

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-07/16-17



Between

1. Sri Miran Mohiddin Peerzada S/o Mohammad Saheb Peerzada.
2. Sri Meharaj S/o Miran Mohiddin Peerzada
3. Smt. Mehrana D/o Miran Mohiddin Peerzada.
4. Sri Mashecha S/o Miran Mohiddin Peerzada.
5. Smt. Mayesar D/o Miran Mohiddin Peerzada.

All are Resident of 150 'Ragina House'
2nd floor, Room No. 23 Matar Pakady Road Mazgaon Mumbai.
(Represented through Advocate Sri. K.R.Desai)

.... Revision Petitioners

V/s

1. Sri. Fakki Ismail Peerzada S/o Mohammed Saheb Peerzada
R/o Bunder road, Magdum Colony, Taluk Bhatkal.
2. Rashida Baidoori W/o Burhanuddin Basha,
R/o Sidique Street, Susgadi, Taluk Bhatkal.
3. Irshad Ahmed Gangavali S/o Mohammed Ibrahim Gangavali
R/o Shad Villa, Kidwai Road, Susgadi, Bhatkal.
4. Bibi Zubeda W/o Mohammed Ibrahim Gangavalli.
R/o Shad Villa, Kidwai Road, Susgadi, Bhatkal.
5. Noorjahan Peerzade W/o Mohammed Peerzade.
R/o Azad Nagar, Jali village Taluk Bhatkal.
6. Khatija Kubra Sukham W/o Sayyed Salim
R/o Azad Nagar, Jali village Taluk Bhatkal.
7. Humaira W/o Jainulabuddin, R.o. Sultan Street Bhatkal.
8. Abdul Rehman Peerzada S/o Mohammed Saheb Peerzade
R/o Venkatapur, Hindu Colony, Bhatkal.
9. Ameer Hamza Peerzade S/o Mohammed Saheb Peerzade
R/o Siddique Street, Bhatkal.
10. Ahmed Muzamilla Peerzade S/o Mohammed Saheb Peerzade
R/o Nasiman Street, Magdum Colony Bhatkal.
11. Bava Ammer Bantwal S/o Imran Bantwal.
R/o Nasiman Street, Magdum Colony, Bhatkal.
12. Revenue Inspector Susgadi, Taluka Bhatkal.
13. Tahasildar Bhatkal.

(R1 & 9 Represented through Advocate Sri.M.L Naik)

.... Respondents

Sub: Appeal filed u/s 136(3) of Karnataka Land Revenue Act
against the order of Assistant Commissioner, Bhatkal in file
No.RTS/AP/SR-04/2015-16 dated: 25-2-2016 relating to Mutation
Entry No. 24/2012/13, dated 12-12-2012, 44/2012-13, dated 12-12-
2013, and consequential mutation entry No. H433/2013-14, dated 30-1-
2014 and mutation entry No. 70/2013-14, dated 4-7-2014 in respect of
Sy no.262 of Jali village in Bhatkal Taluk.

Preamble:

The instant appeal has been filed against the order of Assistant Commissioner, Bhatkal in file No.RTS-AP-SR-04/2015-16 dated: 25-2-2016 notices were issued to both parties.

The brief facts of the case are as follows.

The suite land Sy.No 262 an extent of 4-0-0 (A-G-A) of Jali Village of Bhatkal Taluka was the property of appellant 1 and 2 i.e. Miran Mohiddin Peerzada and Meharaj S/o Miran Mohiddin Peerzada out of which an extent of 2-0-0 was sold to appellant No. 3 to 6 i.e. (1) Mehrana D/o Miran Mohiddin Peerzada, (2) Mashecha S/o Miran Mohiddin Peerzada, and (3) Mayesar D/o Miran Mohiddin Peerzada as per registered sale deed date 28-8-1996 as per mutation entry No. 4666 dated 28-9-1996. Appellant No.1 and mother of appellant No. 2 to 6 have expired and her share was mutated in the names of her legal heirs appellant No. 1 to 6. Since the appellants are staying at Mumbai for their avocation, care taker was appointed to look after the property. In the month of October 2014, the care taker informed the appellants that Respondent No. 1 to 11 are threatening to encroach the said land. After obtaining the RTC of Sy.No 262 the appellants came to know that the names of Respondent No. 1 to 10 have been entered in the RTC on the basis of gift deed. Subsequently the Respondent No. 1 has sold this property to Respondent No. 11 as per registered sale deed mutation entry No. H-70/2013-14 dated 4-7-2014. Against this mutation entry the appellant challenged all above mutation entries before Assistant Commissioner, Bhatkal and Assistant Commissioner, Bhatkal by his order dated: 25-2-2016 rejected the appeal with a reason that the original suit No. 22/2014 is pending before senior Hon'ble Civil Judge Honnavar and O.S. No. 24/2015 is pending before Hon'ble Civil Judge Bhatkal, action will be taken as per Hon'ble Civil Court order. Being aggrieved by this order the second appeal is filed the appellant before this court.

