

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-33/15-16



Between

Nagaraj Ganapati Naik
R/o Manki Tq: Honnavar
(Represented through Advocate Sri. K.T Gouda & P.B Tandel)

.... Revision Petitioner

V/s

1. Manjunath Hanumanth Naik
R/o Manki Tq: Honnavar
2. Tahsildar, Honnavar
3. Revenue Inspector, Manki
4. Smt. Mankali Dinga Naik
R/o Manki Tq: Honnavar
(Represented through Advocate Sri. R S Hegde Gali and Smt. Padma Tandel for R1 and R4)

.... Respondents

Sub: Revision petition filed u/s 136(3) of Karnataka Land Revenue Act 1964 against the order of Assistant Commissioner, Bhatkal in file No. RTS/AP/SR-65/14-15 dated: 26-11-2015 relating to Mutation entry No. H92/13-14 of Manki village in Honnavar Taluk.

Preamble:

Suit property is joint family property belonged to One Subray 2) Krishna 3) Dinga and Dinga got 1/3 share in the property. The revision petitioner is the grandson of Subray Naik and Respondent No.1 is the grandson of Krishna Naik. Dinga Naik has no issues. It is alleged that during the lifetime Dinga Naik had executed a registered Will bequeathing the rights of the suit property in favour of Respondent No.1. The Will was given effect vide impugned Mutation entry No. H92/13-14. But it was challenged before Assistant Commissioner, Bhatkal and who in his order dated: 26-11-2015 dismissed the appeal. Being aggrieved by this order the revision petitioner filed the instant revision petition before this Court.

The advocate for the appellant argued that:

1. Application with affidavit was filed before Assistant Commissioner, Bhatkal for condonation of delay. But Assistant Commissioner, Bhatkal without hearing the delayed application entire matter was heard on merit. So the revision petition may be allowed.
2. As per the Genealogy the petitioner and Respondents are members of one family and the names of all shareholders jointly entered in the RTC. But while certifying the impugned Mutation entry Number notices has been served to the petitioner as per Section 127, 128 of KLR Act. So the Mutation entry is liable to be set aside.
3. The impugned entry is made on the basis of the alleged Will Nama. But as per the decision of the full bench reported in 2002(6) KLJ Pg No. 391 and also in 2013(5) KCCR page No. 3676 and ILR 2007 Page 4542 the entry made on the alleged Will is to be set aside.
4. The alleged Will is not attested by two witnesses. So it is not valid.
5. No entry can be made on the basis of the disputed Will and also Assistant Commissioner, Bhatkal passed the order without considering

the application for condonation of delay,. Considering all these facts the decision of the High Court reported in 2016(1) KCCR Page 535 para 12 and 15 requested to allow the revision petition.

The advocate for the Respondent argued that.

1. The impugned Mutation entry was effected in the name of Respondent after the death of Dinga Naik as Varasa entry. The entry was claimed on the basis of Registered Will Nama.
2. The petitioner is not the Class I heir. So he has no locus standi to challenge the Will.
3. Smt. Mankali Naik Respondent No.4 is the only Class I heir and she did not file any objection.
4. Late Dinga Naik and Mankali Naik had no issues. Respondent No.1 is their adopted son. So bequeathing the property in favour of adopted son cannot create any suspicion.
5. The claim of the revision petitioner is that the will was not signed by two attesting witnesses is not correct. Because the Will is a registered Will and property attested.
6. As per Citation reported in 2002(4) KCCR 2285 the revision petitioner has to challenge the Will before the Civil Court only.
7. The contention of the petitioner is that the Will is forged Will. But as per the Citation reported in 2006(I) KCCR 652 and 2001 (1) KCCR Page No. 488 the factors like fraud, forgery and undue influences to be proved before Civil Court.

Hence he requested to dismiss the revision petition.

On perusal of the Lower court records written argument of both parties it reveals that the suit property of Sy.No. 231 & 232 of Manki Village of Honavar Taluka is joint family property and Subray Naik 2) Krishna Naik and Dinga Naik were brothers Dinga Naik got 1/3 share in the joint family property and he had no issues. It is evident from the records that during the lifetime Dinga Naik executed a registered Will bequeathing his right to Respondent No.1 that is the grandson of Krishna Naik. The revision petitioners contention is that the Will is a forged Will. But Section 128 of KLR Act 1964 discloses that whenever a person acquires right under a registered document, the Revenue Authorities are bound to carry out Mutations in accordance with the contents of the Registered document. So as per the Will mutation entry No. H92/13-14 was mutated. Revenue Authorities have no jurisdiction to enquire in to the validity of the Will. However the validity of the Will should be decided by the Civil Court only.

Hence, I proceed to order as follows.

No. RB/RTR/CR-33/15-16

Date: 02-01-2017

Order

Revision Petition is Rejected.



[Handwritten Signature]
11/2/17
**Deputy Commissioner,
Uttara Kannada, Karwar.**