

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

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

No. RB/RTR/CR-31/15-16



Between

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

.... Revision Petitioners

V/s

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

.... 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-17/13-14 dated: 08-10-2015 relating to Mutation entry No. H2/12-13 in respect of Sy NO. 188/7 of Valagalli village in Kumta Taluk.

Preamble:

The instant revision petition came to be filed against the order of Assistant Commissioner, Kumta in file No: RTS/AP/SR-17/13-14 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 revision petitioners are the legal heirs of deceased Krishna Parameshwar Shanbhag. After the death of Krishna Shanbhag as per Mutation entry No.2/12-13 the names of legal heir i.e. the names of revision petitioners were mutated. But it is alleged that during life time Krishna Shanbhag had executed a Will in favour of Respondent No.1 in respect of suit property. After the death of Krishna Shanbhag the Respondent No.1 moved an application to Tahsildar to mutate his name to the suit property as per the Will. So Tahsildar, Kumta cancelled the Varasa Mutation entry No. 02/12-13. The revision petitioner challenged this before Assistant Commissioner, Kumta and who in order dated: 08-10-2015 dismissed the appeal. Being aggrieved by this order the revision petitioners filed instant revision petition before this court.

The advocate for the revision petitioner argued that:

1. The revision petitioners are the legal heirs of Late Krishna Parameshwar Shanbhag who acquired the suit property through Land Tribunal. So it is exclusively family property of the petitioners.
2. After the death of Krishna Shanbhag all the other properties except this land was mutated in the name of revision petitioners.

3. Afterwards it came to know that the Respondent No.1 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 revision petitioners 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 revision petitioners requested to enter their names to the suit property.
- Hence he requested to allow the revision petition.

The advocate for the Respondent No. argued that:

1. Assistant Commissioner, Kumta directed the revision petitioners to approach the Civil Court in respect of Will. This observation and order passed by Assistant Commissioner, Kumta is legal and valid.
2. Late Krishna Shanbhag had executed the Will in favour of Respondent so only Respondent No.1 acquired legal right title an interest over the suit property.
3. The revision petitioners had no legal right over the suit property by virtue of the Will.

Thus there is no merit in the revision petition. Hence he requested to dismiss the revision petition.

After perusal of the Lower court records written argument of both parties it reveals that the instant case and the case NO. RB/RTR/CR-27/15-16 are connected each other. 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 Respondent No. 1 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 Respondent No. 1 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 Respondent No.1 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 revision petitioners the legal heirs of Krishna Parameshwar Shanbhag. After due enquiry Tahsildar cancel the impugned mutation entry. Being aggrieved by this Respondent No.1 filed appeal before Assistant Commissioner, Kumta. Assistant Commissioner, Kumta in order dated: 08-10-2015 dismissed the appeal. Being aggrieved by this order the Respondent No. 1 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-31/15-16

Date: 17-10-2016

Order

Revision Petition is rejected, Assistant Commissioner, Kumta in file No. RTS/AP/SR-17/13-14 dated: 08-10-2015 is upheld.

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



[Handwritten Signature]
17/10
**Deputy Commissioner,
UttaraKannada, Karwar.**