The argument of the Advocate for petitioner are as follows :

1. Respondent No. 1 to 10 have created and fabricated the forged gift deed in favour of appellant No. 1 mother Smt Mamujani, who was bed ridden and aged about 80 years.
2. The Gift deed mutation entry No. H24/2012-13 12-12-2012 and H44/2012-13 dated 12-2-2013 made in favour of Smt Mamujani kom Mohammed Saheb Peerzade is in the basis of illegal, fabricated, fraudulent and unregistered Gift deed (Hiba) dated 20-9-2012.
3. Respondent No.1 has once again managed to create bogus, fraudulent unregistered Deed of gift / Hiba in his favour alleged to be executed by the mother of appellant No.1 Smt Mamujani kom Mohammed Saheb Peerzade, without issuing the extract notice to appellants as per mutation entry No.H/33/2013-14 dated 30-1-2014.
4. The mutation entries were regarding transfer of right in respect of property with more than Rs.3,00,00,000/- without paying stamp duty and registration fees to Government. As per the decisions reported in 2009 (1) KCCR.771 (DB) and ILR.1986 Kar., page 1059 the Deputy Commissioner can exercise his Revisional Power Under Sec.136(3) suo moto or otherwise to set right fraudulent Act.
5. As per Sec.49 of Indian Registration Act, if the documents required under law are not registered such documents cannot be looked into by authority or court of law as valid document of transfer. The alleged fraudulent 3 gift deeds are unregistered and improperly stamped creating right in favour of Donees in present are

On perusal of the lower court records written arguments of both the parties it is pertinent to note that Sy.No 262 an extent of 4-0-0 (A-G-A) of Jali Village of Bhatkal Taluka was the property of appellant 1 and 2 i.e. Miran Mohiddin Peerzada and Mcharaj S/o Miran Mohiddin Peerzada out of which an extent of 2-0-0 was sold to appellant No. 3 to 6 i.e. (1)Mehrana D/o Miran Mohiddin Peerzada, (2) Mashcheha S/o Miran Mohiddin Peerzada, and (3) Mayesar D/o Miran Mohiddin Peerzada as per registered sale deed date 28-8-1996 as per mutation entry No. 4666 dated 28-9-1996. Appellant No.1 and mother of appellant No. 2 to 6 has expired and her share was mutated in the names of her legal heirs appellant No. 1 to 6. Since the appellants are staying at Mumbai for their avocation, care taker was appointed to look after the property. In the month of October 2014, the care taker informed the appellants that Respondent No. 1 to 11 are threatening to encroach the said land. After obtaining the RTC of Sy. No 262 the appellants came to know that the names of Respondent No. 1 to 10 have been entered in the RTC on the basis of gift deed. Subsequently the Respondent No. 1 have sold this property to Respondent No. 11 as per registered sale deed mutation entry No. H-70/2013-14 dated 4-7-2014. Against this mutation entry the appellant challenged all above mutation entries before Assistant Commissioner, Bhatkal and Assistant Commissioner, Bhatkal by his order dated: 25-2-2016 rejected the appeal with a reason that the original suit No. 22/2014 is pending before senior Hon'ble Civil Judge Honnavar and O.S. No. 24/2015 is pending before Hon'ble Civil Judge Bhatkal, action will be taken as per orders of the Civil Courts. The matter is sub-judice . As registered sale deed cannot be questioned in revenue courts. Hence I proceed the following order.

No. RB/RTR/CR-07/2016-17

Date: 20-03-2017

Order

Revision petition is dismissed.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on: 20-3-2017)



[Signature]
Deputy Commissioner,
Uttara Kannada, Karwar.

Copy to:-

1. Advocate Sri. K. R. Desai and Sri. M. L. Naik for information.
2. Assistant Commissioner, Bhatkal for information and necessary action with Lower court file No. RTS/AP/SR-04/2015-16 dated: 25-02-2016. page No.1 to page No.
3. Tahasildar Bhatkal for information and necessary action.