

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Dr. Harish Kumar K., I.A.S.
Deputy Commissioner,
Uttar Kannada, Karwar.

No. RB/RTR/CR-14/2018-19

Between

Sri. Ashok Dattatraya Joshi
R/o H.No. 2006/2, Near Marine Biology Centre,
National Highway No. 17, Kodibag, Karwar
(Represented through Advocate Sri S.A. Kazi)

....Appellant

V/s

Chaitanya Dattatraya Joshi
R/o Near Marine Biology Centre,
National Highway No. 17, Kodibag, Karwar
(Represented through Advocate Sri. G N Jambavalikar)

.... Respondent

Sub: Appeal filed U/s 136 (3) of Karnataka Land Revenue Act against the order of Assistant Commissioner, Karwar in file No. RTS/AP/CR/58/2011-12 dated 24-05-2013 in respect of mutation entry.

Preamble:

The instant appeal has been filed U/s 136(3) of Karnataka Land Revenue Act against the order of Assistant Commissioner, Karwar in file No. RTS/AP/CR/58/2011-12 dated 24-05-2013.

Notice was issued to respondents. Respondent No. 3 entered appearance through his counsel.

The facts in brief relevant for disposal of this appeal are as hereunder:

That the appellant and respondent are brothers. The land measuring 8-38-0 (A-G-A) situated in Sy. No. 31 of Belur village Karwar Taluk along with other properties originally belonged to their unmarried sister late Manorama Dattatraya Joshi who had bequeathed the above said land along with other properties to respondent Chaitanya Joshi under registered Will dated 18-04-1996. She died on 09-02-2009. Thereafter, on the application being filed by the respondent, the land was mutated in his name as per MR No. 26 dated 15-06-2009. This entry was challenged by the appellant before the Assistant Commissioner Karwar in RTS/AP/CR/58/2011-12. The appeal was dismissed vide order dated 24-05-2013 for the reasons that Civil Suit in O.S. No. 215/2012 was pending before the Prl. Civil Judge Karwar in respect of the mutated land.

Aggrieved by the order of the Assistant Commissioner Karwar, the appellant preferred this appeal before this Court on various grounds.

The appeal is filled with delay condonation application along with affidavit explaining the reasons for delay. The reasons are accepted and the delay is condoned.

The appellant submitted written arguments as hereunder -

1. The impugned order passed by the Assistant Commissioner is contrary to law and true facts of the case.

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2. The Assistant Commissioner has not given any reasons to dismiss the appeal. The only reason is pendency of O.S. No. 215/2012. But the suit is only for bare injunction which had nothing to do in deciding the appeal.
3. The Assistant Commissioner has not considered the points urged and documents produced before him.
4. The Assistant Commissioner failed to note that the revenue authorities have no jurisdiction to decide validity of the Will though it is registered.
5. The Assistant Commissioner failed to note that mutation cannot be entered on the basis of disputed Will.
6. Though the Will is probated by the order passed by the Court of District and Sessions Judge Karwar in P & SC. No. 03/2013, the order was obtained behind the back of the appellant and hence he has filed Miscellaneous application with a prayer to revoke and annul the probate and said miscellaneous application is still pending before the Prl. District and Sessions Judge Karwar.
7. As on the date of registering mutation entry, the Will was not probated.

Hence on these among other grounds, the appellant requested to allow the appeal.

The learned counsel for respondent has argued in support of the impugned order passed by the Assistant Commissioner.

The point for consideration before this Court is-

1. Whether there are sufficient grounds to allow the appeal?

Ans. In the Negative.

After hearing the learned counsel for both parties in the background of the lower Court records, it is seen that the land in dispute originally belonged to the unmarried sister of appellant and respondent late Manorama Dattatray Joshi. She had bequeathed the disputed land along with other properties in favour of respondent Chaitanya Joshi under registered Will dated 18-04-1996. The testatrix Manorama Dattatray Joshi died on 09-02-2009. Thereafter, on the application being filed by the respondent, the land was mutated in his name as per MR No. 26 dated 15-06-2009. It is found that before entering the mutation, public notice was issued by affixing the same in the notice board of Village Accountant Office as could be seen from Form No. 12.

The main contention raised by the appellant is that mutation cannot be entered on the basis of a Will, though it is registered as the revenue authorities have no power to decide validity of the Will. This contention of the appellant has to be considered in the background of the full bench decision of the Hon'ble High Court of Karnataka reported in ILR 2002 KAR 2750 (C.N. Nagendra Singh Vs the Special Deputy Commissioner, Bangalore District and Others), wherein it is held---

When the Revenue Court is prevented from recording the statements of the parties and the depositions, the question of establishing the genuineness of the Will would not arise. Hence the Revenue Courts have no jurisdiction to go into the genuineness of the Will or question of title.

The above full bench decision is subsequently followed in another decision reported in 2006 (3) KCCR 1980, (Appasab Babaji Dhabade V/s The Deputy Commissioner, Belgaum District and others) wherein it is held as hereunder:

Sections 127 and 129 recording of mutation under -Disputed Will-Held, revenue authorities have no jurisdiction to record revenue entries on the basis of Will - Direction of the Assistant Commissioner and the Deputy Commissioner setting aside the order of the Tahasildar mutating the name of the petitioner on the basis of a disputed Will and directing the entries in the name of all the legal representatives is upheld.

The law laid down by the Hon'ble High Court of Karnataka in the above decisions cannot be disputed. However, in the case on hand, the Will is found probated as per the certificate dated 07-11-2014 issued by the Court of District Judge Uttara Kannada Karwar in P & SC. No. 03/2013 wherein it is ordered as hereunder:

Accordingly this certificate is granted to you and you are empowered to get the "A" and "B" Schedule properties transferred in your favour.

Original Will dated 16-04-1996, duly probated is annexed herewith.

"B" Scheduled property referred above is the disputed land measuring 8-38-0 (A-G-A) in Sy.No. 31 situated in Belur Village Karwar Taluk. The probate empowers the respondent to get the properties transferred in his favour as he himself is the executor under the Will. This means, he is entitled to get the land mutated in his name based on the probated Will. A probated Will stands on higher footing than unprobated Will. It is true that among Hindus, probate is not mandatory. At the same time there is no bar in probating the Will. It is also true that a Will, even if it is probated should be proved in accordance with law when challenged before the Civil Court. Of course, the appellant preferred Misc. No. 36/2014 before the Prl. District and Sessions Judge Karwar with a prayer to revoke and annul the probate and the same is pending disposal. But on perusal of the order sheet, it is clear that the Hon'ble District Judge has not stayed the probate already issued in favour of respondent. That being so, as of now, there being probate granted by the competent Court in respect of legality of the Will, the mutation entered in the name of the respondent need not be disturbed subject to the final verdict in the above said Misc. No. 36/2014. I do not find any grounds to allow the appeal. It is however made clear that this order is subject to the final verdict in the above said Misc. No. 36/2014. Hence, I proceed to pass the following order:

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Date:09-09-2019

Order

Appeal is dismissed. The impugned mutation entry is confirmed subject to final verdict in the above said Misc. No. 36/2014.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 09-09-2019.)

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**Deputy Commissioner,
Uttar Kannada, Karwar.**

Copy to:-

1. Advocates Sri S.A. Kazi and Sri. G N Jambavalikar for information.
2. Assistant Commissioner, Karwar for information and necessary action with Lower court file no. RTS/AP/CR/58/2011-12 dated 24-05-2013 page No. 1 to page No.116.
3. Tahasildar Karwar for information and necessary action.