

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-38/2017-18

Between

Sri. Honna Subba Madiwal
R/o Madiwalkeri, Hosakuli,
Honnavar Taluk
(Represented through Advocate Sri N.S. Bhat)

....Revision Petitioner

V/s

1. Assistant Commissioner
Bhatkal Sub division, Bhatkal
2. Tahasildar, Honnavar
3. Nagaraj Prabhakar Madiwal @ Nagaraj Hanumant Madiwal
R/o Madiwalkeri, Hosakuli,
Honnavar Taluk.
(Represented through Advocate Sri Srinivas U. A)

.... Respondents

Sub: Revision petition filed U/s 136 (3) of Karnataka Land Revenue Act against the order of Assistant Commissioner, Bhatkal in file No. RTS/AP/SR/75/2015-16 dated 19-12-2017 in respect of mutation entry.

Preamble:

The instant revision petition has been filed U/s 136(3) of Karnataka Land Revenue Act against the order of Assistant Commissioner, Bhatkal in file No. RTS/AP/SR/75/2015-16 dated 19-12-2017.

The Revision Petitioner is represented by his counsel. Respondent No. 3 entered appearance through his counsel.

Brief facts of the case are as hereunder:

That 0-8-8 (A-G-A) in Sy. No. 107/1, 0-26-0 (A-G-A) in Sy.No. 128, 0-2-12 out of 0-6-8 in Sy.No. 130/A3 of Hosakuli village Honnavar Taluk originally belonged to Smt. Manji Kom Hanumanth Madiwal. After her death, the mutation was entered in the name of the 3rd respondent Nagaraj Prakash Madiwal @ Nagaraj as he claimed right over the land being adoptive son of late Smt. Manji Kom Hanumanth Madiwal and also being beneficiary under registered Will dated 29-05-2007 executed by her. Shri. Honna Subba Madiwal, the petitioner herein, filed his objection before the Tahasildar Honnavar. The Tahasildar held enquiry and upheld the objection stating that mutation could not have been entered on the basis of disputed Will. This finding of the Tahasildar was set aside by Assistant Commissioner Bhatkal vide order dated 19-12-2017 in RTS/AP/SR/75/2015-16.

Aggrieved by the order of the Assistant Commissioner, the petitioner Honna Subba Madiwal preferred this Revision Petition before this Court on various grounds.

The Advocate for the revision petitioner argued that-

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

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2. The Assistant Commissioner failed to note that the mutation could not have been entered in the name of respondent No. 3 on the basis of disputed Will and adoption deed.
3. The Assistant Commissioner failed to note that the Tahasildar has not committed any error in passing the order dated 07-01-2016.
4. The Tahasildar had rightly held that until validity of the Will is decided by a Civil Court, the land could not have been mutated in the name of respondent No. 3 the so called beneficiary under the Will.

Hence on these among other grounds, the advocate for the petitioner requested to allow the revision petition.

The learned counsel for respondent No. 3 has argued in support of the impugned order passed by the Assistant Commissioner.

The documents before this court have been perused. In the instant case the dispute is with regard to inheritance of the suit property belonging to the deceased Smt Manji Kom Hanumanth Madiwal. The petitioner claims right in lieu of natural succession while the respondent No. 3 claims right on the basis of will deed dated: 29-05-2007 and adoption deed dated:24-12-2002. The petitioner has relied upon following judgment of Hon'ble High Court reported in ILR 2002 KAR 2750 which is read as below:

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.

Further, the petitioner has also produced a copy of the full bench decision reported in 2006 (3) KCCR 1980 (Appasab Babaji Dhabade V/s The Deputy Commissioner, Belgaum District and others) which is held as under:

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.

On going through the above judgments, it is crystal clear that the revenue authorities are restricted from going in to the genuineness of a registered will under dispute. These Judgments also imply that the natural succession over rules the disputed will until the later is probated through a competent civil court. In the instant case the registered will is disputed by the petitioner who happens to be a legal heir. The status of the petitioner as legal heir has not been disputed by the respondent No. 3. The judgment of the Hon'ble High Court reported in 2010 (1) Kar. L.J. 263, (R.V. Gopalkrishna V/s The Deputy Commissioner, Shimoga and others) emphasizes that overlooking the claim of a legal heir in case of disputed will is against law. Under these circumstances, I feel appropriate to mutate the name of the petitioner who is entitled to inherit the suit property through natural succession. The impugned order is liable to be set aside. Hence the following order.

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Order

Revision petition is allowed. The impugned order passed by the Assistant Commissioner Bhatkal is set aside. The Tahasildar Honnavar is directed to mutate the name of the petitioner for suit property in lieu of natural succession through a fresh mutation entry. The respondent No. 3 is reserved with liberty to approach the Civil Court for relief.

(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 N.S. Bhat and Sri. Srinivas U.A. for information.
2. Assistant Commissioner, Bhatkal for information and necessary action with Lower court file no. RTS/AP/SR/75/2015-16 dated 19-12-2017 page No. 1 to page No.70.
3. Tahasildar Honnavar for information and necessary action with Lower court file no. RTS/D/SR/30/2014-15 dated: 7-1-2016 page No. 1 to page No.150.