

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

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

No. RB/Tech Appeal/CR-01/09-10



Between

Sri Jnaneshwar Shanker Gajinkar
Since deceased by his LR Smt Shamala Kom Jnaneshwar Gajinkar
R/o Sadashivgad, Taluka Karwar
(Represented through Advocate Sri B.S.Pai)

... Appellant

V/s

1. The President
Shri Narasimha Dev Devastan Samithi,
Sadashivgad Taluk Karwar.
2. Rumo Vilas Belkar
R/o Sadashivgad Taluk Karwar.
3. Deputy Director of Land Records, Karwar
4. Tahsildar, Karwar.
(Represented through Advocate Sri K.R.Desai)

.... Respondents

Sub: Appeal filed u/s 56 of Karnataka Land Revenue Act 1964 against the Hissa Phodi and PT sheet prepared in respect of Sy No. 237 of Chittakula village in Karwar Taluk.

Preamble:

The instant appeal has been filed against the order of Deputy Director of Land Records, Karwar in file No. 30/300/ಭೂಮಾ/ಭೂವಿಳಾಸ/ಬೆಂಗಳೂರು-30/08-09 dated: 26-03-2009. Notices were issued to both parties.

The brief facts of the case are as follows:

The Suit property Sy No. 237 of Chittakula village in Karwar Taluka comprised of 1-23-0(A-G-A) Kharab 0-1-0 actual area 1-22-0 (A-G-A) out of which the respondent No.1 got an area of 0-17-0 (A-G-A) share, the appellant got 0-35-0 share, Balu Prabhakar Gajinkar got 0-5-0 (A-G-A) and Saraswati Jogi Ambi got 0-5-0 share. There exists a public road covering an extent of 0-3-4 (A-G-A) known as Devbhag road, which is used commonly by the joint owners. But however the appellant moved application for survey and Tahasildar issued the Pot-Hissa Map. Against the Hissa-Podi, the Respondent No.1 filed appeal before Deputy Director of Land Records, Uttara Kannada Karwar. The appeal was allowed vide order dated 26-3-2009 with a direction to resurvey the land in accordance with actual possession and enjoyment of the properties by each sharer. Being aggrieved by this order the appellant filed the instant appeal before this court.

The Advocate for the Appellant argued that.

1. The impugned order is contrary to law ad against the principle of natural justice.
2. Respondent No.1 and 2 are present at the time of survey.They signed with committee seal.
3. Tahsildar Karwar made the phodi work in presence of the appellant and Respondent after visiting the spot.
4. The Respondent constructed the new building in the land of appellant without prior permission of the competent authority. The appellant is in actual possession of the suit land.
5. Tahsildar Karwar issued notice to all surrounding land holders. So the survey map issued by Tahsildar is valid.

Hence he requested to allow the appeal.

The advocate for the Respondent No.1 filed a memo with a copy of the application of Jnaneshwar Gajinkar for having applied for survey in which he clearly admitted that he has got right over 0-35-0(A-G-A) arca. Hence he requested to dismiss the appeal

On perusal of the lower court records, appeal memo and written argument of the Appellant it reveals that the suit property in Sy No. 237 of Chittakula village totally comprised of 1-23-0(A-G-A) area. Narasimha Dev Devastan Samithi Chittakula holds an extent of 0-17-0 (A-G-A), Jnaneshwar Shanker Gajinkar holds an area of 0-35-0 (A-G-A), Balu Bin Prabhakar Gajinkar holds an area of 0-5-0 (A-G-A) and Saraswati Jogi ambi holds an area of 0-5-0 (A-G-A). There is a public road covered an extent of 0-3-4(A-G-A) which is commonly used by the joint owners. It was objected by the Respondent No.1 before Deputy Director of Land Records Karwar that the public road covers an extent of 0-3-4 (A-G-A) which should have been deducted from each of the share holders and that the Appellant is being the adjacent owner got the survey done to his convenience without the knowledge of respondent No.1 and that the survey is not done in accordance with the actual possession and enjoyment of the properties by each of the share holders. These objections were upheld by Deputy Director of Land Records, Karwar and observed that total extent of Sy.No. 237 does not tally with hissa form No.XII and P.T. Sheet.

Hence, he allowed the appeal and rejected the Form No.XII and P.T.Sheet made by Tahsildar Karwar. vide order No. ೩೦/ಸಾಂ/ಭೂಮಾಪನ/ಭೂಮಾಲಸಿ/ಮೇಲ್ವಸವಿ-30/08-09 dated: 26-03-2009 with a direction for re-survey in accordance with actual possession and enjoyment of the parties.

On a careful scrutiny of the impugned order in the back ground of the facts narrated above, it is seen that the Deputy Director of Land Records, Karwar has passed an equitable order that in case the survey is not done in accordance with actual possession and enjoyment, no harm will be cost to either of the parties if an order is passed for re-survey of the properties. This being an equitable order, there are no good grounds to interfere with the order passed by Deputy Director of Land Records, Karwar.

Hence, I proceed to order as follows:

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Date:27-03-2017

Order

Appeal is dismissed. Assistant Director for Land Records Karwar is hereby directed to re-survey to property in the background with the order passed in the connected case in file no. RB-RTR-CR-45+46-09/10 dated: 27-3-2017.

(Order dictated to the Stenographer, not computerized, verified and pronounced in open court on 27-03-2017)



[Handwritten Signature]
27/3
**Deputy Commissioner
Uttar Kannada, Karwar**

Copy to:-

1. Advocate Sri B. S. Patil and Sri. K. R. Desai for information.
2. Deputy Director of Land Records Uttara Kannada, Karwar for information and necessary action with Lower court file no. ೩೦/ಸಾಂ/ಭೂಮಾಪನ/ಭೂಮಾಲಸಿ/ಮೇಲ್ವಸವಿ/30/08-09 dated: 26-3-2009 page No. 1 to page No.
3. Tahasildar Karwar for information and necessary action.