

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-45/11-12



Between

1. Dr. Vasant Madhav S/o Prabhakar Hegdekatte
R/o Muralidhar Matha Road, Tq: Karwar
(Represented through Advocate Sri. N. S.Bhat)

.... Revision Petitioner

V/s

1. Tahashildar Kumta
2. Revenue Inspector, Mirjan
3. Sri. Venkatraman Shantaram Hegdekatte Sirsi
4. Sri. Sadanand Vithob Hegdekatte
R/o Mudabidri Dist: Udipi
5. Sri. Mahadev Ganesh Hegdekatte
R/o MPCL Colony, Mathamari Road, Raichur
6. Smt. Rajeshwari Kom Mahabaleshwar Hegdekatte
7. Smt. Prema Kom Ganapati Bhat
8. Kum. Guru Shrikanth Hegdekatte
9. Smt. Sudha Shrikanth Hegdekatte
10. Smt. Sujata Ramakrishna Pandit
All are R/o Hegde Tq: Kumta
11. Smt. Savitri Kom Radhakrishna Hegdekatte
R/o Near APMC, Sirsi Road Yellapur
12. Smt. Parvati Rama Hegdekatte
13. Smt. Lalita Rama Hegdekatte Yaane Shridhar Pandit
14. Sri. Raghavendra Rama Hegdekatte
C/o Prasanna Hegdekatte, Yallapur
15. Sri. Gajanan Radhakrishna Hegdekatte
R/o Near APMC, Sirsi Road Yellapur
16. Sri. Prasanna Radhakrishna Hegdekatta
R/o Near APMC, Sirsi Road Yellapur
17. Sri. Prakash Raya Kamat
R/o Kumta
18. Smt. Rajeshwari Vishnu Bhat @ Rajeshwari Kom. Laxminarayan Bhat
19. Sri. Rajesh Anant Bhat
20. Smt. Gouri Vijay Hegdekatte
21. Sri. Prakash Laxminarayan Bhat
22. Sri. Janardhan Vishnu Bhat
23. Smt. Bharati Shripad Bhat
24. Sri. Vinayak Krishna Hegdekatte
25. Smt. Tara Venkataraman Hegde @ Tara Kom Anant Madaguni
26. Sri. Timmanna Krishna Hegde
All are R/o Hegde, Kumta
(R17 is Represented through Advocate Sri. D. R.Bhat)

.... Respondents

Sub: Revision petition filed u/s 136(3) of KLR Act 1964 against the Mutation Entry no. 9/2011-12 dated: 25-8-2011, 10/2011-12 dated: 25-8-2011, 1/2011-12 dated: 25-8-2011, 299/2010-11 dated: 25-8-2011, 21/2011-12 dated: 20-09-2011, 11/2011-12 dated: 25-8-2011, 2/2011-12 dated: 25-8-2011, 3/2011-12 dated: 25-8-2011, 22/2011-12 dated: 21-09-2011, of Hegde village in Kumta Taluk.

Preamble:

The instant revision petition has been filed against the order of against the Mutation Entry no. 9/2011-12 dated: 25-8-2011, 10/2011-12 dated: 25-8-2011, 1/2011-12 dated: 25-8-2011, 299/2010-11 dated: 25-8-2011, 21/2011-12 dated: 20-09-2011, 11/2011-12 dated: 25-8-2011, 2/2011-12 dated: 25-8-2011, 3/2011-12 dated: 25-8-2011, 22/2011-12 dated: 21-09-2011, of Hegde village in Kumta Taluk. Notices were issued to both parties.

The brief facts of the case are as follows:

