

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

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

No. RB/RTR/CR-28/15-16



Between

Anil Mastya Nagarkar
R/o Bapuji Nagar Tq: Sirsi
(Represented through Advocate Sri D R Bhat)

....Revision Petitioners

V/s

1. Satish Ghanashyam Kanade(Sirsikar)
R/o Bapuji Nagar, Sirsi
2. Tahsildar, Sirsi
(Represented through Advocate Smt. Rajeshwari Nayak)

.... Respondents

Sub: Revision petition filed u/s 136(3) of Karnataka Land Reforms Act 1964 against the order of Assistant Commissioner, Sirsi dated: 2-11-2015 in file No. RRT/AP/CR-49/14-15 regarding Mutation entry No. H570/13-14 of Sirsi village.

Preamble:

The revision petition came to be filed against the order of Assistant Commissioner, Sirsi in file No. RRT/AP/CR-49/14-15 dated: 2-11-2015. Notices were issued to both parties.

The brief facts of the case are as follows:

The suit property originally belonged to one Ghanashyam Masti Kanade (Sirsikar). It is alleged during his lifetime he had executed a Will in favour of Revision petitioner. After the death of Ghanashyam Kanade, the revision petitioner gave an application to Tahsildar to enter his name to the suit property. On this basis Mutation entry Mo. H570/13-14 was affected and this entry was challenged before Assistant Commissioner, Sirsi and who in order No. RRT/AP/CR-49/14-15 dated: 2-11-2015 cancelled the impugned entry. Being aggrieved by this order the revision petitioner filed the instant revision petition before this court.

The counsel for the revision petitioner submitted to consider the appeal memo as written argument.

1. The impugned order passed by Assistant Commissioner, Sirsi is contrary to law and facts of the case.
2. Assistant Commissioner, Sirsi failed to note that Tahsildar, Sirsi has followed all procedures prescribed u/s 129 of KLR Act, 1964.
3. Assistant Commissioner, Sirsi failed to note that Respondent has filed OS No. 155/2014 before Civil Court, Sirsi by challenging the Will executed by Ghanashyam Kanade and which is pending. So Assistant Commissioner, Sirsi has to direct the Tahsildar, Sirsi to keep the Mutation entry intact till the disposal of the case.
4. Assistant Commissioner, Sirsi failed to note when the Will is disputed no fresh entry can be effected.
5. Revenue Authorities have no power to decide a disputed entry based on Will.
6. Impugned order passed by Assistant Commissioner, Sirsi is against the principles of natural justice.

Hence, he requested to allow the revision petition by setting aside the order of Assistant Commissioner, Sirsi .

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

On perusal of the lower court records and appeal memo it reveals that the suit property Sy No. 226/2D1 an extent of 1-0-0(A-G-A), Sy No. 231/2 an extent of 0-20-8(A-G-A) and Sy No. 227/2 an extent of 2-0-0(A-G-A) of Sirsi Village of Sirsi Taluka originally belonged to one Ghanashyam Masti Kanade. He died on 21-01-2014. During his lifetime he executed a WILL in favour of Revision petitioner, Anil Mastya Nagarkar. After the death of Gahanshyam Masti Kanade(Sirsikar) WILL was given effected vide impugned entry No. H570/13-14 dated: 05-05-2014 and Anil Mastya nagarkar name was entered in RTC. But it is pertinent to note that Satish Gahanshyam Kanade filed OS No. 155/2014 on 07-08-2014 against the revision petitioner Anil Mastya Nagrakar before Hon'ble Civil Judge, Sirsi, and Civil Judge, Sirsi issued status-quo order on 11-03-2015. In the meantime he filed an appeal before Assistant Commissioner, Sirsi against the Mutation entry No. H570/13-14, Assistant Commissioner, Sirsi heard the matter and rejected the Mutation entry No. H570/13-14 in his order No. RRT/AP/CR/49/14-15 dated: 02-11-2015. Revision petitioner has not produced any documents, whether the case is finalized or not in Hon'ble Civil Court, Sirsi. 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 it is probated by the Competent Civil Court.

Hence, I proceed to order as follows:

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Date: 17-10-2016

Order

Final *Revision petition*
^ **Appeal** is dismissed, Assistant Commissioner, Sirsi order No. RRT/AP/CR-49/14-15 dated: 2-11-2015 is upheld.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 17-10-16)



Final
**Deputy Commissioner,
Uttar Kannada, Karwar**