filed the suit in question seeking the aforesaid relief by contending that the suit property bearing R.S.No. 391 measuring 7 acre 23 guntas of Avanagere village was purchased by the plaintiff''s husband by name Jayanna under a registered sale deed dated 28.9.1970 from its previous owner and since the said date, the suit property is being enjoyed by the respondent-plaintiff following the death of her husband. The 4th defendant before the trial court viz., Tahsildar passed an order in RRPT No. 105/82-83 changing the survey number from 391 to 390/1p and the extent as 6 acres 13 guntas instead of 7 acres 23 guntas. It is the case of the plaintiff that while effecting the said changes, the Tahsildar did not give any opportunity to the plaintiff and mandatory provisions of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "1964 Act").

3. The plaintiff requested for the certified copy of the order passed, but the same

was not given to her, but an endorsement was issued in this connection and then she approached the Assistant Commissioner who failed to exercise the jurisdiction vested in him and thereafter, after issuing notice to the appellants herein u/s 80 of CPC for making necessary notification in respect of survey number as well as the extent of land, the plaintiff on getting no such positive response from the appellant herein, filed the suit in question praying for the relief of declaration and injunction.

4. The defendants did not admit any of the plaint allegations and it was their case that following an application filed by one Nagendrappa for modification of the katha of Sy.No. 390/p and 391 /p of Avanagere Village and after measuring the land, the ADLR, Davangere, upon notice being issued to the concerned parties to give their statements, finally changes were effected and as the extent of the land belonging to the plaintiff was found to be 6 acres 13 guntas as per the report dated 5.7.1982 of the ADLR, the 4th defendant-Tahsildar made necessary corrections. Hence, the defendants sought for dismissal of the suit.

5. Based on the pleadings of the parties, the trial court framed as many as five issues and answered Issue Nos. 1 to 4 in the affirmative and after taking into consideration the evidence of PWs. 1 to 3 and the documents produced on behalf of the respondent-plaintiff as per Exs.P-1 to-P-10 and also considering the evidence let in by the appellant through DWs. 1 and 2 and the documents Exs. D-1 to D-45, decreed the suit of the plaintiffs. A direction was also given to the Tahsildar to restore the original survey number and also the extent of land as claimed by the plaintiff. Further, the relief of the defendants being retrained from interfering with the peaceful possession and enjoyment of the suit land by the plaintiff was also granted by the trial court. It is this judgment of the trial court is challenged by the defendants in this first appeal.

6. I have heard the learned Counsel for the parties.

7. Learned Government Pleader Sri. R.K. Hatti contended that the trial court committed a serious error in decreeing the suit itself when there is a specific bar under the 1964 Act in respect of the orders passed by the Revenue Authorities. It was submitted that the Civil Court had no jurisdiction because, having regard to Section 61 of the 1964 Act and as the respondent-plaintiff is seeking rectification of the survey number as well as the extent of land, the proper course for the plaintiff was to approach the authorities under the 1964 Act itself and not rushing to the civil court for the relief. Reference was also made u/s 63 of the 1964 Act in this connection. In support of the said submissions, learned Government Pleader placed reliance on the decisions reported in Hatti Vs. Sunder Singh, : State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, : Agricultural Produce Market Committee Vs. Siddeshwara Industries, and Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale and Others, . Referring to the law laid down in the above said decisions, it was submitted that the plaintiff ought to have exhausted the remedies available under the Karnataka land Revenue Act before approaching the civil court. It was also argued that the

trial court should not have issued direction to the Tahsildar to restore the original survey number by making necessary corrections in the records.

8. On the other hand, learned Counsel for the respondent-plaintiff submitted that the plaintiff had approached the authorities under the Land Revalue Act and as the Assistant Commissioner did not pass any order, the plaintiff was left with no other alternative than to approach the civil court for the relief. It was also submitted that the suit filed by the plaintiff was pending for a long period of time and all of a sudden, the Tahsildar had passed the order in question by changing the survey number and also the extent of land and the plaintiff was not afforded an opportunity to appear before the court when such an order was passed and therefore, the relief granted to the plaintiff by the trial court is just and proper and no interference is called for as against the judgment and decree of the trial court.

9. Having thus heard the learned Counsel for the parties, the only point that arises for consideration is, whether the civil court was justified in entertaining the suit filed by the plaintiff and could have granted the relief as sought for in the suit?

