

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

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

No. RB/RTR/CR-27/15-16



Between

Gajanan Vishnu Shanbhag
R/o Valagalli Tq: Kumta
(Represented through Advocate Sri. S M Pandit)

.... Revision Petitioner

V/s

1. Satish Krishna Shanbhag
2. Smt. Ganapi Krishna Shanbhag
3. Satyanarayan Krishna Shanbhag
All R/o Valagalli Tq: Kumta
4. Tahsildar Kumta
(Represented through Advocate Sri. P S Bhat)

.... Respondents

Sub: Revision petition filed u/s 136(3) of Karnataka Land Revenue Act 1964 against the order of Assistant Commissioner, Kumta in file No. RTS/AP/SR-74/12-13 dated: 08-10-2015 relating to Mutation entry No. 30/11-12 in respect of Sy No. 188/7 of Valagalli village in Kumta Taluk.

Preamble:

The instant revision petition has been filed against the order of Assistant Commissioner, Kumta in file No. RTS/AP/SR-74/12-13 dated: 08-10-2015. Notices were issued to both parties.

The brief facts of the case are as follows:

Originally the suit land belonged to one Late Krishna Parameshwar Shanbhag which was granted by Land Tribunal. The respondents are the legal heirs of deceased Krishna Parameshwar Shanbhag. But it is alleged that during the life time Krishna Shanbhag had executed a Will in favour of Revision petitioner in respect of suit property. After the death of Krishna Shanbhag the revision petitioners moved an application to Tahsildar to mutate his name to the suit property as per the Will. Accordingly Mutation entry No. 30/11-12 was initiated. But it was objected by respondents before Tahsildar Kumta. After enquiry Tahsildar, Kumta cancelled the impugned entry the revision petitioner preferred appeal before Assistant Commissioner, Kumta and who in order dated: 08-10-2015 dismissed the appeal. Being aggrieved by this order the revision petitioner filed revision petition before this court.

The advocate for the revision petitioner argued that:

1. The Will executed by said Krishna Parameshwar Shanbhag in favour of revision petitioner is legal valid and in accordance with law. The Will was executed out of natural love and affection. Thus the revision petitioner inherited all the legal right title and interest by virtue of the said Will.
2. Considering the legality of the Will the Assistant Commissioner, Kumta ought to have ordered for certifying the Mutation entry.
3. Relying upon the decision cited in ILR 2006 Karnataka page 1895 as follows:

Sripad ekanath Goankar v/s Assistant Commissioner

Karnatak Land Refoms Act, 1961 Section 61-

"Whether a Will made in favour of grantee of the land is violative of Section 61-HELD-By reading of the section 61 of the Karnataka Land Reforms Act indicates that the provisions of Section 61 is applicable only to transfer made in respect of granted lands through registered sale deed, gift deeds, exchange, lease or assignment. Therefore there is no bar to bequeath the property by way of will by a tenant, in whose favour the occupancy right has been granted by the tribunal".

The revision petitioner requested to allow the revision petition.

The advocate for the Respondent submitted a memo to consider the written argument filed in RB/RTR/CR-31/15-16 in favour of revision petitioner. The argument is as follows:

1. The respondents are the legal heirs of Late Parameshwar Shanbhag who acquired the suit property through Land Tribunal. So it is exclusively family property of the respondents.
2. After the death of Krishna Shanbhag all the other properties except this land was mutated in the name of respondents.
3. Afterwards it came to know that the revision petitioner has created a bogus and concocted unregistered Will in favour of himself and managed to get his name to the suit property.
4. When the Will is challenged the Revenue Authority has no jurisdiction to make entry on the basis of unregistered Will.
5. As per Section 61 of Karnataka Land Reforms Act the land granted by Land Tribunal cannot be alienated to third person by way of Will or any agreement within period of 15 years from the grant.
6. The respondents are the legal heirs of late Krishna Shanbhag, so the property cannot be kept in the name of dead person.
7. By relying upon the following citations 1) 2010(5) KCCR Page No.4273 2) 2005 AIR KANT HCR 1729 3) 2009(1) KLJ Page No. 547 4) 2000(4) KLJ Page No. 407 the respondents requested to enter their names to the suit property.

Hence he requested to dismiss the revision petition.

On perusal of the Lower court records written argument of both and the order of Assistant Commissioner, Kumta clearly reveals that Sy No. 188/7 an extent of 0-6-8(A-G-A) of Vallgalli Village in Kumta Taluka is Tribunal land. The occupancy right has been conferred to One Krishna Parameshwar Shanbhag with conditions of restriction that the land cannot be alienated within a period of 15 years. But Krishna Parameshwar Shanbhag had executed a WILL in favour of Revision petitioner Gajanan Vishnu Shanbhag on 28-11-2005. WILL is an unregistered document. Again Krishna Parameshwar Shanbhag executed General Power of Attorney in favour of Lokesh Gajanan Shanbhag son of revision petitioner on 28-11-2005 and he also executed an agreement to sale the suit land with Gajanan Vishnu Shanbhag on 28-11-2005 for an amount of Rs. 27,000/-.

Krishna Parameshwar Shanbhag died on 13-11-2011. After the death of Krishna Parameshwar Shanbhag the revision petitioner moved an application to mutate his name to the suit property as per will. Accordingly Mutation entry No.30/11-12 was initiated. But it was objected by the Respondents the legal heirs of Krishna Parameshwar Shanbhag. After due enquiry Tahsildar cancel the impugned mutation entry. Being aggrieved by this revision petitioner filed appeal before Assistant Commissioner, Kumta. Assistant Commissioner, Kumta in order dated: 08-10-2015 dismissed the appeal. Being aggrieved by this order the revision petitioner filed revision petition before this court.

As per the Hon'ble High Court order published in KLJ 2002 Part (6) Page No. 391 " The Revenue Courts have no jurisdiction to enquiry about the validity of the Will" In this regard the revision petitioner has to obtain probate order from Civil Court unless and until it is better to continue the names of all legal heirs to the suit property.

In this case WILL is not probated and matter to be decided in Civil Court.

Hence I proceed to order as follows.

No. RB/RTR/CR-27/15-16

Date: 17-10-2016

Order

Revision Petition is rejected, Assistant Commissioner, Kumta in file No. RTS/AP/SR-74/12-13 dated: 08-10-2015 is upheld.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 17-10-2016)



S. S. S. S.
17/10/16
**Deputy Commissioner,
Uttara Kannada, Karwar.**