

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA-KARWAR

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

No. RB/RTR/CR-27/17-18



Between

1. Shri Ashok Ramrao Naik
R/o Wangad, Majali, Tq: Karwar
(Represented through Advocate Sri. R. V Bhat)

.... Revision Petitioner

V/s

1. Sri. Anandu Shantaram Sail,
2. Shri Ramakant Shantaram Sail,
3. Shri Shyam Shantaram Sail
4. Smt Usha Uday Sail
All are R/o Wangad, Majali, Tq: Karwar
5. Shri Neelakamal Chandrakant Lolekar
R/o Mahalewada, Nandangadda , Tq: Karwar
6. Tahasildar Karwar

(R1 to R5 is Represented through Advocate K.B naik)

.... Respondents

Sub: Revision petition filed u/s 136(3) of Karnataka Land Revenue Act 1964 against the order of the Assistant Commissioner, Karwar No. RTS/AP/CR-50/2016-17 dated: 01-9-2017.

Preamble:

The instant revision petition has been filed against the order of the Assistant Commissioner, Karwar No. RTS/AP/CR-50/2016-17 dated: 01-9-2017. Notices were issued to both parties.

The brief facts of the case are as follows:

Survey No. 1572/A1/3 an extent of 5-33-8 (A-G-A) of Majali village in Karwar Taluka out of which an extent of 2-16-0 of agricultural land belongs to as joint owner and family member of the land. The said Sy No. 1572/A1/3 an extent of 5-33-8 (A.G.A) out of which an extent of 0-6-0 (AGA) was sold by respondents 1. Shri Anandu S Sail, 2. Shri Ramakant S Sail, 3. Shri Shyam S Sail, 4. Smt Usha Uday Sail to respondent No. 5. Smt Neelakamal Chandrakant Lolekar as per registered sale deed No. KRW-1-03331-2015-16 dated: 03-02-2016. This land was sold by respondent No. 1 to 4 to respondent No. 5 without preparing 11E map or without preparing any sketch and have executed sale deed/ released deed. The petitioner file objection before Tahasildar Karwar and Tahasildar Karwar passed the order and directed to certify the mutation entry. Against this the petitioner filed an appeal before Assistant Commissioner, Karwar. Assistant Commissioner, Karwar rejected the appeal and passed the order that Revenue Court have no jurisdiction to reject the registered sale deed. Being aggrieved by this order the revision petitioner filed the instant revision petition before this court.

The advocate for the appellant argued that

1. The impugned order passed by Assistant Commissioner, Karwar is contrary to law and facts of the case and hence deserves to be set aside.
2. The land was sold as per release deed or sale deed and is against the Government Rules and Norms. The 11E Map of Sy No. 1572/A1/3 is compulsory during the time of registration of sale deed. The land sold under sale deed is agricultural land and P.T Sheet of the same does not show the area 0-6-0 (A-G-A) sold by respondent 1 to 4 infavor of respondent No. 5. Hence mutation No. H-150/2015-16 deserved to be set aside.
3. The said released deed is considered as released the in such case also the same is illegal and no released deed can be executed between strangers.

Released deed has to be executed by one joint owner infavor of other joint owner.

4. The land belonging to respondent No. 1 to 4 of an extent of 0-6-0 (A-G-A) is a agricultural paddy field land and the land of this petitioner and others family members is bagayat land. The purchaser i.e. respondent No. 5 is trying to forcibly encroach upon the land which is in occupation of petitioner and his relatives.
5. There was a civil suit filed between the present petitioners and ancestral of respondent No. 1 to 4 long back in the year 1968. The said suit OS No. 56/1968 is decreed and in the judgment of the said case is it is stated that the ancestral of the respondent No. 4 who are representing the defendants in the said case were restrained permanently from interfering in to the possession, vahivati of the suit land by the plaintiff. In view of the same respondent No. 1 to 4 ought to have drawn a 11E map showing the exact area of 0-6-0 (A.G.A) which is in the possession. However without doing the same they have sold the land and now purchaser is trying to encroach upon the land of this petitioner. Hence the petitioner is forced to file the appeal before this court.
6. The boundary shown in released deed/ sale deed is incorrect and the land shown belongs to petitioner. Hence the released deed/ sale deed is against the principle of law and without following due procedure laid down for registration and there was no occasion for Tahasildar to certify the sale deed mutation entry.

Hence he requested to allow the revision petition and set aside the order of Assistant Commissioner, Karwar dated: 01-9-2017 and order of Tahasildar Karwar in file No. RTS/CR/92/2015-16 and cancel the mutation entry.