10. It has to be mentioned that the trial court after considering the pleadings of the parties, had framed the following issues:

i) Whether the plaintiff proves that she is the owner in possession of the suit schedule property?

ii) Whether she farther proves that the acts of the defendants in changing the S.No. and extent of suit land S.No. 391 measuring 7 acres 23 guntas into S.No. 390/1p measuring 6 acres 13 guntas measuring 6 acres 13 gts. is illegal, arbitrary and void ab initio?

iii) Whether the plaintiff is entitled for mandatory injunction against the defendants directing to restore the original S.No. and extent of the suit schedule property by making necessary corrections in all the revenue documents as sought for?

iv) Whether the plaintiff is entitled to the relief sought for?

v) What order or decree?

11. Issue Nos. 1 to 4 were answered in favour of the plaintiff and in the course of its judgment, the trial court took note of the evidence given by DW1 and found that the plaintiff has been in possession of 7 acres and 23 guntas of land in Avanagere Village and as such, there was no necessity to change the survey number and the extent of land. The said act on the part of the 4th defendant in changing the survey number and the extent of the land was held arbitrary and illegal by the trial court. The trial court also took note of the stand taken by the plaintiff that no notice had been served on the plaintiff while effecting the changes in regard to survey number and the extent of land.

12. Since the main ground urged in this appeal is with regard to the jurisdiction of the civil court to entertain the said suit of the plaintiff, it is necessary to refer the provision of Section 61 of the Karnataka Land Revenue Act, 1964. Section 61 of the 1964 Act reads as under:

61. Exclusive jurisdiction of Revenue Courts and bar of jurisdiction of Civil Courts: (1) Save as otherwise provided in this Act, or any other law for the time being in force, a Revenue Court shall have jurisdiction to determine, decide or dispose of, any matter which it is, by or under this Act, empowered to determiner decide or dispose of and no Civil Court shall exercise jurisdiction as to any of such matters.

(2) Subject to the exceptions hereinafter specified, no Civil Court shall exercise jurisdiction as to any of such matters, namely:

(a) claims against the Government relating to any property appertaining to any officer or for any service whatsoever;

(b) objections:

(i) to the amount or incidence of any assessment of land revenue under this Act, or

(ii) to the mode of assessment or levy, or to the principle on which such assessment, or levy is fixed, or

(iii) to the validity or effect of the notification of survey or settlement;

(c) claims connected with or arising out of any proceedings for the realisation of land revenue or other demands recoverable as arrears of land revenue under this Act, or any other law for the time being in force-

(d) claims to act aside, on account of irregularity mistake, or any other ground, except fraud, sales for arrears of land revenue;

(c) claims against the Government-

(i) to be entered in the revenue survey or settlement records or any land records as liable for the revenue or as superior holder, inferior holder, occupant, mortgagee, landlord or tenant;

(ii) to have any entry made in any record of a revenue survey or settlement, or

(iii) to have any such entry either omitted or amended;

(f) the distribution of land or allotment of land revenue on partition of any estate under this Act or any other law for the time being in force;

(g) claims against the Government:

(i) to hold land wholly or partially free from payment of land revenue; or

(ii) to receive payments charged on or payable out of the land revenue; of

(iii) to set aside any cess or rate payable under the provisions of any law for the time being to force; or

(iv) respecting the occupation of waste or vacant land belonging to Government;

(h) claims regarding boundaries fixed under this Act or under any other law for the time being in force or to set aside any order passed by a competent office under any such law with regard to boundary marks or survey marks:

Provided that if any person claims to hold land wholly or partially exempt from payment of revenue under:

(a) any law for the time being in force expressly creating an exemption not before existing in favour of an individual, or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(b) any written grant from the Government expressly creating or confirming such exemption, such claim shall be cognizable by a Civil court.

13. Further Section 63 of the 1964 Act mentions that the plaintiff has to exhaust the right of appeal before instituting a suit or other proceedings against the Government and the said section reads as under:

63. Plaintiff to exhaust his right of appeal before instituting a suit or other proceeding against Government: No Civil Court shall entertain any suit or other proceeding against the State Government on account of any act or omission of the State Government or any Revenue Officer, unless the plaintiff first proves that previously to the institution of the suit or other proceeding, he has presented all such appeal allowed by the law for the time being; in force as, within the period of limitation allowed for bringing such suit or proceeding, it was possible to present.

14. It is, thus, clear from the above provisions of law that the jurisdiction of the civil courts is barred in respect of the matters which, the revenue courts are empowered to decide or dispose of. As regards fixing of the boundaries is concerned, Clause (h) of Section 61 (2) makes it clear that in respect of the said matter, the civil courts have no jurisdiction.

15. Only in respect of the suite, which are mentioned in Section 62 of the Land Revenue Act, there is no bar in approaching the civil courts, It is not in dispute that the present case does not come within the preview of any of the three clauses of Section 62.

