(2015) 06 KAR CK 0236

In the Karnataka High Court

Case No : Writ Petition No. 31186 of 2009 (KLR-RR/SUR)

Yellamma and Others — APPELLANT

Vs

The Deputy Commissioner and Others — RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:
Karnataka Land Revenue Act, 1964 — Section 136, 50

Citation : (2015) 06 KAR CK 0236

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M. Jai Prakash Reddy, for the Appellant; E.R. Diwakar, AGA, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.

1. One Chikka Chennamma is said to have purchased 3 acres 11 guntas of land in Sy. No. 90 of Dinnehosahalli, Chickballapur taluk and district and on her death, her sole legal representative Smt. Yellamma, petitioner No. 1, claimed to have inherited the said property. Yellamma is said to have been given in marriage to one Chennappa and from out of the wedlock were born two sons and three daughters of which one Ramakrishnappa petitioner No. 1(a) on marriage begot two sons, petitioner No: 2 and one Marappa since deceased represented by widow Respondent No: 3. Marappa during his life time is said to have approached the revenue authorities and secured an entry in the mutation Register in IHR 477/97-98 to the extent of one half portion i.e., 1 acre 33 guntas, on the premise that there was a partition in the family. Thereafterwards on the death of Marappa, his widow, the 3rd respondent secured an entry in the mutation Register at No. 11/2000-01 recording her name in respect of the said property.

2. Petitioner No. 1 represented by her power of attorney Rama Krishnappa Petitioner No: 1(a) filed Appeal No. 154/2001-02 before the Asst. Commissioner

under Section 136 of the Karnataka Land Revenue Act, 1964, for short Act'', arraigning the 3rd respondent and the 2nd petitioner as party respondents, calling in question IHR 477/97-98 and MR 11/2000-01, whence by order dated 17.1.2005 Annexure-B entries were set-aside. Petitioner No: 1 Yellamma, is said to have died testate on 5.12.2005, bequeathing the property in question in favor of her General Power of Attorney Holder and his two children petitioners 1(a), (b) and (c) respectively.

3. Respondent No. 3 filed appeal No. 230/2004-05 before the Deputy Commissioner invoking Section 50 of the Act instead of Section 136, whence the Deputy Commissioner by order dated 29.7.2009 allowed the appeal and restored IHR 477/97-98 and MR 11/2000-01 by inferring that in the admitted fact of relationship between the mother and her two sons, each of the sons was entitled to one half of the share in the lands in question, while the Will of late Yellamma was in the nature of a civil dispute to be decided by the Civil Court.

4. According to the learned counsel for petitioners, 3rd respondent is said to have instituted O.S. 137/2006 arraigning 1st petitioner as party defendant for declaration, partition and separate possession of land in Sy. No. 90 measuring 3 acres 11 guntas on the premise that there was a prior partition and that the plaintiffs husband by name Marappa, since deceased, was entitled to one half share, and that Suit was dismissed as withdrawn on 22.9.2010.

5. Admittedly, dismissal of the suit is after the order dated 29.7.2009 passed by the Deputy Commissioner.

6. In the aforesaid admitted facts, the question is whether revenue authorities, more appropriately the Tahsildar and Deputy Commissioner could have assumed and drawn an inference that the two sons of the 1st petitioner were entitled to an equal share each in the properties inherited by the 1st petitioner from her mother Smt. Chikka Chennamma. The further question is, whether petitioner 1(a), 1(b) and 1(c) could have claimed right, title and interest over the entire extent of 3 acres 11 guntas in Sy. No. 90 on the basis of a testamentary disposition by way of an alleged Will dated 22.1.2005 of the deceased 1st petitioner, and its validity could be adjudicated in a proceeding before Revenue Courts.

7. The answers to the aforesaid questions need not detain the court for long in the light of the authoritative pronouncement of the Full Bench of this Court in C.N. Nagendra Singh v. The Special Deputy Commissioner, Bangalore District and Others ILR 2002 KAR 2750 recording a finding that when revenue court is preventing from recording the statements of parties and the depositions, the question of establishing the genuineness of the Will would not arise and the question of title too would not arise. In other words, the Full Bench held that revenue courts did not have the requisite jurisdiction to adjudicate and decide civil disputes, more so in the nature of title and possession of immovable properties, which was the exclusive jurisdiction of the Civil Court.

8. In that view of the matter, the Deputy Commissioner was not justified in reversing the finding of the Assistant Commissioner so as to restore the entries in IHR 477/97-98 and MR 11/2000-01. Parties may have their respective rights over the immovable properties adjudicated in an appropriate suit before a competent court of law, whence the Revenue Authorities would be bound by the Judgment and Decree therein.

In the result, this petition is allowed. The order dated 29.7.2009 in appeal No. 230/2004-05 of the Deputy Commissioner is quashed.

