

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Shri S.S Nakul I.A.S.
Deputy Commissioner,
Uttar Kannada, Karwar.

No. LND/CTS/CR-1/07-08



Between

Sri N. M. Kamath
Civil Court Road, Karwar
(Represented through Advocate Sri R. S. Hegde Gali)

...**Appellant**

V/s

1. Karnataka Government
2. Commissioner, CMC Karwar
(Represented through Advocate Sri V. S. Bhagwat)

...**Respondents**

Sub: Order as per the direction given in appeal No. 1244/07 dated 11-03-2010 by the Hon'ble Karnataka Appellate Tribunal at Bangalore.

Preamble:

Based on the report dated 22-10-2007 by City Municipality Karwar regarding unauthorized occupation of City Property no. 425, a government land and part of Court road Karwar, by the appellant Sri. Narendra Mahadev Kamath, the then Deputy Commissioner issued direction to the Tahsildar Karwar and City Surveyor Karwar to submit the check report. Accordingly they filed their report reiterating the contents of the report of CMC Karwar. Thereafter notice was issued to Sri. N. M. Kamath on the very same day that is on 22-10-2007 u/s 94(3) of Karnataka Land Revenue Act-1964 to remove the unauthorized construction. The appellant Sri. N. M. Kamath appeared himself before the Deputy Commissioner at 12.00 pm on 23-10-2007 and pleaded his case. After hearing him for two hours and perusing his documents he was asked to submit his points in writing on that day itself. Again on the same day at 6.00 pm he appeared and he was heard for about one hour and he was directed to remove his unauthorized occupation on the same day itself vide order no. LND/CTS/CR-1/07-08 dated 23-10-2007 u/s 94(3) of Karnataka Land Revenue Act-1964 with a direction to the Tahashildar Karwar together with City Surveyor Karwar to enforce the order under supervision of Assistant Commissioner Karwar with full assistance of the Police and Municipal authorities.

Since the appellant Sri. N. M. Kamath failed to comply the order, it was enforced and in this regard the Tahashildar Karwar after removing the wall in the encroached area, submitted report to the Assistant Commissioner stating that there is a RCC building in the spot with two floors which were illegally hanging on the Government land and in the first floor an area of 209.62 sq. feet was rented out to State Bank of Mysore, Karwar on monthly rental basis.

Being aggrieved by the order No. LND/CTS/CR-1/07-08 dated 23-10-2007, the present appellant Sri. N. M. Kamath filed Appeal No. 1244/07 before

Karnataka Appellate Tribunal At Bangalore and the KAT by its order dated 11-03-2010 set aside the impugned order and remitted the case back to Lower Court with a direction to give reasonable opportunity to the appellant and conduct the enquiry strictly in accordance with the provisions of the Act and Rules and decide the matter afresh. Accordingly notices were issued to both parties.

During pendency of the appeal the appellant filed IA raising the point of maintainability of the appeal before this court. After hearing both sides the IA was disposed of by rejecting his prayer vide order dated 21-11-2016 and both the parties were directed to advance their arguments on main appeal.

The points urged on behalf of the appellant are that-

1. The instant proceeding is contrary to law and true facts of the case. Vinayak Madhav Kamath being the brother of the Appellant is a necessary party to the proceedings as he is also in joint possession, title and enjoyment of the suit property as a co-owner and failure to implead him is not legally valid.
2. A title suit in OS No. 150/08 which was filed after withdrawing the previous injunction suit in OS No. 25/2006 in respect of the suit property is pending disposal and hence the instant summary proceeding is not maintainable.
3. The predecessors in title were in possession and enjoyment of the property since 22-7-1927 and the same possession is now being continued by appellant and his brother.
4. The said plot was first leased in 1922 to one Shankar Sheshagiri Chandavarkar who was the owner of adjoining Malki Revenue Sy No. 6A1C/7B and that the said plot was sold by the then Municipality Karwar to the said Shankar Sheshagiri Chandavarkar for a price of Rs 46.46 vide receipt/sale chit dated 22-07-1927 and after his death his Legal Heir Chandrakant Maruti Chandavarkar sold the plot along with adjoining Malki Revenue land to Sri. Madhav Ramachandra Kamath the father of the appellant under duly registered sale deed dated 14-05-1966. After the death of said M. R. Kamath, the present appellant and his brother Vinayak Kamath inherited the property and they are in joint possession and enjoyment of the same.
5. Bombay District Municipal Act 1901 permitted such sales of road side plots/portion of Public Road as per section 90(1)(2) and section 49(2) of the said Act. The then Municipality Karwar sold several such road side plots vide General Committee Resolution No. 2 dated 12-09-1925.
6. As per section 26 r/w Article 111 of the Limitation Act 1963 the right of the Respondents to claim the suit plot from the appellant is extinguished.
7. The suit plot is in the possession of Appellant and his brother and their predecessors in title since 1927 and that civil suit OS No.150/08 is pending before the Civil Court.



8. The suit plot is not a part of the road. The predecessors in title and now the appellant and his brother are in continuous possession for more than 80 years ever since the sale in the year 1927.

