

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/25/2017-18



Between

Shri. Preetam Narasimha Barkur
R/o Marigudi Road, Sirsi Taluk
(Represented through Advocate Sri R.V. Bhat)

....Appellant

V/s

1. Assistant Commissioner Sirsi
2. R.R.T. Shirastedar, Sirsi
3. Shri. Uday S/o Gangadhar Raikar
R/o Gandhinagar, Sirsi Taluk
4. Shri. Ravi S/o Gangadhar Raikar
R/o Gandhinagar, Sirsi Taluk
5. Shri. Balaji Gifts
Represented by its partner
Shri. Kiran S/o Ramdas Gudigar
R/o C.P. Bazar, Sirsi Taluk
6. Shri. Balaji Gifts
Represented by its partner,
Smt. Shilpa W/o Kiran Gudigar
R/o C.P. Bazar, Sirsi Taluk.
(Represented through Advocate Sri. G.N. Patgar)

.... Respondents

Sub: Appeal filed U/s 136 (3) of Karnataka Land Revenue Act against the order of Assistant Commissioner, Sirsi No. RTS/AP/CR-06/2017-18 dated 11-09-2017 in respect of mutation entry.

Preamble:

The instant appeal has been filed U/s 136(3) of Karnataka Land Revenue Act against the order of Assistant Commissioner Sirsi dated 11-09-2017 in file No. RTS/AP/CR-06/2017-18.

Originally the appeal was filed as a revision and later as per the request of the counsel for the appellant the revision was treated as an appeal.

Notices were issued to both parties. Respondents No. 3 and 4 entered appearance through their counsel. Respondent No. 5 & 6 remained absent despite service of notice.

Brief facts of the case are as hereunder:

That, based on registered sale deed dated 03-11-2016, mutation in respect of land in Sy.No. 232/B/1 measuring 0-3-8 (A-G-A) of Sirsi gram Sirsi Taluk was certified in the name of appellant Preetam Narasimha Barkur in MR No. H-171/2016-17. The respondent No. 3 Uday Gangadhar Raikar and respondent No. 4 Ravi Gangadhar Raikar herein have filed their objection before the R.R.T. Shirastedar Sirsi stating that respondent No. 5 and 6 have agreed to sell the very same property by executing agreement dated 27-03-2013 and receiving advance amount of Rs. 1,50,000/-. But their objection was over ruled vide order No. RRT/II/CR/100/16-17 dated 22-02-2017. This order was challenged by respondent No. 3 and 4 by preferring appeal before the Assistant Commissioner Sirsi in RTS/AP/CR-06/2017-18. The appeal was allowed and the impugned mutation entry was set aside vide order dated 11-09-2017.

ay
T

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

The Advocate for the appellant argued that-

1. The Assistant Commissioner Sirsi has allowed 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. H-171/2016-17 was entered on the basis of registered sale deed dated 03-11-2016.
3. It is true that the original suit filed by respondent No. 4 Shri Ravi Gangadhar Raikar against respondent No. 5 and 6 in O.S. No. 26/2016 is pending disposal in the Court of Civil Judge Sr. Dn. Sirsi. But, the Assistant Commissioner failed to note that there is no prohibitory order against the Revenue Authorities in respect of certifying mutation on the basis of registered sale deed.

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

The advocate for contesting respondent No. 3 & 4 has argued in support of the impugned order passed by the Assistant Commissioner Sirsi by submitting that in view of pendency of the above said Civil Suit before the concerned Civil Court, there are no error committed by the Assistant Commissioner Sirsi and as such the appeal is not maintainable and consequently prayed for dismissal of the appeal.

The point for consideration before this Court is-

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

Ans. In the Negative.

On hearing the learned counsel for the appellant and respondent No. 3 and 4 in the background of the lower Court records, it is seen that mutation No. H-171/2016-17 was certified in the name of the appellant based on a registered sale deed dated 03-11-2016 and therefore the objections raised by respondent No. 3 and 4 before the RRT Shirestdar Sirsi was rejected vide order dated 22-02-2017. The objection raised before the RRT Shirestdar Sirsi is that, respondent No. 5 and 6 herein had executed sale agreement dated 27-03-2013 in favour of respondent No. 3 and 4 herein in respect of disputed property on receiving advance amount of Rs. 1,50,000/- and since they failed to execute registered sale deed as agreed by them, a civil suit for specific performance of contract was filed before the Civil Judge Sr. Dn. Sirsi in O.S. No. 26/2016.

The appeal preferred before the Assistant Commissioner Sirsi, was allowed mainly on the ground that when a civil suit was pending before the competent civil Court, the RRT Shirestdar Sirsi ought not to have entered mutation in the name of the appellant herein only on the basis of registered sale deed. In this regard, it is pertinent to note that the above said O.S. No. 26/2016 was filed on 22-04-2016 by respondent No. 4 Ravi S/o Gangadhar Raikar on the averments that the respondent No. 5 and 6 herein had executed agreement for sale of the property in dispute to him and his brother Uday S/o Gangadhar Raikar. The appellant herein Preetam S/o Narasimha Barkur is defendant No. 3 in the said suit. That being so, respondent No. 5 and 6 and the appellant herein were well aware about pendency of the suit. But in spite of it, respondent No. 5 and 6 have executed registered sale deed dated 03-11-2016 in favour of the appellant. It is true that, originally the government or revenue authorities were not parties to the suit. But later, when the property was sold and mutation was entered in the name of the appellant during pendency of the suit, the revenue department was impleaded as a party to the suit as admitted at para No. 3 of the memorandum of appeal. This goes without saying that the registered sale deed as well as the mutation entry during pendency of the suit are under judicial scrutiny by the competent Civil Court. That being so, the Assistant

Commissioner has rightly dismissed the appeal. He has not committed any error in dismissing the appeal by setting aside the order passed by the RRT Shirestedar Sirsi. There are no valid grounds to interfere with the impugned order. Consequently, I proceed to pass the following order:

No. RB/RTR/CR/25/2017-18

Date: 26 -08-2019

Order

Appeal is dismissed. The impugned order No. RTS/AP/CR-06/2017-18 dated 11-09-2017 passed by Assistant Commissioner is upheld.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 26 -08-2019)



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

Copy to:-

1. Advocate Sri R.V. Bhat and Sri. G.N. Patgar for information.
2. Assistant Commissioner, Sirsi for information and necessary action with Lower court file no. RTS/AP/CR-06/2017-18 dated 11-09-2017 page No. 1 to page No.30.
3. Tahasildar Sirsi for information and necessary action.