Advocate for the Respondent argued that

1. The appeal is not maintainable and the appellatant is no locus standi to file this appeal.
2. Respondent No. 1 to 4 are owners of the land bearing Sy No. 1572/A1/3 an extent of 0-6-0 out of total extent 5-33-8 (A-G-A) in Majali village in Karwar taluka. The respondents 1to 4 have sold the property to respondent No. 5 under registered sale deed and they have received entire amount of Rs. 85,000/- from respondent No. 5.
3. The respondent No. 5 purchased the said land after confirming the rights and possession of the said land of respondent No. 1 to 4.
4. The petitioner has no right, title and interest in the said extent of 0-6-0 sold by respondent No. 1 to 4 to the respondent No. 5.
5. The mutation entry bearing No. H-150/2015-16 is passed on the bases of registered sale deed is legal and valid in the eye of law. If at all the petitioner wants to challenge the registered sale deed he wants to go to the Hon'ble Civil Court.
6. The said Sy No. 1572/A1/3 an extent of 0-25-0 (A-G-A) is Land Tribunal granted land of respondent No. 1 to 4. Out of this an extent of 0-6-0 land has been sold to respondent No. 5. After purchasing the land respondent No. 5 developed the land by spending huge amount money, knowing the said fact now the petitioner challenged the said mutation entry.
7. The petitioner falsely stated in his argument that he is in occupation of the said area of land. Further the petitioner falsely stated that the respondent No. 1 to 4 had been restrained permanently in O S No. 56/1968, no such document is produced by the petitioner in order to substantiate his contention.
8. If Mutation entry in respect of sale deed is cancelled the respondent No. 5 will be put in to great hardship.



9. Assistant Commissioner Karwar have rightly passed the order for certification of mutation entry. Respondent No. 1 to 4 have shown the boundary of an area of 0-6-0 (A-G-A) in the sale deed.

10. It is settled principals of law that revenue authorities should not see the validity of registered document at the time of change of mutation. In this regard the citation of Hon'ble High Court of Karnataka is reported in 2000(4)K.L.J page No. 449.

Hence he requested to dismiss the revision petition.

Questions before this court is

1. whether the mutation based on Sale deed can be questioned in a revenue court ?

Answer:

1. No

After perusal of the lower court records and written argument of both parties it reveals that the Survey No. 1572/A1/3 total area of 5-33-0 (A-G-A) of Majali village in Karwar Taluka out of which an extent of 2-16-0 of agricultural land belongs to as joint owner and family member of the land. The said Sy No. 1572/A1/3 an extent of 5-33-8 (A.G.A) out of which an extent of 0-6-0 (AGA) was sold by respondents 1. Shri Anandu S Sail, 2. Shri Ramakant S Sail, 3. Shri Shyam S Sail, 4. Smt Usha Uday Sail to respondent No. 5. Smt Neelakamal Chandrakant Lolekar as per registered sale deed No. KRW-1-03331-2015-16 dated: 03-02-2016. This land was sold by respondent No. 1 to 4 to respondent No. 5 without preparing 11E map or without preparing any sketch and have executed sale deed/ released deed. As per circular issued by Government of Karnataka No. RD 103 MRR 2002 dated: 19-8-2006. It is mandatory requirement of pre mutation sketch before registration of sale deed as per Section 128 and 131 of Karnataka Land Revenue Act 1964. In this case 11E sketch has not been prepared before registration of released deed/ sale deed. Revision petitioner has preferred this revision against the entry effected on the basis of sale deed. Under such circumstances the revenue court has no jurisdiction to decide on the merits and demerits of the sale deed. It is only Civil Court to decide the genuineness of the sale deed. It is the duty of the revenue officials to effect the mutation entry whenever J form is issued by the Sub registrar on the basis of sale deed. But in this case the contention of revision petitioner is the extent of the land 0-6-0 (A-G-A) not the genuineness of the sale deed. The land sold to the purchaser was not demarked before sale procedure was taken place. The Tahasildar Karwar and Assistant Commissioner, Karwar did not considered this point that 11E sketch was not produced at the time of sale deed. Hence mutation entry No. H-150/2015-16 of Majali village Karwar Taluka is bound to be rejected.

Hence I proceed the following order.

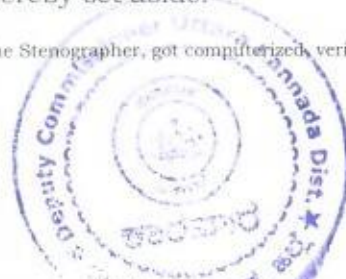
No. RB/RTR/CR-27/17-18

Date: 20-08-2018

Order

Appeal is allowed. Mutation Entry No. H-150/2015-16 of Majali Village Karwar Taluka is hereby set aside.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 20-08-2018)



**Deputy Commissioner,
Uttara Kannada, Karwar.**

Copy to:-

1. Advocate Sri. R.V Bhat and Shri K. B Naik for information.
2. Assistant Commissioner, Karwar for information and necessary
3. Tahasildar Karwar for information and necessary action.