9. As per the decision of the Hon'ble High Court reported in Karnataka 2012(1) KCCR 690 (HCR 2012 Kant 388) it is clearly held that notice combining the provisions of section 39 and 94 of KLR Act are not maintainable unless there is proper determination of unauthorized occupation of public premises under section 67 of the KLR Act and the question of summary eviction u/s 94(3) of KLR Act does not arise.

On the above material points the appellant has prayed for dropping the proceedings initiated against him.

All the above points urged on behalf of the appellant are refuted by the respondents in the detailed statement of objections filed by R1 City Municipality Karwar.

In the background of the points urged on both sides on perusal of records in the file it can be said that the appellant has mainly relied on a receipt/chit dated: 22-7-1927 issued by the then Municipality Karwar in favour of Appellants predecessor in title by name Shankar Sheshagiri Chandavarkar. According to the Appellant, the then Municipality Karwar sold the suit property CTS No. 425 in favour of said Shankar Sheshagiri Chandavarkar by accepting sale price of Rs. 46-4-6. But R2 CMC has strongly resisted appellants claim by contending that as per Bombay District Municipal Act-1901, Municipalities in Bombay Province were vested with power of Lease and license of immovable properties for a period of seven years as it can be seen from various resolutions passed by the then Karwar Municipality and after repeal of the Bombay District Municipal Act-1901 by Karnataka Municipality Act. Municipal Council is empowered to lease immovable properties only for a period of five years and even not empowered to renew such lease without the sanction from state government. At no time the appellants predecessor in title by name Shankar Shekhar Chandavarkar purchased the lease hold land from the then Karwar Municipality for a consideration of Rs. 46-4-6 (Rs.An.Ps). The payment of said amount is only rent for having enjoyed the lease hold land as it is clearly shown as "Nelaterige Pavati" (ground rent) for lease of road side plot to the south of Baad Sy no. 6 to the extent of 18x14=252 sq.ft for a period of 4 years with effect from 1922-23 to 1925. This receipt is in the prescribed form in Kannada language as "Nelaterige Pavati". Further, no permission of the then Collector was taken for sale as contemplated under the Act. Infact, as could be seen from the resolution of Karwar Municipality dated 18-7-25 the then collector of Kanara sent letter requiring the municipality to vacate all the road side plots listed out by the municipality and thereafter no lands forming part of the roads were leased or sold to any one and that being so there is no question of selling the suit property to the above said Shankar Sheshagiri Chandavarkar.



On a careful scrutiny of the material on record it can be said that there are reasonable grounds to accept the objection raised by the respondents. It is evident that the so called receipt/chit dated: 22-7-1927 was issued by way of receipt for having received ground rent. There is nothing in this document to show that any particular property was sold by the municipality for sale consideration. Therefore the appellant cannot succeed by relying on the said document.

The appellant has relied on Registered sale deed dated 14-5-1966 executed by one Chandrakant Maruti Chandavarkar the legal heir of Shankar Sheshagiri Chandavarkar in favour of Appellants father Madhav Ramachandra Kamath. But when Shankar Sheshagiri Chandavarkar himself did not acquire title in the property as already discussed above there is no question of the father of the Appellant acquiring title under the said sale deed.

It is pertinent to note that in the detailed survey of 1934 and City Survey of 1978, City property no. 425 is shown as "Government land" in the ownership column. These surveys of 1934 and 1978 are not challenged by anyone including the father of the Appellant or the persons who alleged to have sold the property to the father of the Appellant. Infact, Sri. Madhav Ramachandra Kamath the father of the Appellant appears to have fought through documents to insert his name during the city survey in the year 1978, but the same was rejected in the enquiry during the survey. Added to these, respondent no.2 CMC has clearly stated that the suit property in CTS no. 425 is a Government land which statement is corroborated by the reports of the CMC and other revenue officials.

The above said decision relied by the appellant is not applicable to the facts and circumstances of this case.

Appellants brother Sri. Vinayak Madhav Kamath is not a necessary party to the proceeding as it is not the case of the appellant that there is conflict of interest inbetween them.

Pendency of title suit in OS No. 150/08 before the Civil Court is not a bar to decide the appeal under Revenue jurisdiction as under Karnataka Land Revenue Act this court is not deciding title of the parties. The issue of title is discussed above only to the limited purpose of deciding the main issue of unauthorized encroachment of Government land by the Appellant.


The limitation point raised by the Appellant is not applicable to the illegal and unauthorized continuous occupation of Government land by the Appellant.

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Date: 24-04-2017

Order

Appeal is dismissed. This order is subject to final decision of O.S. No. 150/2008 by the Hon'ble Court of Civil Judge, Karwar.


**Deputy Commissioner,
Uttara Kannada, Karwar.**



Copy to:-

1. Advocate Sri. R. S. Hegde Gali and Sri. V. S. Bhagwat for information.
2. Project Director, District Urban Development Cell, Deputy Commissioner U. K. Karwar office for information and necessary action.
3. Commissioner CMC Karwar for information and necessary action.
4. Tahasildar Karwar for information and necessary action.