Survey No. 397/1A total area of 1-9-8 (A-G-A) of Hegde vilge in Kumta taluka was a joint family property of Late Mahadev Hegdekatte after his death the land was transferred to Ramkrishna since deceased his legal heirs 1. Ganesh 2. Narayan 3. Govind 4. Vishwanath 5. Prabhakar. These legal heirs gave their concurrence in the year 1949 to make Sri. Ganesh Mahadev Hegdekatte as undivided family manager. Since joint family members were working outside the Kumta Taluka. After the death of Sri. Ganesh Mahadev Hegdekatte the land was transferred to all joint land owners that is respondent no. 3 to 26. This joint land owners gave general power of attorney to Sri. Prakash Raya Kamat. Sri. Prakash Raya Kamat being the GPA holder transfer this land to Smt. Rajeshwari Vishnu Bhat an extent of 0-6-0 (A-G-A) as per mutation entry no. 9/2011-12, Sri. Rajesh Anant Bhat an extent of 0-3-10 (A-G-A) as per mutation entry no. 10/2011-12 dated: 25-8-2011, Smt. Gouri Vijaya Hegdekatte an extent of 0-2-8(A-G-A) as per mutation entry no. 1/2011-12 dated: 25-8-2011, Sri. Prakash Laxminarayan Bhat an extent of 0-5-0 (A-G-A) as per mutation entry no. 299/2010-11 dated: 25-8-2011, Sri. Janardhan Vishnu Bhat an extent of 0-4-0 (A-G-A) as per mutation entry no. 21/2011-12 dated: 20-9-2011, Smt. Bharati Shripad Bhat an extent of 0-4-0 (A-G-A) as per mutation entry no. 11/2011-12 dated: 25-8-2011, Sri. Vinayak Krishna Hegdekatte an extent of 0-4-0 (A-G-A) as per mutation entry no. 2/2011-12 dated: 25-8-2011, Smt. Tara Venkataraman Hegde an extent of 0-2-14 (A-G-A) as per mutation entry no. 3/2011-12 dated: 25-8-2011 and Sri. Timmanna Ramkrishna Hegde an extent of 0-4-0 (A-G-A) as per mutation entry no. 22/2011-12 dated: 21-9-2011. The revision petitioner Dr. Vasant Madhav S/o Prabhakar Hegdekatte had given objection to Respondent no.1 Tahashildar Kumta, and Tahsildar Kumta gave an endorsement to revision petitioner to appeal before competent court, since the application submitted was after the mandatory period. Being aggrieved by this endorsement the revision petitioner filed the instant revision petition before this court.

The advocate for the appellant argued that

1. The suit land is undivided family property of Hegdekatte family.
2. The properties came to the share of petitioners branch that is undivided family properties, and without the consent or knowledge of petitioner the respondent have sold the same by creating bogus General Power of Attorney. J form and Mutation entries have been affected inspite of strong objection from the petitioner. The said mutation made by the Tahashildar has been challenge before this court under revision petition.
3. The mutation has been cancelled by the order of Tahashildar and against that respondent have filed appeal before Assistant Commissioner, Kumta and Assistant Commissioner, Kumta allow the appeal by exparte is challenge under this revision petition.
4. The respondent who is said to be GPA holder has no legal right to sell the property since the Power of Attorney is bogus and created one.
5. Second party sworn in the General power of Attorney was dead two years prior to date of said General power of Attorney. Therefore the said Power of Attorney is not valid and consequently J form issued in respect of the said sale is not valid one.
6. Till today there is no partition amongst the father of the petitioner and his brothers and since from the year made in 1940-50 the revenue documents are stating as joint family property. So the petitioner is entitled for his legitimate share to be allotted to his father. Therefore the respondent has no legal right to sell the undivided family property and the purchaser his also not acquiring any right over the said property.
7. The GPA has been created by forging the signature of that person as it amongst to criminal offence. The revenue officials who made the entry in the revenue records on the basis of forged document is illegal. Inspite of a strong opposition and objection in writing and without conducting proper enquiry Tahashildar Kumta has effected the mutation entry is against the Law.

8. The mutation entry in respect of family property has been cancelled but the appeal filed by the GPA holder has been allow by the Assistant Commissioner, Kumta and Assistant Commissioner, Kumta without giving proper opportunity to the petitioners and in that connection petition no. 8/2014-15 has been filed and that proceeding is also directly connected with this. This court has got powers to decide the same with this revision petition. Therefore both the cases can be decided at a time.
9. There is no merit in the connection of Respondent no. 17 Sri. Prakash Raya Kamat, as he had created false GPA in the name of that person. The said act of 17 respondent is nothing but fraud, forgery, cheating and therefore this court has to register a criminal case against him.
10. On the basis of said forged GPA Respondent no. 17 has obtained the N.A. permission in respect of this land from this office in file no. ALN/1/viva-705/2010-11 dated: 31-5-2011. So it is necessary to call for that N.A. file while deciding this case. The same has been brought to notice of previous Deputy Commissioner. Therefore N.A. permission obtained on the basis of GPA is liable to be cancel in the interest of state. The Tahashildar Kumta has passed the order by not considering the objection raised by the petitioner and it is illegal and caused loss to the petitioner. Knowingly the said GPA is falsely created and on that basis family property has been sold by the Respondent no. 17 and inspite of all this illegality committed by him Tahashildar Kumta has made entries in the name of purchasers. A detail enquiry has to be conducted and concerned person has to be punished. A record under challenge is the defective and illegal.
11. The petitioner is having legal right over the property of his father and that should have been decided. The sale deed executed by Respondent no. 17 Sri. Prakash Raya Kamath is prima facie bogus and created in the name of that person. Therefore any entry made on the basis of said forged GPA is liable to be cancelled. When the sale deed is created by playing fraud and consequently sale deed executed by GPA holder and entry made on that basis amongst committing crime. There is no necessity for the petitioner to approach the Civil court and instead of that to entry is not made the purchaser of the property as to approach Civil Court.
12. The decisions relied on by the Respondent no. 17 are not applicable to the present case. Therefore I pray for order of Mutation entry has to be cancelled.

