

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-36A/16-17



Between

1. Smt. Rukma Vithoba Naik
 2. Shri Krishna S/o Vithoba Naik
 3. Shri Raju S/o Vithoba Naik
 4. Shri Shankar S/o Vithoba Naik
 5. Shri Uday S/o Vithoba Naik
 6. Shri Arvind S/o Vithoba Naik
- All are R/o Keni, Bhavikeri Tq: Ankola
(Represented through Advocate Sri K.R Desai)

.... Revision Petitioner

V/s

1. Tahasildar Ankola
 2. Revenue Inspector Bhavikeri Tq: Ankola
 3. Village Accountant Bhavikeri Tq: Ankola
 4. Smt. Gulabi Styling as W/o Vithoba Naik
 5. Smt. Chandrakala Styling as D/o Vithoba Naik
 6. Smt. Roopa Styling as D/o Vithoba Naik
- R/o Bhavikeri, Tq: Ankola.

(Represented through Advocate Sri R.S Hegde Ghali)

.... 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-76/2014-15 dated: 04-3-2016 in respect of mutation entry No. H-13/2014-15 pertaining to Sy no. 469/4, 470/1, 431/1, and 431/2 of Bhavikeri Village in Ankola Taluka.

Preamble:

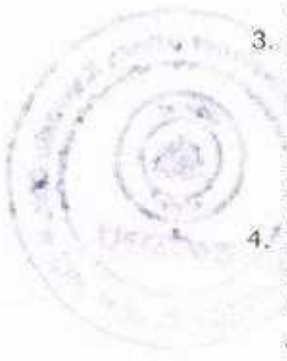
The instant revision petition is filed against the order of Assistant Commissioner, Kumta in file No. RTS/AP/SR-76/2014-15 dated: 4-3-2016. Notices were issued to both parties.

The brief facts of the case are as follows:

The suit Sy no. 469/4, 470/1, 431/1, and 431/2 belonged to late Vithoba Nagu Naik. He died on 16-9-2006. After his death inheritance mutation entry was effected as per M.R No. H-13/2014-15 and all legal heirs names are entered in the RTC i.e 1) Smt. Rukma Vithoba Naik (wife), 2) Krishna Vithoba Naik, 3) Raju Vithoba Naik, 4) Shankar Vithoba Naik, 5) Uday Vithoba Naik, 6) Arvind Vithoba Naik, 7) Smt. Gulabi Vithoba Naik (Wife), 8) Chandrakala Vithoba Naik, 9) Roopa Vithoba Naik. The revision petitioner filed an appeal before Assistant Commissioner, Kumta against this mutation entry No. H-13/2014-15 claiming that Smt. Gulabi Vithoba Naik is not legal wife of Vithoba Nagu Naik and Chandrakala Vithoba Naik and Roopa Vithoba Naik are not legal heirs of the said late Vithoba Nagu Naik. Assistant Commissioner, Kumta after hearing the case dismissed the appeal on the bases that case is Civil in nature and does not come under his jurisdiction. Being aggrieved by this order the revision petitioner filed an appeal before this court.

The Advocate for the Revision Petitioner argued that.

1. The impugned order passed by learned at Assistant Commissioner, Kumta conforming the illegal certification of impugned Mutation No. H. 13/2014-15 of Bhavikeri Village is quite contrary to law, illegal, capricious & perverse, and as such the same is deserves to be set aside in limine and also impugned Mutation Entry No. H 13/2014-15 is also deserves to be cancelled by issuing Respondent No.1 to 3 to effect new Mutation Entry relating to R of R of disputed lands by only entering the names of Appellants and to delete the names of Respondent No. 4 to 6, respectively.

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2. It is admitted before Assistant Commissioner Court that revision petition No. 1 is legally wedded wife and revision petitioner No. 2 to 6 are the only legitimate children of late Vithoba Nagu Naik.
 3. It is admitted fact by the respondent No. 4 to 6 before A. C Court that respondent No.4 claims as 2nd wife of late Vithoba Nagu Naik and respondent No. 5 and 6 are children of respondent No.4. But revision petitioner have not admitted the 2nd marriage nor admitted the relationship of respondent No.4 to 6, with Vithoba Nagu Naik the disputed lands are ancestral joint family property of late Vithoba Nagu Naik.
 4. These being the facts without admitting the 2nd marriage with Vithoba and also without admitting that Respondent. No.4 as his illegitimate wife and Respondent No. 5 & 6 as his illegitimate children, even for the sake of arguments it is assumed that the Respondent No. 4 is contacted with Vithoba the legal position is that the Respondent No.4 is deemed as kept mistress of late Vithoba under law and if it is proved that the Respondent No. 5 & 6, were born out of such relationship are deemed as illegitimate children and cannot claim any right in property. And not entitled to claim the status of legal heirs of late Vithoba. The learned Assistant Commissioner, Kumta failed to note understand this legal position and passed the illegal order.
 5. As per Hindu Succession Act 1956 only class I heirs are entitled under land Revenue Act, Sec. 128 to get their names entered on the record of Rights of disputed lands, excluding the Respondent No. 4 to 6 in accordance with law. This important and crucial aspect of law is not taken note before passing illegal order by Assistant Commissioner, Kumta.
 6. Advocate have produced citation in this regards. 1) AIR 1999 Karnataka Page No.226 " *Hindu Marriage Act (25 of 1955), Ss. 5.11 Husband keeping company with another women while his wife is alive and not divorced - Status of second women is that of kept mistress - On death of husband second women cannot apply for succession certificate - Not entitled to succeed to his properties*".

