

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-16/16-17



Between

Shri Nagesh Manjunath Shet,
R/o Hosahervatta, Tq: Kumta
(Represented through Advocate Sri R.S.Hegde Gali)

.... Revision Petitioner

V/s

1. Smt. Santeri Kom Shantayya Shet,
R/o Hosahervatta, Tq: Kumta.
2. Tahasildar Kumta.
3. Revenue Inspector Kumta.
4. The Paryavekshakaru,
Sub-Division, Tahasildar Office Kumta.
(Represented through Advocate Sri. D.R.Bhat)

.... Respondents

Sub: Revision petition filed u/s 136(3) of Karnataka Land Revenue Act 1964 against the order of Assistant Commissioner, Kumta in file No.RTS/AP/SR-32/2013-13 dated: 07-04-2016 in respect of Mutation entry No. 91/2005-06 pertaining to Sy no. 232/1A and 232/1B of Hosahervatta Village in Kumta Taluka

Preamble:

The instant revision petition is filed against the order of Assistant Commissioner, Kumta in file No. RTS/AP/SR-32/2013-13 dated: 07-04-2016. Notices were issued to both parties.

The brief facts of the case are as follows:

The suit Sy No.232/1 an extent of 1-12-0 belonged to Shri Nagesh Manjunath Shet and Smt. Shanteri Kom Santayya Shet this land was divided as per decree passed by Hon'ble Civil Court Kumta in O.S No. 45/1996. As per Hon'ble Civil Court Kumta decree in O.S No.45/1996 revision petitioner and respondent are entitled for half share i.e 0-24-8 (A-G-A) each in total extent of suit Sy. No. 232. Measuring 1-22-0 (A-G-A) after deducting 0-10-0 (A-G-A) tenancy land and extent of 0-3-0 (A-G-A) which has been used for public road in the said Sy No. 232. However the original revision petitioner and respondent in this case got 0-21-0 (A-G-A) and Shri Nagesh Manjunath Shet original defendant and revision petitioner in this case got 0-31-0(A-G-A) extent of land on the basis of phodi map. Against this phodi respondent Smt. Santeri Kom Shantayya Shet filed Regular appeal before Hon'ble Civil Judge (Sr.Dn) Honnavar in file No. RA No. 4/2015. The said appeal also dismissed by Hon'ble Civil Court. Again the respondent Smt. Santeri Kom Shantayya Shet filed appeal before Deputy Director of Land Records Karwar challenging the said Phodi Map. The DDLR Karwar cancelled the phodi map and Hissa form 4, 11 and 12 in his order No.ಕಂ/ತಾಂ/ಭೂಮಾಪನ/ಭೂದಾಖಲೆ/ಮೇಲ್ಮನವಿ-06/14-15 dated: 08-01-2015. Against this order and against mutation entry No.91/2005-06 the respondent filed an appeal before Assistant Commissioner, Kumta. Assistant Commissioner, Kumta allowed the appeal and rejected the mutation entry Number 91/2005-06. Being aggrieved by this order the revision petitioner filed an appeal before this court.

The Advocate for the Revision Petitioner argued that.

1. The Appeal is not maintainable as Mutation entry No.91/2005-06 was based on Hissa and Phodi effected by DDLR Karwar.
2. The Revision Petitioner is the owner for an extent of 0-31-0(A-G-A) in Sy.No.232/1 totally measuring 1-2-0. This has been reflected in tippan map and registered sale deed No.339 dated:17-9-1970.
3. The Civil Court Judgment relied by Assistant Commissioner, Kumta has been challenging RA No. 50/2016. There is no finding against the petitioner existing in the Civil Court.
4. Mutation Entry No.91/2005-06 based on Phodi that was conducted in presence of Respondents. Hence the said entry cannot be challenge by Respondents.

Hence he requested to allow the appeal.

The Advocate for the Respondent argued that.

