

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

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

No. RB/Tech Appeal/CR-4/17-18



Between

1. Sri. Devu Putta Marathi,
R/o Dasangadde, Mugadde Post Sonda Tq; Sirsi.
(Represented through Advocate Sri.D.A.Naik)

.... Appellant

V/s

1. Sri. Dhaku Putta Marathi
2. Sri Parameshwar Rukya Marathi.
3. Sri Umesh Rukya Marathi
All are R/o Dasangadde, Mugadde Post: Sonda Tq; Sirsi.
4. Tahasildar and Taluka Surveyor Sirsi.
(Respondent No.1&3 are represented through
Advocate Sri.S.M.Pandit & Respondent No.2
through Advocate Sri N.R. Deshbhandari.)

.... Respondents

Sub: Appeal filed u/s 50 of Karnataka Land Revenue Act-1964 against the order of Deputy Director of Land Records, Karwar in file No. ಕಂ/ತಾಂ/ಭೂಮಾಪನ/ಭೂದಾಖಲೆ/ಮೇಲ್ಮನವಿ-41/16-17 dated: 28-6-2017 and Phodi Hissa Map survey in respect of Sy. No.46 Hissa 1,2,3,4 & 5 of Hulekal Hobli in Mugadde village Sirsi Taluk.

Preamble:

The instant appeal has been filed against the order of Deputy Director of Land Records, Karwar in file no. ಕಂ/ತಾಂ/ಭೂಮಾಪನ/ಭೂದಾಖಲೆ/ಮೇಲ್ಮನವಿ-41/16-17 dated: 28-6-2017. Notices were issued to both parties.

The brief facts of the case are as follows:

The suit property Sy no. 46 totally consist actual extent of 2-33-0. In pursuance to the family partition made by appellant and respondents in the year 1988 as per Mugadde village mutation entry No. 56. This survey number was further divided and Hissa phodi map is described as under-

SL No.	Name	Sy. No and Hissa No.	Extent	Kharab	Actual area Extent
1	Sri Dhaku Putta Marathi	46/1	1-30-0	-	1-30-0
2	Sri Parmeshwar Rukma Marathi Sri Umesh Rukma Marathi	46/2	0-4-8	-	0-4-8
3	Sri Devu Putta Marathi	46/3	0-10-0	-	0-10-0
4	Sri Parmeshwar Rukma Marathi Sri Umesh Rukma Marathi	46/4	0-5-8	-	0-5-8
5	Sri Devu Putta Marathi	46/5	0-23-0	-	0-23-0
		Total	2-33-0		2-33-0

Appellant No.1 and Respondent No. 3 are brothers and Respondent No. 2 and 3 are also brothers. This land was divided as per family Partition in the year 1988 and an extent of 0-33-0 (A-G-A) was allotted to appellant Sri Devu Putta Marathi. This land was divided in hissass as 46/1, 46/2, 46/3, 46/4, 46/5. The appellant Sri Devu Putta Marathi challenged the phodi map No.10060415214299 of Sy No.46

prepared by ADLR Sirsi dated 30-7-2015 before DDLR Karwar. Deputy Director of Land Records, Uttar Kannada Karwar dismissed the appeal reasoning that survey was made as per the possession of the land owners and Hissa Map was prepared as per possession. Being aggrieved by this order the appellant filed the instant appeal before this court.

The advocate for the appellant argued that

1. Phodi map prepared by the ADLR Sirsi is contrary to law and not to the true facts of the case.
2. Advocate for the respondent No.4 argued that Taluka surveyor Sirsi conducted the survey without issuing notice to him which is against the principles of natural justice. The phodi map No. 10060415214299 dated: 17-2-2016 prepared by Taluka surveyor it is mentioned that phodi map is prepared on 28-7-2015 and in panchanama which is written by Taluka surveyor it is mentioned that the Taluka surveyor visited the Sy No. 46 on 30-7-2015 which is contrary to law.
3. The Taluka surveyor visited the Sy No. 46 on 30-7-2015 and phodi map was prepared on 28-7-2015 is illegal and unjust and against to the settled principles of law.
4. Appellant signature is not available in the panchanama and also in the statement taken by Taluka surveyor at the time of survey.
5. The phodi map prepared by ADLR Sirsi is not as per the possession of the owners and it is technically /scientifically not correct. There is discrepancy in phodi map which does not match with rights of the respondents and possession of the respondents.
6. There is brook (water source) passing through the land. As per the partition made by the family members an extent of area 0-33-0 was mentioned at one place as per the possession of the appellant. But ADLR Sirsi during the time of survey demarked the land as Sy No. 46/3 an extent of 0-10-0 and Sy No. 46/5 an extent of 0-23-0 in two different hissass is contrary to law and contravention of the survey manual.
7. DDLR Karwar has decided the case on the basis of spot inspection report of ADLR Sirsi and not on the principles of natural justice and not as per the possession of the parties.

