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2005 SCeJ 001 (Kar.)

KARNATAKA HIGH COURT

Before : D.V. Shylendra Kumar, J

SMT. PAPAMMA — Appellant ,

versus

THE DEPUTY COMMISSIONER AND OTHERS — Respondent

Writ Petition No. 20143 of 2005

19.09.2005

**Constitution of India, 1950, Article 227 - Karnataka Land Revenue Act, 1964, Section 127 - Karnataka Land Revenue Rules, 1966 , Rule 19, 43 - Purpose of changing the revenue entries — The revenue authorities do not have power or jurisdiction to pronounce upon legal rights or legal entitlement or even to pronounce upon the validity of a Will or a sale deed and such power is undoubtedly vested with the Civil Court - The Tahsildar had no competence to say one way or the other on the validity of the sale deed and to the extent the Tahsildar ventured upon to opine that the sale transaction was one not tenable or proper is an adventure not permitted in law — Whatever may be said by the revenue authorities their domain is only for effecting a change in the revenue records and to show the names of particular persons, which can notion pass on or by itself create rights to such persons who have already acquired them and it is not as though the revenue entries by themselves give such right - Revenue entries are not conclusive of the rights of the parties to the properties. [Para 5, 8, 9]**

*Cases Referred*

*1.(2002) ILR (Kar) 2750 : (2002) 6 KarLJ 391 : (2002) 3 KCCR 1493, C .N. Nagendra Singh Vs. The Special Deputy Commissioner and Others,*

*B.M. Siddappa, for the Appellant; B. Bharamagouda B. Goudar, HCGP for R-1 to 3, for the Respondent*

ORDER

D.V. Shylendra Kumar, J.—Writ petition is by a person, who claims to have purchased a piece of agricultural land in terms of a sale deed dated 9.3.1995. It is claimed that the

petitioner had filed an application before the revenue authorities praying for transfer of katha in terms of the application. The Tahsildar had received the records from the Office of the Sub-Registrar by then and also received the intimation of the factum of registration of such a document before the concerned authority, the authority had issued notices in Form-D to the entries and concerned persons and it turned out that there were several disputes including the identity of the person executing the very document itself, as it appears that there were two Sanna Boraiahs involved and as to who had executed the sale deed in respect of what land etc there was considerable confusion. The Tahsildar while ventured upon to pronounce that the validity of the sale deed registered in terms of Annexure-A SR.No. 2527/94-95 was illegal and therefore while declining the request of the petitioner affirmed the entries as it stood earlier in terms of his order dated 17.7.1995.

2. Petitioner being aggrieved had approached the Assistant Commissioner by filing the appeal R.A.No. 49/2000- 2001 in terms of her memorandum of appeal dated 10.10.2000 in terms of the provisions u/s 136(2) of the Karnataka Land Revenue Act, 1964 (for short the 'Act'). The Assistant Commissioner as per his order dated 5.4.2002, copy at Annexure-C to the petition, allowed the appeal cancelling the order of the Tahsildar and directed the revenue entries to be brought in tune with the sale transaction.

3. The 5th respondent thereafter approached the Deputy Commissioner invoking his revisional jurisdiction u/s 136(3) of the Act. The Deputy Commissioner went into the rival contentions and the parties claims in great detail that while the purchaser was claiming under one Sanna Boraiah, s/o. Obaiah, what was sought to be given effect to in the revenue records was change of entries in respect of the land which had been granted to another Sanna Boraiah, S/o Chinniah and that could not be under the sale transaction etc. The Deputy Commissioner on recording a finding that the revision petitioner alone was found to be in possession of the land in question in terms of the records which had been granted to him or his predecessors in terms of the revenue records and thought it fit to revise the order of the Assistant Commissioner, set aside the same and directed restoration of the names as it stood originally and that the parties should approach the Civil Court for resolution of the disputes as there was considerable confusion with regard to the claims of the parties. It is against such an order the present writ petition.