Hence he requested to allow the appeal and set aside the order passed by Assistant Commissioner, Kumta and cancel Mutation Entry No. H-13/2014-15 of Bhavikeri Village in Ankola Taluka, and issue direction to Respondent No. 1 to 3 to effect fresh Mutation Entry by entering the name of revision petitioner No. 1 to 6 in RTC.

The Advocate for the Respondent argued that.

1. The appeal was rightly dismissed by Assistant Commissioner, Kumta holding that the appeal is meritless.
2. Admittedly, the respondent No. 4 is the wife and No. 5 and 6 are the daughters of deceased Vithoba Nagu Naik. The voter, list Aadhar Card and other documents pertaining to the respondent No.5, clearly proves that she is the wife. Similarly, the Aadhar Card of the Respondents 5 and the T.C of Respondent No. 5 as well as the Marks Card of Respondent No.6 the Election card of Respondent No. 5 the Ration Card are all the proofs of the relationship of Respondent No. 4, 5 and 6 with deceased Vithoba Nagu Naik.
3. It may be a fact the Revision petitioners are also the legal heirs of the deceased Vithoba Naik. After verifying the facts of the relationship from the local enquiry the heir ship certificate has been issued based on the family tree prepared by the Revenue officers.
4. The relationship of the parties the legal entitlement and the title to the properties are the field of the Civil Court and Revenue Court cannot enquire in to such points of law and facts. Advocate has produced citation in this regard. 1) 2001 (1)KCCR 488 Karnataka High Court K. Sreedhar Rao, J. "When disputed questions arise about the validity of the sale and right of sale of joint family property the Revenue Authorities cannot go in to the matter and adjudicate the questions relating to title. The proper forum for the parties in such a situation is to seek remedy from the Civil Court".
5. 2) 2006 (1)KCCR 652 Karnataka High Court " *Karnataka Land Revenue Act 1964- Section 128 - Khata Change -Revenue Authorities have no right to decide the question of fraud or title of the parties to the land- It is only Civil Court, which has jurisdiction to decide such issues*".

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. 469/4, 470/1, 431/1, and 431/2 belonged to late Vithoba Nagu Naik. He died on 16-9-2006. After his death inheritance mutation entry was effected as per M.R No. H-13/2014-15 and all legal heirs names are entered in the RTC i.e 1) Smt. Rukma Vithoba Naik, 2) Krishna Vithoba Naik, 3)Raju Vithoba Naik, 4)Shankar Vithoba Naik, 5)Uday Vithoba Naik, 6)Arvind Vithoba Naik, 7)Smt. Gulabi Vithoba Naik, 8)Chandrakala Vithoba Naik, 9) Roopa Vithoba Naik. The revision petitioner filed an appeal before Assistant Commissioner, Kumta against this mutation entry No. H-13/2014-15 claiming that Smt. Gulabi Vithoba Naik is not legal wife of Vithoba Nagu Naik and Chandrakala Vithoba Naik and Roopa Vithoba Naik are not legal heirs of the said late Vithoba Nagu Naik. Assistant Commissioner, Kumta after hearing the case dismissed the appeal on the bases that case is Civil in nature and does not come under his jurisdiction. As per Hindu Succession Act, 1956 Section 8 the property of a male Hindu dying intestate shall devolve according to the provisions of this chapter. a) *Firstly, upon the heirs, being the relatives specified in class I of the Schedule.* As per Hindu Succession Act, 1956 Section 10 Distribution of property among heirs in class I of the Schedule. *Rule 1 - The intestate's widow or if there are more widows than one, all the widows together, shall take one share. In this case property is distributed among the legal heirs equally.* The contention of the revision petitioner that Respondent No. 4 to 6 are not class I legal heirs of late Vithoba Nagu Naik shall be challenged before Civil Court this does not comes under the jurisdiction of Revenue Court.

Hence the following order.

No. RB/RTR/CR-36A/16-17

Date: 25-09-2017

Order

Revision petition is allowed. Mutation entry no. H-13/2014-15 dated:9-10-2014 is cancelled. Tahasildar Kumta is directed to mutate in name of all class I legal heirs of late Vitobha Nagu Naik jointly.

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



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

Copy to:-

1. Advocate Sri. K-R Desai & Sri. R. S. Hegde Gali for information.
2. Assistant Commissioner Kumta for information and necessary action with lower court file No.RTS/AP/SR/76/2014-15 page No.01 to 194.
3. Tahasildar Kumta for information and necessary action.