16. As far as the jurisdiction issue is concerned, the Apex Court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, has laid down the principles regarding exclusion of jurisdiction of civil court and the said principle are as under:

(1) Where the statute gives a finality to the orders of the special tribunals the

civil courts'' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities arc declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply: case law discussed.

17. The Apex Court, in the State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, has laid down the test to be adopted when examining question whether civil court has jurisdiction and the said test is to find out the legislative intention of excluding jurisdiction explicit or clear by necessary implication and as to whether the statute provide adequate remedy in case of grievance against order made under the statute. In another decision, i.e., Agricultural Produce Market Committee Vs. Siddeshwara Industries, this Court has held as under:

Whenever a special statute bars the jurisdiction of the Civil Court by an express provision or by implication and makes the decision of such authority not liable to be questioned in any Civil Court, then the jurisdiction of the Civil Court would be excluded. If there is any express bar created by the Special Act or if the Special Act creates a Special Tribunal and makes its decision final and not liable to be questioned in any Civil Court at all, then the jurisdiction of the Civil Court would stand barred.

18. In the case of Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale and Others, , the Apex Court has held that the trial court passed a decree barring the jurisdiction of Civil Court must be subject to the orders of the appropriate authority in proceeding under the statute concerned. In the case of Irawwa Vs. Krishnaji Venkatesh Naik, this Court has held that in respect of boundary dispute under the Karnataka Land Revenue Act, 1964, if a dispute arises, the same will have to be decided by the Survey Officer and the Tahsildar and not by the Civil Court. In yet another decision, in the mm of Ramajois Vs. Chief Secretary, dealing with a case arising out of an order passed by the Tahsildar under the Land Revenue Act, 1964, this Court has held thus:

The order in question having been issued by the Tahsildar who is Revenue Officer subordinate to the Assistant Commissioner, an appeal lies under Clause (a) of Section 49. The jurisdiction of Civil Courts to entertain any suit or other proceeding against the State Government on account of ay act or omission of the State Government or any Revenue Officer is barred u/s 63 of the Act, unless the plaintiff first proves that prior to the institution of the suit or other proceeding, he has presented all such appeals allowed by the law for the time being in force, within the period of limitation. Section 63 is an express bar to the filing of a suit, unless the plaintiff has exhausted the remedies provided under the Act by filing an appeal. When there is an express bar in the Act, Section 9 of CPC will not come to the aid of the appellant

19. Whether the Civil Court has got the jurisdiction to go into the issue concerning fixing of boundaries, maintenance of boundaries of lands or sub-division of lands came up for consideration in the case of Patel Doddakempe gowda Vs. Chikkeere gowda, and dealing with the said question, this Court has laid down the following provisions of law:

Section 61(e)(ii) of the Act not only lays down that the exclusive jurisdiction is of Revenue Court, but also bars the jurisdiction of Civil Courts...when the Civil Court has no jurisdiction to hold that an entry made in any record of revenue survey or settlement is wrong, it cannot, in law proceed to grant the relief prayed for by the plaintiff because that relief is based on such a finding to be recorded by the Civil Court. The object behind Section 61 is to provide finality for the acts covered by it and the other provisions of the Act viz., Sections 109 and 140. It has been left to the exclusive jurisdiction of the Revenue Courts to fix the boundaries and maintain the boundaries of lands or sub-division of lands, to fix the revenue and re-assess the revenue and so on. Civil Courts are not permitted to have a hand in any of these matters.

20. Thus, having regard to the above position in law as laid down by the Apex Court and also by this Court in respect of the relief sought for by the respondent-plaintiff, the proper course for the respondent is to approach the authorities under the Land Revenue Act, and as the order in question was paused by the Tahsildar and as the respondent-plaintiff approached the Assistant Commissioner for the relief and as there was no order passed in favour of the respondent by the Assistant Commissioner,, the next course of action, which ought to have been taken by the respondent-plaintiff, was to approach the higher authorities mentioned u/s 49 of the Land Revenue Act, 1964. The respondent did not exhaust the said remedies available under Land Revenue Act and therefore, there is enough merit in the submissions made by the learned Government Pleader for the State, particularly to the light of the decision referred to by him, that the Civil Court is jurisdiction is excluded in respect of the matter dealt by the revenue courts. As such, the suit of the plaintiff could not have been decreed by the trial court particularly having regard to the provision of law as contained in the Land Revenue Act, 1964 to which I have already made reference and hence, interference is called for in this appeal.

21. Hence, the appeal is allowed and the judgment of the trial court is set aside and the respondent-plaintiff is at liberty to approach the authorities under the Land Revenue Act as contemplated u/s 49 of the said Act.

