

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Sri. S S Nakul, IAS,
Deputy Commissioner,
Uttar Kannada, Karwar

No. RB/RTR/CR-49/14-15

Between

Smt. Shailaja D/o Shabu Gurav
W/o Ravindra Gopal Gurav
R/o Goageri Majali Tq: Karwar
(Represented through Advocate Sri R V Bhat)

.... Revision Petitioners



V/s

1. Pramod Shabu Gurav
R/o Goageri Majali Tq: Karwar
2. Tahsildar, Karwar
(Represented through Advocate Sri K R Desai)

.... Respondents

Sub: Revision Petition filed u/s 136(3) of Karnataka Land Revenue Act 1964 against the Mutation entry No. 155/08-09 of Majali village in Karwar Taluk.

Preamble:

The instant revision petition has been filed against the order of Assistant Commissioner, Karwar in order No. RTS/AP/CR-09/10-11 dated: 07-03-2014. Notices were issued to both parties.

The brief facts of the case are as follows;

The petitioner is the sister of Respondent No.1 and children of late Shabu Gurav. After the death of the father of the Respondent No.1 moved an application to Tahsildar, Karwar stating that Respondent No.1 and Savita Gurav are the only legal heirs of late Shaba Gurav and to mutate their names to the suit property. Petitioner objected it. So Tahsildar, Karwar ordered to mutate the names of petitioner and Respondent No.1 jointly to the suit property. Accordingly Mutation entry No. 155/08-09 was mutated. Against this entry the Respondent No.1 filed appeal before Assistant Commissioner, Karwar and who in his order dated: 07-03-2014 set aside the order of Tahsildar, Karwar. Being aggrieved by this order the petitioner filed the revision petition before this court.

The Advocate for the Appellant argued that.

1. Assistant Commissioner, Karwar cancelled the order of Tahsildar only on the base of School leaving certificate and marriage registration certificate holding that petitioner is given adoption to one Upendra Gurav.
2. The issue of adoption should be dealt by the Competent Civil Court of law. Revenue Courts are not competent to decide about adoption.
3. The birth certificate proves that petitioner is the daughter of late Shabu Gurav. If the Respondent argues that "She is given in adoption to Upendra Gurav it is for him to prove the same in the Competent Court of Law.
4. Upendra Gurav is the brother of Shabu Gurav. After the death of Upendra Gurav all the properties standing in the name Upendra are mutated in the names of his lega; heirs. In the said Varasa entry the Petitioner's name is not shown.
5. The impugned order is not a speaking order and not given proper reasons to substantiate the order.

Hence he requested to allow the appeal.

The Advocate for the Respondent argued that.

1. The deceased Shabu Gurav and Upendra Gurav are brothers Shabu Gurav got two daughters and a son by name Pramod Upendra Gurav got two sons only. So he adopted Shailaja the daughter of Shabu Gurav.
2. As per the customs prevailing in their community she has been recognized as daughter of Upendra Gurav.
3. In the Transfer Certificate issued by the Government Public School, Majali clearly proves that Shailaja is the daughter of Upendra Gurav.
4. At the time of registering her marriage and in the form she herself declared as she is daughter of Upendra Gurav.
5. As per Section 12 of Hindu Adoption and Maintenance Act after the adoption the Appellant is not entitled to claim any share in the property of Natural father.

Hence he requested to dismiss the revision petition.

On perusal of the Lower Court Records and Written argument of Appellant and oral argument by the Respondent reveals that the suit property belonged to One Shabu Gurav. The said property of Karwar Taluka Majali Village Sy No. 1206/5, 1208/2, 1262/2, 1291, 1295/2, 1320/9B, 1321/3 belongs jointly to Shabu Gurav and Upendra Gurav. He died on 27-09-2006. Upendra Gurav is brother of Shabu Gurav after death of Upendra Gurav property was mutated in the name of his legal heirs as per Mutation entry No. 18179 dated: 25-01-1986. Shabu Gurav is father of Shailaja Shabu Gurav, Pramod Shabu Gurav and Savita Shabu Gurav. The contention of the Respondent is that the petitioner has given in adoption to Upendra Gurav. So she is not entitled to claim any share in the property of Natural father. But the Respondent has not produced any formal conclusive record that the petitioner has been given in adoption. Merely the school leaving certificate and Marriage Registration certificate are not the authenticated documents. It should be decided by the Competent Civil Court only. As per the Hindu Varasa Act, 1956 daughters are also eligible to get share in the father's property. So Tahsildar rightly ordered to mutate the names of Petitioner and Respondent jointly. Assistant Commissioner, Karwar has exceeded in jurisdiction in deciding on the matter of adoption which is not part of Revenue court jurisdiction. Hence I proceed to order as follows.

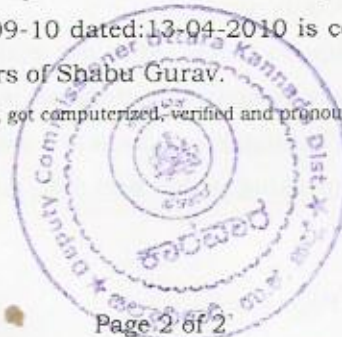
No. RB/RTR/CR-49/14-15

Date: 19-09-2016

Order

Appeal is upheld. Assistant Commissioner, Karwar Assistant Commissioner, Karwar in order No. RTS/AP/CR-09/10-11 dated: 07-03-2014 and amended order dated: 07-05-2014 is quashed. The order passed by Tahsildar, Karwar order No. RTS/CR-2/2009-10 dated: 13-04-2010 is confirmed, is directed to mutate the names of all legal heirs of Shabu Gurav.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 19-09-2016)



J. Shabul
19/9
**Deputy Commissioner,
Uttara Kannada, Karwar.**