4. Submission of Sri. Siddappa, learned counsel for the petitioner is that the revenue authorities are not competent to pronounce upon the validity of a sale transaction. The law in this regard is well settled in terms of a Full Bench of this Court in the case of C .N. Nagendra Singh Vs. The Special Deputy Commissioner and Others, (2002) ILR (Kar) 2750 : (2002) 6 KarLJ 391 : (2002) 3 KCCR 1493, while interpreting on the scope of the provisions of Sections 127 to 129 of the Karnataka Land Revenue Act, 1964 and Rules 19 and 43 of the Karnataka Land Revenue Rules, it has been very clearly held that it is not within the domain of revenue authorities to pronounce upon the validity or otherwise of a Will' that the action taken by the Tahsildar to pronounce upon the sale transaction which had been duly registered was without jurisdiction and the Deputy Commissioner, in such circumstances should not have interfered with the order of Assistant Commissioner to the detriment of the petitioner, that he could not have at any rate directed restoration of the entry as earlier which in fact amounts to affirming the order of the Tahsildar who has

ventured upon to pronounce upon the validity of the sale transaction, therefore, the order requires to be quashed even in the exercise of writ jurisdiction and suitable directions be issued to the respondents etc.

5. The learned counsel is very right in his submission and in relying upon the Full Bench Decision to contend that the revenue authorities do not have power or jurisdiction to pronounce upon legal rights or legal entitlement or even to pronounce upon the validity of a Will or a sale deed and such power is undoubtedly vested with the Civil Court. The Tahsildar had no competence to say one way or the other on the validity of the sale deed and to the extent the Tahsildar ventured upon to opine that the sale transaction was one not tenable or proper is an adventure not permitted in law.

6. However, it does not mean that the authorities can give a go by to the procedure contemplated in law even for the limited purpose of changing the revenue entries. The Tahsildar while holding an enquiry in terms of the provisions of the Rule, noticed several disputes, claims, counter claims, even to the extent of identity of the very person, who had executed the sale deed being not clear; that the very person who is said to have executed the sale deed claiming that he had not executed the sale deed in respect of the land in question was not his land that he had been pressurized to execute the sale deed etc.

7. In such a situation, if the Tahsildar even otherwise finds it difficult to effect the change of entries, it cannot be said that the conduct of the Tahsildar is totally wrong. The Deputy Commissioner while exercising his revisional jurisdiction does notice the very position, the disputes and the confusion, and has declared that it is only proper that the parties should approach the Civil Court to get their rights determined and there upon seek for necessary correction in the revenue entries. No exception can be taken to an order of this nature. It is not as though the Deputy Commissioner passes order affirming the order of the Tahsildar positively to hold that the transaction is invalid etc., but finds sufficient justification for interference in the sense that the matter is one which is fit for resolution before the Civil Court rather than before the revenue authority.

8. Whatever may be said by the revenue authorities their domain is only for effecting a change in the revenue records and to show the names of particular persons, which can notion pass on or by itself create rights to such persons who have already acquired them and it is not as though the revenue entries by themselves give such right. Unfortunately for the petitioner in the present case it is to his detriment. Time and again it has been made clear by this Court, that the parties and litigants proceed on a premise that what is said by the revenue authorities is final and orders of the revenue authorities had taken away the rights of the parties and such a situation should be set right by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

9. I am of the opinion that it is not necessary to venture upon such aspects in exercise of jurisdiction under Article 227 of the Constitution of India, Particularly as the revenue entries are not conclusive of the rights of the parties to the properties and while the arguments of the learned counsel for the petitioner is that the effect of the order of the Deputy Commissioner while exercising revisional jurisdiction is one to indirectly confirm the finding

of the Tahsildar for annulling the sale transaction, I do not find this to be the factual position. On a perusal of the order of the Deputy Commissioner it indicates that even assuming that it has a direct effect in the sense, the Deputy Commissioner had confirmed such a finding of the Tahsildar also, it is hereby clarified that in the light of the well settled principle of law in terms of the opinion expressed by the Full Bench of this Court, the Deputy Commissioner is very right in directing the parties to approach the Civil Court to have the dispute resolved and in the interregnum not to act further, but to retain the entries as it stood originally in the revenue records.

10.It is for this reason that I do not find any justification or need to exercise the discretionary writ jurisdiction under Article 227 of the Constitution of India for setting aside such orders or even for pronouncing upon the correctness or otherwise of such orders, but it is left open for the petitioner to approach the Civil Court seek such remedy as she is advised to get so that the dispute amongst the parties is resolved before a Court of competent jurisdiction whereupon the revenue authorities will have to automatically bring the entries in the revenue records to be in conformity with the determination by the Civil Court.

11.Reserving such liberty, this writ petition is dismissed.