

**IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR**

**Present: Shri. S S Nakul,**  
Deputy Commissioner,  
Uttar Kannada, Karwar.

**No. RB/RTR/CR-08/2011-12**



**Between**

1. Sri Suresh Bin Nagesh Kamath  
R/o. Shantadurga Vijayanagar, Hubli
2. Sri Ramesh Nagesh Kamath  
Vaibhav Restaurant Mumbai
3. Sri Vishwanath Nagesh Kamath  
Temple Street Murdeshwar  
(Represented through Advocate Sri R. S. Hegde Gali)

**.... Appellants**

V/s

1. Smt Taramati Dattatraya Kamath  
R/o. Mavalli-2, Murdeshwar Bhatkal
2. Sri Sundar Govindray Kamath  
Main Road Murdeshwar, Taluk Bhatkal  
(Represented through Sri R V Bhat)

**.... Respondents**

**Sub:** Case remanded by Hon'ble High Court of Karnatak in WP No.111971/2014(KLR-RR/SUR) dated: 18-08-2015 for fresh disposal.

**Preamble:**

The suit property bearing Sy No. 364/2 an extent of 0-25-0(A-G-A), Sy No. 889 an extent of 2-38-0(A-G-A) of Mavalli-II village and Sy No. 21A/2 an extent of 0-12-0(A-G-A), Sy No. 65/1 an extent of 0-9-0(A-G-A), Sy No. 351/1B an extent of 0-29-0(A-G-A), in Mavalli-I village are the undivided family property of Appellant and Respondents. One Devaraya Dasappa Kamath was joint family manager he died leaving behind 7 brothers 4 sons and 2 daughters. During his lifetime Devaray Dasappa Kamath there was family partition and all brothers and their family members started enjoying the property separately. The Mutation Entry No. 90/06-07 of Mavali-I village and Mutation Entry No. 137/06-07 of Mavalli-II village dated: 12-03-2007 based on Will Nama executed by Sri. Nagesh Dasappa Kamath in favour of appellants. Regarding the clarification of this entry the Respondent filed appeal before Assistant Commissioner, Bhatkal and who in order dated: 02-05-2011 cancel the impugned mutation entries and remanded back the case to Tahsildar, Bhatkal for re-enquiry. Being aggrieved by this order appellant filed appeal before Deputy Commissioner, Uttara Kannada, Karwar and who in his order dated: 08-09-2014 upheld the order of Assistant Commissioner, Bhatkal against this appellant filed WP No. 111971/2014 in Hon'ble High Court of Karnataka. Hon'ble High Court of Karnataka in its order dated: 18-08-2015 remanded back the case to Deputy Commissioner, Uttara Kananda, Karwar for fresh enquiry. Notices were issued to both parties.

**The Advocate for the Appellant argued that:**

1. The Assistant Commissioner Bhatkal order dated: 02-05-2011 is against the provisions of Karnataka Land Revenue Act.
2. Mutation entry No. 137/06-07 and 90/06-07 were made in respect of the properties exclusively held by Nagesh Kamath in his individual capacity. The

property is transferred to Class-I legal heirs namely the children of Nagesh Kamath. The Respondents being the divided brothers cannot have any claim over the disputed properties.

3. The revision petitioners are the children of Nagesh Kamath, who is brother of said Devaraya Kamath, who died on 23-07-1981 was holding the properties as joint family manager. During his lifetime he had made family arrangements by virtue of which his brothers were holding the properties independently.
4. The partition Mutation entry were made in the year 1982 all the parties have acted upon the said arrangements without any dispute till 2010 when the appeal was filed.
5. After the original subsequent entries were made in A-4477 also is the evidence of further change in the partition. That entry was not at all challenged. This proves the entries made in the year 1982 were accepted.
6. The right, title, interest if any of the Respondents will have to be established in Civil Court by properly instituted declaratory suit.

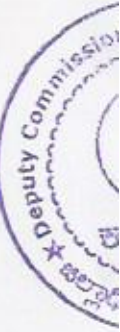
Hence he requested to allow the appeal by restoring the two Mutation entries and setting aside the order of Assistant Commissioner, Bhatkal.

