

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Sri. S S Nakul,
Deputy Commissioner,
Uttar Kannada, Karwar

No. RB/RTR/CR-27/14-15



Between

Altaf Hussain S/o Mohammed Nazir
R/o H. No. 88, Azad Nagar Tq: Bhatkal
GPA Holder Faiyaz Ahammed Musba
R/o Usmaniya Street Tq: Bhatkal
(Represented through Advocate Sri R S Hegde Gali)

.... Revision Petitioner

V/s

1. Narayan Jattappa Naik
2. Nagappa Jattappa Naik
3. Irayya Jattappa Naik
4. Venkatesh Jattappa Naik
5. Nagappa Kom Manjappa Naik
6. Jattamma Kom Nagappa Naik
Since deceased by his legal heir
 - a. Subraya Nagappa Naik
 - b. Mamata Kom Bhaskar Naik
 - c. Devaraja Nagappa Naik
7. Madevi Kom Manjappa Naik
8. Manjamma Kom Honnappa Naik
9. Jappappa Nagappa Naik
10. Durgayya Nagappa Naik
11. Manjunath Nagappa Naik
12. Hadiyama Nagappa Naik
13. Nagamma Durgappa Naik
14. Narayan Jattappa Naik
15. Sridhar Nagappa Naik

All R/o Baravyyanamane Honnegadde, Heble Gram Tq: Bhatkal
(Represented through Advocate Sri B K Naik for Respondent No. 3,4,6,7,8,9,12, 13 and 14)

.... Respondents

Sub: Revision Petition filed u/s 136(3) of Karnataka Land Revenue Act 1964 against the order of Assistant Commissioner, Bhatkal dated: 04-09-2014 in file No. RTS/AP/SR-121/13-14 relating to Mutation entry No. 483/13-14 of Heble village in Bhatkal Taluk.

Preamble:

The revision petition has been filed against the order of Assistant Commissioner, Bhatkal in file No. RTS/AP/SR-121/13-14 dated: 04-09-2014. Notices were issued to both parties.

The brief facts of the case are as follows:

An extent of 2-0-0(A-G-A) in Sy No. 203A1 of Heble village in Bhatkal Taluk was granted on Khayam Lagani to Smt. Manjamma Kom Jattappa Naik as legal heir of Late Irayya Durgayya Naik. As per the WILL Nama executed by said Smt. Manjamma Jattappa Naik in the suit property was mutated in the name of Revision petitioner vide Mutation entry No. H83/13-14. This entry was challenged before Assistant Commissioner, Bhatkal and who in order No. . RTS/AP/SR-121/13-14 dated: 04-09-2014 cancelled the impugned Mutation entry. Being aggrieved by this order the revision Petitioner filed the instant revision petition before this court.

The Advocate for the Petitioner argued that.

1. The suit property was self acquired property being a grant made by the Government on permanent basis. So she had legal right to execute WILL to any one she likes. The execution of the Will not challenged by the Respondents.
2. The Respondents failed to produce documents that the suit property is joint family property. Grant of land to an individual person takes the nature of self acquired property.
3. The Respondents not challenged the Will Nama.
4. The genuineness of the Will is to be proved by the propounder in the Civil Court only in the case of Joint family property bequeath for the execution of the Will. The objection of the Respondents is mainly that the suit property bequeathed is the joint family property. Tahsildar rightly directed the Respondents to prove the property as joint family property in Civil Court. But Assistant Commissioner, Bhatkal passed the order without looking in to the matter.

Hence he requested to allow the appeal.

The Advocate for the Respondent not filed any oral or written argument inspite of sufficient opportunities so it has been decided to dispose the case on the records available in the case.

On perusal of records pertaining to the case and written argument submitted by the Advocate for the revision petitioner it reveals that the suit property Sy No. 203A1 measuring the extent of 2-0-0(A-G-A) of Heble village of Bhatkal Taluk was granted by Deputy Commissioner, Uttar Kannada, karwar vide order No. Kamsha/Aranya/Viva-9/94-95 dated: 21-04-1994 in favour of Irayya Durgayya Naik. After the death of Irayya Durgayya Naik the said land was mutated in the name of Manjamma Jattappa Naik as legal heirs. During her lifetime, she had executed Will in favour of revision petitioner. Respondent No. 1,2,3,6,7,8 have signed as witness in the said Will Nama. This Will was mutated as per Mutation entry No. H126/12-13 this was objected by Respondent No. 1 to 9 in the court of Tahsildar, Bhatkal. Tahsildar, Bhatkal after hearing the case ordered to mutate the land in the name of appellant. Being aggrieved by the order of Tahsildar, Bhatkal Respondent No. 1 to 14 filed an appeal before Assistant Commissioner; Bhatkal after hearing the case rejected the disputed Mutation entry No. H83/13-14 dated: 12-02-2014. Being aggrieved by the order of Assistant Commissioner, Bhatkal No. RTS/AP/SR/121/13-14 dated: 04-09-2014 the appellant filed revision petition before this court.

The decision of Hon'ble High Court published in KLJ.2002 part (6) page 391 "The Revenue Courts have no jurisdiction to enquiry about the validity of the WILL. So, no WILL can be mutated unless and until is probated by the Competent Civil Court.

In this case WILL in not probated. Hence, I proceed to order as follows:

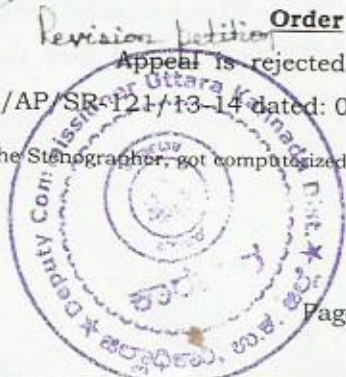
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Date: 17-10-2016

Order

Appeal is rejected, Assistant Commissioner, Bhatkal in file No. RTS/AP/SR/121/13-14 dated: 04-09-2014 is upheld.

(Order dictated to the Stenographer, not computerized, verified and pronounced in open court on 17-10-2014)



**Deputy Commissioner,
Uttar Kannada, Karwar**