

(1978) 02 KAR CK 0016
In the Karnataka High Court
Case No : WP. 11922 of 1977

Venkatalakshamma

APPELLANT

Vs

Asst. Commr and Spl Divisional Magistrate and Another

RESPONDENT

Date of Decision : 28-02-1978

Acts Referred:

Karnataka Debt Relief Act, 1976 — Section 5(2)
Karnataka Land Revenue Act, 1964 — Section 34

Citation : (1978) 2 KarLJ 24

Hon'ble Judges : Kudoor, J

Judgement

1. The petitioner Smt. Venkatalakshamma has filed this writ petition under Art. 226(1)(a)(b) and (c) of the Constitution of India for the issue of appropriate writ to quash the impugned orders marked as Exts. "H" and "J" made by the 1st respondent on an application filed by the 2nd respondent under S. 5 of the Karnataka Debt Relief Act, 1976 (shortly called the "ACT") allowing the application and holding that the debt of Rs. 3,000 due to the petitioner by the 2nd respondent stood fully discharged as per the provisions of the Act.

2. One of the grounds urged in support of his writ petition is that the impugned order Ext. H was made in contravention of the principles of natural justice inasmuch as no opportunity was given to the petitioner either to adduce evidence or to cross-examine the 2nd respondent. The answer to this question alone would be sufficient to dispose of the writ petition.

3. Original records of the case before the 1st respondent have been secured. It is seen from the records that the 1st respondent appears to have recorded in the order sheet what she calls the gist of the statements made by both the petitioner as well as the 2nd respondent. There is no indication in the record whether the parties were examined on oath, that opportunity was given to the parties to cross-examine the opposite party or that they were given any opportunity to adduce evidence in support of their respective contentions.

4. It is provided under sub-sec(2) of Sec. 5 of the Act that the Sub-Divisional

Magistrate, before determining the question required to be determined under the provisions of the Act and giving the necessary relief to the party concerned, shall have to hold a summary enquiry in the manner provided under the Karnataka Land Revenue Act, 1964. Sec. 34 of the said Act stipulates that when a summary enquiry is prescribed for determination of any question by or under the said Act or any law for the time being in force, the officer conducting enquiry shall himself, as such enquir. proceeds, record in his own hand in Kannada or in English or in any other language of the taluk or village as declared by the State Govt., the summary of the evidence and a minute of the proceedings containing the material averments made by the parties interested, the decision and the reasons for the same. Thus it is clear from the above provision that the Sub-Divisional Magistrate in this case Shall have to record the summary of the evidence adduced. What the provision contemplates is that the SubDivisional Magistrate need not record the evidence of either the parties or the witnesses verbatim. But still what he records should be evidence within the meaning of the Evidence Act although what he has to record is a summary of it. In the instant case, the records would not show that the 1st respondent has recorded the evidence of the parties as required under Sec. 34 of the Karnataka Land Revenue Act. Besides, giving opportunity to the parties to adduce evidence would mean not only recording the evidence of the parties or the witnesses but also giving opportunity to both the parties to cross-examine the witnesses. Even that opportunity has not been given to either of the parties in this case. That being the position, it seems to me that the impugned order Ext.H suffers from the infirmity of contravention of the principles of natural justice resulting in substantial failure of justice. So is Ext.J which is a consequential order flowing out of the impugned order Ext.H.

5. In the result, for the reasons aforesaid Exts.H and J are hereby quashed. The matter is remitted back to the 1st respondent for fresh adjudication according to law after giving opportunities to both the parties to lead evidence and of being heard. Rule is made absolute. There is no order as to costs.

6. The learned High Court Govt Pleader was directed to take notice for Respt-1. She is permitted to file her memo of appearance within two weeks.