The Advocate for the Respondent argued that.

1. The instant revision petition preferred by the petitioner in the present form is not maintainable on the facts of the case.
2. Deputy Commissioner, Uttar Kannada, Karwar in his vide order dated: 08-09-2014 has clearly stated that interference of learned Assistant Commissioner, Bhatkal are sound and based on the documentary evidence and does not call for any interference at this stage. Therefore, order passed by this court was clear order. Even then Hon'ble High court has remanded the matter for fresh hearing this time a detail order with reason may be passed.
3. Disputed Mutation entry is based upon the Will has to be challenged in Civil Court. Revenue Court has no jurisdiction to go into the legality or validity of the Will.
4. Tahsildar, Court while certifying the Mutation entry had not issued any notice to the present Respondent who is legal heirs entitled to inherit the property in absence of the Will. No such notice to natural successors in this case. Assistant Commissioner, Bhatkal in his judgment has correctly noted it.
5. Assistant Commissioner, Bhatkal has remanded the matter for fresh enquiry after giving notice to all legal heirs.

Hence he requested to dismiss the revision petition.

On perusal of the Lower Court Records and Written argument of both parties and the records available in the case reveals that the suit property bearing Sy No. 21A/2 an extent of 0-12-0(A-G-A), Sy No. 65/1 an extent of 0-9-0(A-G-A), Sy No. 351/1B an extent of 0-29-0(A-G-A), in Mavalli-I village and Sy No. 364/2 an extent of 0-25-0(A-G-A), Sy No. 889 an extent of 2-38-0(A-G-A) of Mavalli-II village was granted occupancy right to One Sri Devaraya Dassappa Kamath as Undivided family manager as per Land Tribunal Order NO. LRM/11/214 dated: 09-09-1977. He died on 23-07-1981 leaving behind 7 brothers i.e., 1. Nagesh D Kamath 2. Govindraya D Kamath 3. Shankar D Kamath 4. Narayan D Kamath 5. Dattatraya D Kamath