Hence he requested to allow the revision petition.

Advocate for the Respondent argued that

1. The revision petitioner has preferred this revision against the order of Tahashildar Kumta in respect of Kumta Taluka, Hegde village Sy. no. 397/1A an extent of 1-9-8 (A-G-A). The present revision petition filed before this Hon'ble Court without exhausting the remedy available to prefer an appeal before the Assistant Commissioner u/s 136(2) of KLR Act. On this count also the revision deserves to be dismissed.
2. Revision petitioner submits that he is one of the family member of owner of disputed land. However, the name of the revision petitioner is not at all entered in the revenue records of disputed land. If the revision petitioner has any share in the property it should be decided by proper forum. The share of the revision petitioner itself is not decided and his name is not shown in the record of rights, under such circumstances this revision petitioner has no locus standie to prefer this revision.
3. 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. In this regard Hon'ble High Court of Karnataka has passed ruling 2010(4) KCCR page no. 3037 and 2007(3) KCCR page no. 2069.

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 ?
2. Taking decisions regarding genuineness of the General Power of Attorney comes under preview of this court ?

Answer:

1. No
2. No

After perusal of the lower court records and written argument of both parties it reveals that the Survey No. 397/1A total area of 1-9-8 (A-G-A) of Hegde village in Kumta taluka was joint property of Respondent no. 3 to 26 and except Respondent no. 5 Sri. Mahadev Ganesh Hegdekatte. This joint land owners gave general power of attorney to Sri. Prakash Raya Kamat. Sri. Prakash Raya Kamat being the GPA holder transfer this land to Smt. Rajeshwari Vishnu Bhat an extent of 0-6-0 (A-G-A) as per mutation entry no. 9/2011-12, Sri. Rajesh Anant Bhat an extent of 0-3-10 (A-G-A) as per mutation entry no. 10/2011-12 dated: 25-8-2011, Smt. Gouri Vijaya Hegdekatte an extent of 0-2-8(A-G-A) as per mutation entry no. 1/2011-12 dated: 25-8-2011, Sri. Prakash Laxminarayan Bhat an extent of 0-5-0 (A-G-A) as per mutation entry no. 299/2010-11 dated: 25-8-2011, Sri. Janardhan Vishnu Bhat an extent of 0-4-0 (A-G-A) as per mutation entry no. 21/2011-12 dated: 20-9-2011, Smt. Bharati Shripad Bhat an extent of 0-4-0 (A-G-A) as per mutation entry no. 11/2011-12 dated: 25-8-2011, Sri. Vinayak Krishna Hegdekatte an extent of 0-4-0 (A-G-A) as per mutation entry no. 2/2011-12 dated: 25-8-2011, Smt. Tara Venkataramani Hegde an extent of 0-2-14 (A-G-A) as per mutation entry no. 3/2011-12 dated: 25-8-2011 and Sri. Timmanna Ramkrishna Hegde an extent of 0-4-0 (A-G-A) as per mutation entry no. 22/2011-12 dated: 21-9-2011. There is no dispute between the seller and purchaser of the suit property. Revision petitioner filed objection against the mutation entry mentioning that the sale deed executed by GPA holder was on the basis of forged GPA to Tahashildar Kumta and Tahashildar Kumta rejected his application to approach appropriate forum to establish his right. Revision petitioner has submitted the death certificate of Smt. Gange Kom Ganesh Hegdekatte was dead dated: 3-1-1989 and GPA was executed on 3-2-2011. Under this circumstances GPA to be doubtful. But this court has no jurisdiction to make the decision regarding genuineness of the general power of attorney. Genuineness of the GPA is to be decided by Civil Court. Further a mutation based on a registered sale deed cannot be questioned in a revenue court. Hence I proceed the following order.

No. RB/RTR/CR-45/11-12

Date: 20-03-2017

Order

Revision petition is dismissed

(Order dictated to the Stenographer, got computerized, vetted and pronounced in open court on 20-03-2017)



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

Copy to:-

1. Advocate Sri. N.S.Bhat and Sri. D. R.Bhat for information.
2. Assistant Commissioner, Kumta for information and necessary action with Lower court file No. RTS/AP/SR-40/2012-13 dated: 23-01-2014. page No.1 to page No.
3. Tahasildar Kumta for information and necessary action.