

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/11/2019-20

Between

Shri. Paresh Prabhakar Naik
R/o H. No. 4075, Joshiwada,
Nandangadda , Taluk Karwar.
(Represented through Advocate Smt. Varada D Naik)

....Appellant

V/s

1. The Assistant Commissioner Karwar
2. The Tahasildar Karwar
3. Revenue Inspector Baad Village
Taluk: Karwar.
4. The Village Accountant Baad Village,
Taluk: Karwar

.... Respondents

Sub: Appeal filed U/s 136 (3) of Karnataka Land Revenue Act against the order of Assistant Commissioner, Karwar No. RTS/AP/CR-19/2017-18 dated 15-9-2018 in respect of Sy No. 8/1 of Nandangadda Village in Karwar Taluka.

Preamble:

The instant appeal has been filed U/s 136(3) of Karnataka Land Revenue Act against the order of Assistant Commissioner Karwar dated 15-9-2018 in file No. RTS/AP/CR-19/2017-18.

Brief facts of the case are as hereunder:

The suit land Sy No. 8/1 with an total extent of 0-25-8(A-G-A) out of which 0-4-0(A-G-A) was owned by father of the appellant Sri Prabhakar Chadru Naik. Due to natural love and affection Sri Prabhakar Chadru Naik voluntarily executed gift deed in favour of Paresh Prabhakar Naik and an extent of land measuring 0-2-0(A-G-A) and Satish Prabhakar Naik as per registered gift deed No. KWR-1-03578-2015-16 dated: 24-2-2016. As per gift deed J-Form was issued by Sub-Registrar Officer Karwar to Tahasildar Karwar. Tahasildar Karwar mutated the J-Form as per mutation entry No. H-92/2015-16 and this mutation entry was rejected by Tahasildar Karwar as per endorsement No. RTC/Duviva/29/2017-18 dated: 26-5-2017 reasoning that mutation entry is entered on the basis of sale deed and not gift deed. Against the order of the Tahasildar Karwar, appellant Paresh Prabhakar Naik filed an appeal before Assistant Commissioner Karwar. Assistant Commissioner Karwar rejected the appeal reasoning that the appellant has not produced 11E map at the time of registration of gift deed. Being aggrieved by the order passed by the Assistant Commissioner, Karwar the appellant has preferred this appeal to this court.

The Advocate for the appellant argued that-

1. The order passed by the Assistant Commissioner Karwar is illegal, un-justice, irregular and against the principle of natural justice.
2. Assistant Commissioner Karwar has failed to observe that the land is question is non agriculture land and 11E map is not required for non agriculture land.
3. In the title of registered gift deed itself it is clearly mentioned that the land is non Agricultural land but strangely the respondent No. 1 has not observed the verify the same and passed the order stating that the land is agricultural land and the appellant have not produced 11E map at the time of registration before Sub Registrar Office.

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Hence on these among other grounds, the advocate for the appellant requested to allow the appeal and set aside the order of Assistant Commissioner Karwar.

The point for consideration before this Court is-

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

Ans. In the negative.

The document before this court has been perused. In the instant case land owner Shri Prabhakar Chandru Naik have executed registered gift deed on 24-02-2016 bequeathing rights to an extent of 0-4-0 in favour of his two son's namely Paresh Prabhakar Naik and Satish Prabhakar Naik. This gift deed was implemented on records vide mutation entry No. 92/2015-16 conferring joint rights upon both Paresh Prabhakar Naik and Satish Prabhakar Naik to an extent of 0-4-0 in Sy No. 8/1 of Nandangadda Village. Subsequent to transaction, Shri Paresh Prabhakar Naik approached Tahasildar Karwar with a request to mutate the names of both Paresh Prabhakar Naik and Satish Prabhakar Naik to an extent of 0-2-0 each on the basis of registered gift deed dated: 24-06-2016. The Tahasildar Karwar rejected the applications stating that mutation was already done on the basis of gift deed dated: 24-06-2016 and there are no chances for further rectification vide endorsement dated: 26-05-2017. Aggrieved by this Shri Prabhakar Naik had approached Assistant Commissioner Karwar in an appeal which was also rejected vide the impugned order on the grounds that appellant can get his request fulfilled after producing 11E before Tahasildar Karwar. It is pertinent to note that transfer of rights and partition of rights are two different process. Separate guidelines are formulated for implementation of these process. In view of this, both the Tahasildar Karwar and Assistant Commissioner Karwar are correct in their own ways in passing the orders. Shri Prabhakar C Naik has bequeathed rights to an extent of 0-2-0 each in favour of his two sons vide the registered gift deed dated: 24-06-2016. If at all he wants the land to be apportionated among his sons then he has to execute a partition deed or apply for phodi. The petitioner cannot ask for apportionment based on the instrument of transfer. The endorsement given Tahasildar Karwar and impugned order passed by Assistant Commissioner Karwar are administratively correct in their own respective ways. Hence both these endorsement as well as order needs no interference. The appeal is liable to be dismissed. Hence, I proceed to pass the following order.


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Date:09-09-2019

Order

Appeal is dismissed. The parties are reserved with liberty to get the land apportioned as per their wish through proper phodi process.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 09-09-2019)


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

Copy to:-

1. Advocate Smt Varada D Naik for information.
2. Assistant Commissioner, Karwar for information and necessary action with lower court record page No. 1 to page No. 82.
3. Tahasildar Karwar for information and necessary action.