1. The order passed by Assistant Commissioner, Kumta is as per decree passed in O.S No.45/1996 as his respondent has got an extent of 0-24-8 (A-G-A) out of total area 1-12-0 (A-G-A) in Sy. No.232/1 of Hosahervatta Village in Kumta Taluka. However the original revision petitioner got entered his name to the extent of 0-31-0 (A-G-A) and to the present respondent only 0-21-0 (A-G-A) in the said Sy. No.
2. On the basis of this entry a Phodi map was prepared by the Survey Department. Against that phodi map this respondent preferred appeal before DDLR Karwar challenging the said phodi map in appeal No.6/2014-15. The learned ADLR was pleased to cancel the phodi map. Against said order the original revision petitioner preferred an appeal before this Hon'ble Court in appeal No. 14/2014-15 the said appeal also was dismissed by this Hon'ble Court.
3. The Mutation Entry No. 91/2005-06 of Hosaheravtta Village was effected on the basis of phodi map which is now cancelled as per DDLR order and this Hon'ble Court in both these appeals, the Hon'ble Courts have rejected the plea of the original revision petitioner and ordered to rectify the phodi map as per the court decree. After verifying all these facts, the learned Assistant Commissioner Kumta has rightly allowed the appeal filed by this respondent in case No. RTS/APSR/32/2012-13.

Hence he requested to dismiss the revision petition.

On perusal of the Lower court records and written argument of both parties it is pertinent to note that the suit Sy No.232/1 an extent of 1-12-0 (A-G-A) belonged to Shri Nagesh Manjunath Shet and Smt. Shanteri Kom Santayya Shet this land was divided as per decree passed by Hon'ble Civil Court Kumta in O.S No. 45/1996. As per Hon'ble Civil Court Kumta decree in O.S No.45/1996 Revision petitioner and respondent are entitled for half share i.e 0-24-8 (A-G-A) each in total extent of suit Sy. No. 232. Measuring 1-22-0 (A-G-A) after deducting 0-10-0 (A-G-A) tenancy land and extent of 0-3-0 (A-G-A) which has been used for public road in the said Sy No. 232. However the original revision petitioner and respondent in this case got 0-21-0 (A-G-A) and Shri Nagesh Manjunath Shet original defendant and revision petitioner in this case got 0-31-0 (A-G-A) extent of land on the basis of phodi map. Against this phodi

respondent Smt. Santeri Kom Shantayya Shet filed Regular an appeal before Hon'ble Civil Judge (Sr.Dn) Honnavar in file No. RA No. 4/2015. The said appeal also dismissed by Hon'ble Civil Court. Again the respondent Smt. Santeri Kom Shantayya Shet filed appeal before Deputy Director of Land Records Karwar challenging the said Phodi Map. The DDLR Karwar cancelled the phodi map and Hissa form 4, 11 and 12 in his order No.೩೦/ತಾಂ/ಭೂಮಾಪನ/ಭೂದಾಖಲೆ/ಮೇಲ್ಮನೆ-೦೬/14-15 dated:08-01-2015. Against this order and against mutation entry No.91/2005-06 the respondent file an appeal before Assistant Commissioner, Kumta. Assistant Commissioner, Kumta allowed the appeal and rejected the mutation entry Number 91/2005-06. Sy. No.232/1 was not by bifurcated as per the decree passed by Hon'ble Civil Court Kumta in O.S No. 45/1996. The observation of DDLR Karwar of cancelling Hissa phodi map is correct. The Suit land has to be done resurvey as per decree passed by Hon'ble Civil Court Kumta in O.S No. 45/1996.

Hence the following order.

No. RB/RTR/CR-16/16-17

Date: 25 -09-2017

Order

Revision Petition is allowed. The Hissa Phodi map pertaining to Sy. No 232/1A and 232/1B is cancelled and matter reminded to DDLR Karwar for fresh survey.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 25-9-2017)



[Signature]
25/9/17
**Deputy Commissioner,
Uttara Kannada, Karwar.**

Copy to:-

1. Advocate Sri R. S. Hegde & Sri. D. R. Bhat for information.
2. Deputy Director of Land Records Uttara Kannada, Karwar for information.
3. Assistant Commissioner Kumta for information and necessary action with lower court file No.RTS/AP/SR/32/2012-13 page No.01 to 38.
4. Tahasildar Kumta for information and necessary action.