(2007) 08 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 17242 of 2006

Vijayalakshmi and Shivakumar APPELLANT

Vs

The Deputy Commissioner and Others RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:
Karnataka Land Revenue Act, 1964 — Section 128, 136 (2)

Citation : (2007) ILR (Kar) 3814 : (2008) 1 KarLJ 618 : (2007) 4 KCCR 254 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Veeresh B. Patil, for the Appellant; G. Chandrashekaraiah, AGA for R1 to 4 and S.R. Hegde Hudlamane, for C/R5, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioners, assailing the correctness or otherwise of the impugned order dated 9th October 2006 in proceedings bearing No. REV.RP/42/2004-05 on the file of the first respondent - Deputy Commissioner, Gulbarga District, Gulbarga vide Annexure H, the order dated 5th July 2004 in proceedings bearing No. REV.ROR MUT/ 10/2004-05 on the file of the second respondent - Assistant Commissioner, Yadgir Sub Division, Yadgir and also the impugned mutation order dated 20th December 1998 bearing mutation order No. 13 on the file of the third respondent -Tahsildar, Yadgir Taluk vide Annexure E, have presented the instant writ petition.

2. The grievance of the petitioners in the instant writ petition is that, the fifth respondent herein had filed an application before the village Accountant herein for sanction of mutation on the ground that, there was a partition between himself and his uncle (Doddappa) late Sri. Sharanappa S/o. Bhagappa Yalavara. In the light of the application filed by fifth respondent before the Village Accountant, the Village Accountant in turn, has issued the notice as required under the provisions of the Karnataka Land Revenue Act and Rules and that, the said notice has been affixed in the ''chavadi'' and waited for thirty days as per

the relevant Rules and thereafter placed the report before the fourth respondent, to certify the mutation in favour of fifth respondent. The fourth respondent, in turn has certified the mutation by entering the name of fifth respondent, in respect of Sy.No.160/Aa measuring 03 acres 23 guntas, situate at Mundaraga Village, Yadagir Taluk, Gulbarga District. Accordingly, the name of the fifth respondent has been recorded in the record of rights and all other relevant revenue records. Be that as it may.

3. It is the case of petitioners herein that, the first petitioner claims to be one of the daughters of late Sri. Sharanappa and second petitioner claims to be the son of second daughter or grandson of late Sri. Sharanappa. Both these petitioners have filed a suit in O.S. No. 82/1996 on the file of the learned Munsiff at Yadgir, Gulbarga District, for declaration of joint ownership and perpetual injunction in respect of five items of land bearing various survey numbers situate at Mundargi Village, Yadgir Taluk, more specifically referred in the schedule of the plaint. In the said suit, late Sri. Sharanappa, who was the father of first petitioner and grandfather of second petitioner was defendant No 1 and petitioners have obtained temporary injunction not to alienate the lands in question and also other lands. The same has been communicated to the Village Accountant, Mundargi, on 19th December 1996. In spite of that, the fourth respondent has certified the mutation on 20th December 1998. Assailing the correctness of the said mutation sanctioned by fourth respondent, these two petitioners have filed the appeal before the second respondent - Assistant Commissioner, Yadgir Sub Division, Yadgir u/s 136(2) of the Karnataka Land Revenue Act. The said appeal had come up for consideration before the second respondent on 5th July 2004. The appeal filed by petitioners was dismissed. Assailing the correctness of the order passed by second respondent dated 5th July 2004 vide Annexure G, petitioners herein have filed the revision petition before the first respondent - Deputy Commissioner and the first respondent, in turn, after hearing both sides, after considering the material available on record and after going through the orders passed by fourth respondent and second respondent has dismissed the revision petition holding that, if at all petitioners have got any right in the lands as against the fifth respondent herein, they have to establish before the Civil Court and therefore, the revision petition filed by petitioners herein was not maintainable. Being aggrieved by the impugned orders passed by respondents, 4, 2 and 1 respectively, petitioners herein felt necessitated to present the instant writ petition.