Hence he requested to allow the appeal and by setting aside the order of Deputy Director of Land Records Uttar Kannada Karwar dated: 28-6-2017 and also set aside the phodi map No. 10060415214299 of Sy No.46/1, 46/2, 46/3, 46/4, and 46/5 of Mugadde village in Sirsi Taluka.

Advocate for the respondent No.1 & 3 have submitted written argument.

1. The appeal file by the appellant is quite contrary to law and true facts of the case and deserved to dismiss.

2. The survey conducted in respect of Sy No. 46/1, 46/2, 46/3, 46/4 and 46/5 as per family partition and possession of the parties and correctly shown in the map.
3. The DDLR Karwar before passing the order dated: 28-6-2017 issued notice to appellants and respondents and ordered ADLR Sirsi to give before and after spot inspection of Sy No.46 which is as per law.
4. The appellant did not file any objection during the time of survey ADLR Sirsi prepared the survey map as per the possession of the parties which tallies with actual area of 2-33-0 (A-G-A) of Sy No.46.
5. The family partition of the property was made as per the possession of the parties in the year 1988. ADLR Sirsi surveyed the land as per possession and prepared phodi map.

Hence he requested to dismiss the appeal.

Advocate for the respondent No.2 have submitted written argument.

1. The appeal filed by the appellant Shri Devu Putta Marathi against the survey and phodi map of Sy. No.46/1, 46/2, 46/3, 46/4 and 46/5 is as per law and rejection of phodi map is correct.
2. No surveyor has come to the survey spot and surveyed the land Sy No.46 on 30-7-2015 since there was heavy rainfall at this time.
3. As per survey records the phodi map prepared by Taluka surveyor on 28-7-2015 and in panchanama which is written by Taluka surveyor it is mentioned that the Taluka surveyor visited the Sy No. 46 on 30-7-2015 which is contrary to law.
4. As per family partition made in the year 1988 the appellant was allotted 0-10-0 of bhagayat land but this land was in the possession of respondent No.2 during the time of survey Taluka surveyor made the phodi map in two hissas i.e Sy No. 46/2 an extent of 0-4-8 and Sy No. 46/4 an extent of 0-5-8 and he was not allotted the bhagayat land.
5. Taluka surveyor Sirsi conducted the survey without issuing notice to appellants it is against the principles of natural justice.

Hence he requested to allow the appeal and set aside the order of DDLR Karwar and set aside Tatkal phodi map of Sy No. 46.

Question before this court is

1. Whether the prayer of the appeal can be considered?

Ans:- Affirmative.

After perusal of the lower court records written argument of both the parties it reveals that Sy no. 46 totally consist actual extent of 2-33-0. In pursuance to the family partition made by appellants and respondents in the year 1988 as per Mugadde village mutation entry No. 56. This land was divided as per family



Partition in the year 1988 and an extent of 0-33-0 (A-G-A) was allotted to appellant Sri Devu Putta Marathi. This land was further divided in hissass as 46/1, 46/2, 46/3, 46/4, 46/5. The appellant Sri Devu Putta Marathi challenged the Tatkhal phodi map No.10060415214299 of Sy No.46 prepared by ADLR Sirsi dated 30-7-2015 before DDLR Karwar. Deputy Director of Land Records, Uttar Kannada Karwar heard the matter in detail and decided the case on the basis of spot inspection report of ADLR Sirsi. ADLR Sirsi issued notice to appellant and all respondents at the time of spot inspection dated: 20-5-2017 and he has mentioned in his report that survey was done as per possession of the parties. DDLR Karwar dismissed the appeal reasoning that survey was made as per the possession of the land owners and Hissa Map was prepared as per possession. Hence it is not necessary to interfere in the order of DDLR Karwar.

Hence I proceed the following order.

No. RB/Tech Appeal/CR-4/17-18

Date: 26-03-2018

Order

Appeal is dismissed

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 26-03-2018)



[Signature]
**Deputy Commissioner,
Uttar Kannada, Karwar.**

Copy to:-

1. Advocate Sri. D. A. Naik & Sri S. M Pandit & Shri N.R Deshbhandari for information.
2. Deputy Director of Land Records Uttar Kannada, Karwar for information and necessary action with Lower court file no. ಕಂ/ತಾಂ/ಭೂಮಾಪನ/ಭೂದಾಳುನಿ/ಮೇಲ್ಕನವಿ-41/16-17 dated: 28-6-2017 page No. 1 to page No.136.
3. Tahasildar Sirsi for information and necessary action.