

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Dr. Harish Kumar K., I.A.S.
Deputy Commissioner,
Uttar Kannada, Karwar.

No. RB/RTR/CR/2/2018-19

Between

Shri. Venkatraman Parameshwar Naik, U.F.M
R/o Kagal Village, Kumta Taluka
(Represented through Advocate Sri M.L. Naik)

V/s

1. Tahasildar Kumta
2. Shri Vitoba Hosabayya Naik
R/o Kagal Village, Kumta Taluk

....Appellant

... Respondents

Sub: Appeal filed U/s 136 (3) against the order of Assistant Commissioner, Kumta No. RTS/AP/SR-53/2017-18 dated 01-03-2018 in respect of mutation entry No. T-30/2015-16.

Preamble:

The instant appeal has been filed U/s 136(3) against the order of Assistant Commissioner Kumta dated 01-03-2018 in file No. RTS/AP/SR-53/2017-18. Notices were issued to both parties. Respondents No. 1 and 2 remained absent despite service of notice.

Brief facts of the case are as hereunder:

That 0-20-8 (A-G-A) out of entire extent of 1-2-0 (A-G-A) and kharab 0-1-0 (A-G-A) in Sy.No. 88 of Kagal village Kumta Taluk was granted to the father of the appellant by the land tribunal as per order No. LRT-SR-9537 dated 01-06-1976 and in the same survey number an extent of 0-13-8 (A-G-A) was granted to 2nd respondent Vithoba Hosabanna Nayak by the land tribunal as per order No. LRT-SR-10632 dated 20-01-1982. The name of the father of the appellant was entered in the pahani in respect of Sy.No. 88/1 measuring 0-21-0 (A-G-A) kharab 0-0-8 (A-G-A). Accordingly, the name of 2nd respondent was entered in the pahani in respect of Sy.No. 88/3 measuring 0-14-0 (A-G-A) kharab 0-0-8 (A-G-A). The remaining portion in the said Sy.No. 88/2 being 0-7-0 (A-G-A), Hissa Form 4 and 11 were prepared. But on 17-10-2015, mutation was effected in MR No. T30 by deleting kharab 0-0-8 (A-G-A) from the portion of the petitioner and adding the same to the portion of 2nd respondent. The mutation was challenged by filing appeal before the Assistant Commissioner, Kumta and the Assistant Commissioner after considering the material on record dismissed the appeal by order dated 01-03-2018.

Aggrieved by the order passed by the Assistant Commissioner, Kumta, the appellant has preferred this appeal on various grounds.

The Advocate for the appellant argued that-

1. The Assistant Commissioner Kumta has dismissed the appeal without considering the points in dispute between the parties in proper perspective.
2. The Assistant Commissioner has failed to consider that the mutation No. T30 was wrongly entered by the Tahasildar.
3. The above said kharab portion is meant for constructing of residential house by the appellant and the Assistant Commissioner failed to consider that the Tahasildar has effected the mutation entry by adding the kharab to the property of the 2nd respondent.
4. The Assistant Commissioner has failed to note that the irreparable injury has been caused to the appellant due to the above mutation entry.

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Hence on these among other grounds, the advocate for the appellant requested to allow the appeal.

The point for consideration before this Court is-

1. Whether there are sufficient grounds to allow the appeal?

Ans. In the affirmatives.

On hearing the learned counsel for the appellant in the background of the lower Court records, it is seen that the material controversy is in respect of kharab land of 0-0-8 (A-G-A) in Sy.No. 88 which, according to the appellant, ought not to have been mutated in the name of the 1st respondent under MR No. T30. The Assistant Commissioner has dismissed the appeal by observing that there are no documentary evidence to support the claim of the appellant.

In the instant case, the appellant has question the impugned mutation entry No. T-30/2015-16. The perusal of this mutation entry reveals devolution of rights upon the respondent No. 2 Vitoba Hosabayya Naik to extent of 0-0-8 annas through phodi. There are documents coming forth to substantiate how the respondent No. 2 has gain rights to an extent of 0-0-8 annas except the impugned mutation entry. Further the land tribunal order dated: 01-06-1976 and 26-05-1977 confirms occupancy rights upon appellants father Shri Parameshwar Govind Naik to the extent of 0-20-8 and on respondent No. 2 to an extent of 0-13-8 respectively in Sy No. 88. This would mean that the respondent No. 2 has been provided an additional extent of 0-0-8 annas through impugned mutation entry No. T-30/2015-16. Therefore there are merits in the contention of the appellant and mutation entry No. T-30-2015-16 is liable to be set-aside. Hence, I proceed to pass the following order.

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Date: 19-08-2019

Order

Appeal is allowed. Impugned mutation entry is set-aside. The Tahasildar Kumta is directed to appropriate the land grants to the parties in relevance to the Land Tribunal orders, if land found in excess the same may be recorded in the name of Government.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 19-08-2019)



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**Deputy Commissioner,
Uttar Kannada, Karwar.**

Copy to:-

1. Advocate Sri M.L. Naik for information.
2. Assistant Commissioner, Kumta for information and necessary action with lower court record in file No. RTS/AP/SR-53/2017-18 dated 01-03-2018 page No. 1 to 68
3. Tahasildar Kumta for information and necessary action.

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