4. The principal submission canvassed by learned counsel appearing for petitioners is that, the impugned orders passed by respondents 4, 2 and 1 cannot be sustained and that, the same are liable to be set aside at the threshold itself. To substantiate the said submission, he has taken me through the suit filed by petitioners and pointed out that, petitioners herein have filed the suit in O.S. No. 82/1996 on the file of the learned Munsiff at Yadgir, District Gulbarga seeking declaration of joint ownership and perpetual injunction against the father of first petitioner and grandfather of second petitioner, late Sri. Sharanappa, who was

defendant No. 1 in the said suit and that, subsequently, late Sri. Sharanappa - defendant No. 1 in the said suit died in the year 1999 and thereafter, petitioners herein have filed a compromise petition before the Court and the said compromise petition was accepted by the Court and the suit was decreed. Further, he submitted that, in fact, after obtaining the temporary injunction order, it has been brought to the notice of the Village Accountant, as early as on 19* December 1996 stating that, the matter is seized before the competent Civil Court for adjudication. Neither the Village Accountant nor the fourth respondent has issued notice to these petitioners and without issuing any notice, whatsoever, the said fourth respondent has proceeded to accept the application filed by fifth respondent on the ground that, there was a partition between late Sri. Sharanappa and fifth respondent and that, the fifth respondent has got share in the lands in question and unilaterally, without hearing the petitioners herein has certified the mutation in favour of fifth respondent. It is the specific case of petitioners that, when the petitioners are the interested persons and even though they have brought to the notice of the concerned authorities that, the matter is seized before the competent Civil Court, it was not proper on the part of respondents to have certified the mutation in favour of fifth respondent without hearing the petitioners However, due to illiteracy ad ignorance, petitioners herein could not challenge the mutation entry certified by the fourth respondent in favour of fifth respondent within the prescribed time limit before the second respondent. However, thereafter, an appeal has been filed by petitioners herein along with an application seeking condonation of delay. He submitted that, the petitioners are illiterate, ignorant and rustic villagers and are not well acquainted with the procedures envisaged under the relevant provisions of the Act and the Assistant Commissioner without taking into consideration the grounds urged for condonation of delay and without condoning the said delay has dismissed the appeal filed by petitioners without assigning cogent reasons for such dismissal. In view of dismissal of the said appeal on the ground of delay and latches instead of deciding the same on merits of the case, petitioners herein were constrained to file a revision petition before the first respondent and the revisional authority also has committed the same error and illegality and proceeded to pass the impugned order, contrary to the material on record. Therefore, he submitted that, all the three authorities have committed grave error in coming to the impugned conclusion purely on the basis of the partition alone. The said alleged oral partition entered into between fifth respondent and deceased Sri. Sharanappa is not a registered document nor is the same maintainable nor the fifth respondent is entitled to seek such transfer of land in his favour. Therefore, he submitted that, the impugned orders passed by all the three authorities are contrary to the relevant provisions of the Karnataka Land Revenue Act and Rules and hence, they are liable to be set aside on this ground alone, at the threshold itself.

5. Further, to substantiate the aforesaid submission, learned counsel appearing for petitioners placed heavy reliance on the judgment of the Apex Court reported

in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and submitted that, if the ratio of law laid down in the said decision had been looked into either by second respondent or by first respondent, the delay ought to have been condoned by either of the authorities and matter ought to have been decided on merits of the case. Further, he placed reliance on the judgment of the full bench of this Court reported in the case of C.N. Nagendra Singh v. The Special Deputy Commissioner, Bangalore District and Ors. ILR 2002 Kar. 2760 wherein the full bench of this Court has held that, the party who claims rights on the will must go before the Court and establish better title of the land in question and submitted that, the said ratio laid down by the full bench fully applies to the facts of the case on hand since the claim made by fifth respondent is purely on the basis of the oral partition alleged to have been entered into between late Sri. Sharanappa and the fifth respondent. Therefore, he submitted that, this aspect of the matter has been completely overlooked by all the three authorities and all of them have proceeded to pass the impugned orders unilaterally without affording opportunity to these petitioners. Therefore, he submitted that, the impugned orders passed by all the three authorities are liable to be set aside.

6. Per contra, learned Additional Government Advocate appearing for respondents 1 to 4 and learned counsel appearing for fifth respondent, inter alia, contended and substantiated stating that, the impugned orders passed by all the three authorities are in strict compliance of the relevant provisions of the Land Revenue Act and Rules and that, no error or illegality as such has been committed by the authorities. Further, learned counsel appearing for respondents submitted that, there is inordinate delay of nearly six years in filing the appeal and that, the said inordinate delay has also not been properly explained by giving cogent, valid and convincing reasons. Therefore, the Assistant Commissioner has rightly dismissed the appeal and thereafter, the revisional authority, after considering the relevant provisions of the Karnataka Land Revenue Act, the order passed by the Assistant Commissioner and after perusal of the material available on record, has opined that, if the petitioners have any right in the lands as against the fifth respondent, they have to establish before the Civil Court and therefore, the revision is not maintainable. The said reasoning given by the revisional authority is in accordance with the relevant provision of the Karnataka Land Revenue Act and Rules. The revenue authorities have no power to interfere or decide the civil rights between the parties. Therefore, they submitted that, the writ petition filed by petitioners is liable to be dismissed as devoid of merits.