6. Gajanan D Kamath 7. Radhakrishna D Kamath and 4 sons i.e. 1. Ramadas Devaraya Kamath 2. Chandrakant Devaraya Kamath 3. Ullas Devaraya Kamath 4. Vittal Devaraya Kamath and 2 daughters 1. Vijaya Vinayak Shanbhag 2. Padmavati Srinivas Pai and Wife Lakshmi Devaraya Kamath. The husband of Taramai Dattatraya Kamath, Respondent No. 1 and father of Sundar Govindray Kamath Respondent No. 2 and Appellants 1,2, and 3 are the brothers of Devaraya Dasappa Kamath. There is no dispute regarding the relationship among the appellant and respondents. As per inheritance Mutation entry No. A3250 of Mavali I village Sy No. 364/2 an extent of 0-25-0(A-G-A) and Sy. No. 889 an extent of 2-38-0(A-G-A) was mutated in the name of Nagesh Dasappa Kamath on 07-02-1982. As per inheritance A2856 of Mavali II village Sy No. 21A/2 an extent of 0-12-0(A-G-A) and Sy No. 21A/3 an extent of 0-1-8(A-G-A), Sy NO. 27A an extent of 0-31-0(A-G-A), Sy No. 65/1 an extent of 0-9-0(A-G-A) and Sy No. 351/1B extent of 0-24-4(A-G-A) was entered in the name of Nagesh Dasappa Kamath. Sy No. 7A/2 an extent of 0-0-7(A-G-A) and Sy No. 27B an extent of 0-15-0(A-G-A) half share was mutated in the name of Govindray Dasappa Kamath. Sy No. 22K an extent of 0-0-5(A-G-A) and Sy No. 27B an extent of 0-15-0(A-G-A) half share was mutated in the name of Dattatraya Dasappa Kamath. Nagesh Dassapa Kamath died on 21-02-2006 he executed Will. Based on this Will Mutation entry No. 90/06-07 dated: 12-03-2007 of Mavali I village was effected in the name of 1. Suresh Nagesh Kamath 2. Ramesh Nagesh Kamath and 3. Vishwanath Nagesh Kamath in Sy No. 364/2 an extent of 0-25-0(A-G-A) and Sy No. 889 an extent of 2-38-0(A-G-A) of Mavali I village was entered in the name of all three appellants. As per Mutation entry No. 137/2006-07 dated: 12-03-2007 of Mavali II village appellants name was entered in Sy No.21A/2, 65/1 and 351/1B. Appeal was filed before Assistant Commissioner, Bhatkal against the Will Nama Mutation entry by Smt. Tarabai Dattatraya Kamath and Sundar Govindray Kamath after the period of 3 years. Assistant Commissioner, Bhatkal heard the case and in his order NO.RRT/AP/SR/7/10-11 dated: 02-05-2011 cancelled the disputed mutation entry No. 90/06-07 of Mavali I Village and No. 137/06-07 of Mavali II village and remanded the case back to Tahsildar, Bhatkal for re-enquiry after issuing the notice to all legal heirs and owner of the suit property. Being aggrieved by this order appellant filed appeal before Deputy Commissioner, Uttar Kannada, Karwar who in his order No. RB/RTR/CR-8/11-12 dated:08-09-2014 upheld the order of Assistant Commissioner, Bhatkal against this order Appellant filed WP No. 111971/2014 in Hon'ble High Court of Karnataka. Hon'ble High Court of Karnataka in its order dated: 18-08-2015 remanded the case back to Deputy Commissioner, Uttar Kannada, Karwar for fresh enquiry on the grounds that Deputy Commissioner, perhaps not even looked into the order of Assistant Commissioner, Bhatkal or Tahsildar Bhatkal or the material on record to find out whether the order of the Tahsildar and Assistant Commissioner are proper or correct. But he culled out the arguments submitted by the learned Counsel for the petitioners and the respondents and finally in one sentence, it is stated that the order oof the Assistant commissioner is sound and based on the documentary evidence and therefore, it does not call for any interference. Deputy Commissioner has disposed of the appeal in a very casual manner.

Notice was issued to both parties and case was heard in detail. The suit property is joint family property, after the death of Devaraya Kamat the property was mutated as per inheritance mutation entry No. A3250 of Mavalli-I and mutation entry No A2856 of Mavalli-II village in the year 1981-82. Deveraya Dasappa Kamat who died on 23-7-1981 was the properties as Joint Family Manager. During his life time he only made the family arrangements by virtue of which his brothers were holding properties independently. The mutation entries was made with ehe consent statement of all family members. All the parties have acted upon the said Arrangement without any dispute till 2010. WILL is not probated in Civil Court.

As per Hon'ble High Court Citation 2001(1) KCCR 488 Sri Basappa Nigappa Makapur V/s The Assistant Commissioner and Others " When disputed questions arise about the validity of the sale and right of sale of joint family property the Reveue Authorities cannot go into the matter and adjudicate the questions relating to title. The proper forum for the parties in such a situation is to seek remedy form the Civil Court".

As per the ruling reported in ILR-2002-KAR-2750 revenue courts have no jurisdiction to enquiry about the genuineness of the Will or question of title when there is dispute regarding the Will between the natural heirs should be proved before competent court of law.

Hence it is fit case to be dismissed. Parties are at liberty to approach Civil Court.

Hence I proceed to order as follows:

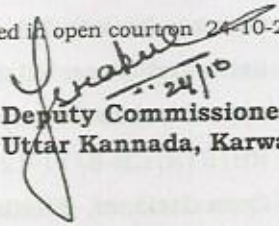
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Date: 24-10-2016.

### Order

Appeal is dismissed, Assistant Commissioner, Bhatkal order in file No. RTS/AP/SR-7/10-11 Dated 02-05-2011 is upheld.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 24-10-2016)

  
24/10  
Deputy Commissioner,  
Uttar Kannada, Karwar