7. I have heard learned counsel appearing for petitioners and learned counsel appearing for respondents.

8. After careful perusal of the material available on record including the original records made available by learned Additional Government Advocate appearing for respondents 1 to 4, it emerges that, the fifth respondent herein has filed the application dated 7/8th November 1998 and the same has been received by the

Village Accountant of Mundargi Village and along with the said application, the fifth respondent has also produced the partition deed (watny patra) duly signed by late Sharanappa, the father of first petitioner and grandfather of second petitioner herein, the wife of late Sharanappa and the fifth respondent and also attested by two other witnesses who were present at the time of writing the Watny patra. Thereafter, on the basis of the application filed by fifth respondent as referred above, notice has been issued under Rule 65 of the Karnataka Land Revenue Rules in prescribed format, stating that, the fifth respondent has filed the application for certifying the mutation in his name and that, it has been specifically referred therein that, the land owner, Sri. Sharanappa, Son of Bhagappa Yalwar has transferred his right in respect of the land in question to the son of his brother, i.e. the fifth respondent. The said notice was issued on 19th November 1998 by the jurisdictional Revenue Inspector - fourth respondent herein and the same has been affixed on the ''chavadi'' of the village now called the grama panchayat office, in the presence of three panchas. Further, it can be seen that, after completion of the required period of thirty days, since no objections were received, the Revenue Inspector - fourth respondent herein has certified the mutation by his order dated 12th December 1998. Thereafter, the name of the fifth respondent has been recorded in column Nos. 9 and 12(2) of the RTCs.

9. Further, from a perusal of the original records made available by learned Additional Government Advocate appearing for respondents 1 to 4, it reveals that, the fifth respondent, in turn, has mortgaged the property for availing the loan from the PLD Bank for a sum of Rs. 19,000/- on 29th February 2000. The said entry is found at column -11 of the record of rights for the year 2006-07 which is maintained in Form No. 16 under the Land Revenue Act and Rules. The petitioners herein have not chosen to file the appeal before the second respondent within the reasonable time. If petitioners had been really aggrieved, then, they ought to have filed an appeal before the Assistant Commissioner - second respondent herein within a period of sixty days as envisaged under Sub-section (2) of Section 136 of the Karnataka Land Revenue Act. Further, it is not in dispute that, petitioners have presented the appeal u/s 136(2) of the Karnataka Land Revenue Act after lapse of five years and five months and along with the said appeal, they have filed the application for condonation of delay in filing the said appeal. The second respondent, after hearing the learned counsel appearing for the parties and after careful perusal of the mutation order passed by fourth respondent, has recorded that, the appeal filed by petitioners is barred by limitation and the said authority has not accepted the grounds urged in the delay application submitted by learned counsel appearing for petitioners before the second respondent. The said authority has specifically referred in his order that, petitioners have in fact filed the suit as early as in the year 1996 which came to be disposed of in the year 2001 and the claim of petitioners that, they did not know about the entries in the record of rights when they were agitating the suit in respect of the same land before the Civil Court, is not tenable. In fact,

they carried out the mutation in their favour in respect of other suit lands in the year 1999 and the civil suit came to be disposed of on 23rd February 2001. Petitioners have not chosen to assail the correctness of the mutation order passed by fourth respondent in the year 1998 and to say that, even after that, they did not come to know about the land record entries is not believable. Further, the petitioners have also not chosen to verify the entries in the relevant records on year to year basis and have also not chosen to file any application seeking to enter their names, as successors of their deceased father and grandfather of petitioners herein respectively, after the death of Sri. Sharanappa in the year 1999 and also have not chosen to redress their grievance by assailing correctness of the mutation order, after disposal of the suit filed by the petitioners in the year 2001. Therefore, the said stand taken by petitioners for condonation of delay is neither acceptable nor believable nor petitioners have assigned valid, cogent or convincing reasons as such for condoning the delay in filing the appeal. Further it is specifically observed by the Assistant Commissioner in the operative portion of the order that, it is common knowledge that, the land revenue and other taxes in respect of the land have to be paid by all the landholders every year and also as per the Karnataka Land Revenue Act, every year all the landholders are given free RTC of the land and that, majority of the land owners are covered by seed subsidy and crop insurance every year and lack of knowledge of five years five months without any sufficient grounds appears unreasonable. The said observation made by the said authority is just and proper and there is no error or illegality as such committed by the said authority in dismissing the appeal filed by petitioners. Assailing the correctness of the said order passed by the Assistant Commissioner, petitioners have filed the revision petition before the first respondent u/s 136(3) of the Karnataka Land Revenue Act. The revisional authority, in turn after giving sufficient opportunity to both parties and after critical evaluation of the entire relevant material available on file including the order passed by second respondent and fourth respondent, has recorded that, as per Section 128 of the Act, public notice has been issued calling for objections and no objections were received from any one including the revision petitioners. Further, the said authority has rightly observed that, "when the name of revision petitioner did not appear in the ROR at that time, question of issuing individual notices did not arise. If at all the petitioners have any right in the lands as against the respondent, they have to establish before the Civil Court. So the revision is not maintainable." The said reasoning given by the first respondent is just and proper and there is no error as such committed by the said authority.

10. Further, it is significant to note here itself that, the application filed by fifth respondent for entering his name in the relevant record of rights was on the basis of the written partition (watny patra) executed by none other than the father of first petitioner and grandfather of second petitioner, late Sri. Sharanappa, when he was very much alive and at that time, these petitioners have not filed any objections. Therefore, the question of issuing individual

notices to petitioners herein does not arise nor the same is contemplated under the relevant provisions of the Land Revenue Act. This fact has been rightly appreciated by the revisions! authority, by holding that, the revision filed by petitioners is not maintainable and if petitioners are aggrieved, they can redress their grievance by establishing their rights before the competent Civil Court. The revisional authority, after affording opportunity to both parties and after perusal of the records and other relevant material available, has assigned cogent reasons at paragraphs 5 and 6 of his order and dismissed the revision filed by petitioners as devoid of merits. The said reasoning given by the first respondent for dismissing the revision petition filed by petitioners is highly reasonable. Therefore, I do not find any justification or good grounds to entertain the instant writ petition also in view of concurrent finding of fact recorded by all the three competent authorities exercising their powers as envisaged under the relevant provisions of the statute. Hence, interference by this Court is not justifiable and the writ petition is liable to be dismissed as devoid of merits.

11. So far as the reliance placed by learned counsel appearing for petitioners is concerned, there is no dispute, quarrel or second opinion regarding the well settled proposition of law laid down by the Apex Court and the full bench of this Court. But, the facts and circumstances of the said referred cases are entirely different from the facts and circumstances of the case on hand and the same are not applicable to the present case of petitioners. Therefore, the reliance placed by learned counsel for petitioners is of no assistance or helpful to him to defend the case of petitioners herein in the present writ petition.

12. Further, it is pertinent to note after careful evaluation of the entire original records available on file threadbare that, when the application has been filed by fifth respondent, the owner late Sri. Sharanappa was very much alive. The said application filed by fifth respondent has been considered and mutation has been ordered by the fourth respondent as per relevant provisions of the Land Revenue Act. Nothing prevented the petitioners from filing their objections or approaching the competent authority during the said period, when late Sri. Sharanappa was alive. Further, the specific submission made by learned counsel appearing for petitioners that, petitioners are illiterate and ignorant and that, they are not well acquainted with the relevant provision of the Act or statue, cannot be accepted or believed for the simple reason that, during the very same period, the names of these petitioners were entered in respect of other survey numbers belonging to late Sri. Sharanappa. More over, there are not cogent and convincing reasons assigned for condoning the delay in filing the appeal. Further, it is the case of petitioners that, mutation has been certified in favour of fifth respondent on the basis of the alleged oral partition and that, the same is not a registered document. The said submission made by learned counsel for petitioners cannot be accepted and is liable to be rejected at the threshold itself on the ground that, in the instant case, petitioners have admittedly filed the suit in the year 1996 and the matter has since been pending adjudication till 2001. Subsequently, after the disposal of the suit in 2001, after lapse of nearly three years and after lapse

of nearly five years five months from the date of certification of mutation by fourth respondent, petitioners have preferred the appeal before the second respondent. The second respondent has rightly considered and referred all the grounds urged by petitioners in the memorandum of appeal and also the delay explained, and has dismissed the appeal on the ground of delay and latches for not explaining the delay satisfactorily and observed that, the stand taken in the affidavit for explaining the delay cannot be given much credibility. The said reasoning given by the Assistant Commissioner is just and reasonable and I do not find any error as such committed in dismissing the appeal.

13. Therefore, taking into consideration the totality of the case on hand, and having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioners is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

