

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-09/2016-17



Between

1. Sri Meharaj S/o Miran Mohiddin Peerzada
Resident of 150 'Ragina House'
2nd floor, Room No. 23 Matar Pakady Road Mazgaon Mumbai.
Represented by his G.P.A Holder
Sri Masheeha S/o Miran Mohiddin Peerzada.
(Represented through Advocate Sri. K.R.Desai)

.... Revision Petitioner

V/s

1. Smt. Bibi Jubeda w/o Ibrahim Ahamed Gangavali
R/o Shad villa, Kidwai Road, Susagadi Bhatkal
2. Sri. Abdul Jabbar S/o Usman Gani Askari
R/o Susagadi Village, Tq: Bhatkal
3. Revenue Inspector Susgadi, Taluka Bhatkal.
4. Tahasildar Bhatkal.
(R1 Represented through Advocate Sri.K.T. Gouda)

.... Respondents

Sub: Appeal filed under rule 69(2) of Karnataka Land Revenue Rules R/W section 136(3) of Karnataka Land Revenue Act against the order of Assistant Commissioner, Bhatkal in file No.RTS/AP/SR-06/2015-16 dated: 25-2-2016 relating to Mutation Entry No. H226/2013-14, dated 29-4-2014 and H161/2014-15 dated: 3-3-2015 in respect of Sy no.477/5 an area of 0-2-4 (A-G-A) of Susagadi village in Bhatkal Taluk.

Preamble:

The instant revision petition has been filed against the order of Assistant Commissioner, Bhatkal in file No.RTS-AP-SR-06/2015-16 dated: 25-2-2016 notices were issued to both parties.

The brief facts of the case are as follows.

The suite land Sy. No 477/5 an extent of 0-2-4 (A-G-A) of Susagadi Village of Bhatkal Taluka was the property of appellant, Respondent No.1 and 2 i.e, Smt. Bibi Jubeda w/o Ibrahim Ahamed Gangavali and Abdul Jabbar S/o Usman Gani Askari colluding together with another person called Fakki Ismail Peerzada without the knowledge of appellant by creating forged and unregistered Gift Deed (hiba) in favor of grandmother of the appellant Smt Mamujani kom Mohammed Saheb Peerzade as per mutation entry No. H82/2012-13 dated 23-11-2012. Fakki Ismail Peerzade being the GPA holder of Smt. Mamujani kom Mohammed Saheb Peerzade sold his property to Smt. Bibi Jubeda w/o Ibrahim Ahamed Gangavali under Registered Gift deed dated no. 1637/2013-14 dated: 26-3-2014 and her name were duly entered in RTC of Sy. No. 477/5 of Susagadi village as per mutation entry no. H226/2013-14 dated: 29-4-2014. Subsequently Smt. Bibi Jubeda W/o Ibrahim Ahamed Gangavali sold this property to Respondent No.2 Shri Abdul Jabbar S/o Usman Gani Askari as per Registered Sale deed

No. BTL-1-01213-2014-15 dated 24-01-2015 as per mutation entry No.H161/2014 dated 03-03-2015. The appellants claims that the Gift deed (Hiba) made as per General power of attorney executed in the name of Fakki Ismail Peerzada is forged fabricated and unregistered and the mutation entry No.H226/2013-14 dated: 29-4-2014 made on the basis of forged fabricated and unregistered Gift deed is illegal. Against this mutation entry the appellant challenged before Assistant Commissioner, Bhatkal and Assistant Commissioner, Bhatkal by his order dated: 25-2-2016 rejected the appeal with a reason that matter is pending before Hon'ble Senior Civil Judge Honnavar in the O.S No. 22/2014 and O.S. No. 24/2015 is pending before Hon'ble Civil Judge Bhatkal, action will be taken as per orders of the Hon'ble Civil Court. 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 and 2 with another person called Fakki Ismail Peerzade with out the knowledge of appellant by creating forged and got up fabricated Gift deed in favour of Grandmother of the appellant alledgedly to be executed by appellant, by imposing his signature in urdu eventhough he never sign his signature in Urdu and M.R.No. 482/2012-13 dated 23-11-2012 was illegally entered in the RTC. The documents produced before Assistant Commissioner Court clearly proves the fraud prima facies and beyond all reasonable doubt.
2. On the basis of illegal transfer of right Respondent no. 1 & 2 got up a GPA from grand mother of appellant in favour of respondent no.1 & another person called Fakki Ismail Peerzade got up a registered Gift Deed in favour of Respondent no.1 dated: 26-3-2014, on the basis of the said illegal document of Gift the impugned petition entry no. H226/20114-15 dated: 12-4-2014 was entered in RTC and then respondent no. 1 sold a land to respondent no. 2, as per sale deed dated: 24-1-2015 as per mutation entry no. H161/2014-15 was entered, illegally and without giving notice to the appellant.
3. The order passed by the Assistant Commissioner, Bhatkal is contrary to law and facts of the case.
4. The Gift deed mutation entry No. H226/2013-14 dated 12-4-2014 made in favour of Respondent no.1 is illegal, since it is made on the basis if fabricated and forged General Power of Attorney. As per the decision reported in I.L.R 2000, Kar,184, it is held that Tahsildar or Revenue Authority can refuse mutation on the basis of registered sale deed if there is genuine grounds and material on record before him.
5. Respondent no.1 and 2 to grab the property of appellant created forged Gift Deed his Act cannot be protected under any circumstances of the case.
6. Appellant requested to allow the appeal and set aside the order of the Assistant Commissioner, Bhatkal.

The argument of the Advocate for Respondent no. 2 is as follows :

1. Mutation entry made on the basis of Registered sale deed the authority have no jurisdiction to go against the registered sale deed and remedy of the aggrieved party to file the suit in the Civil Court and to set aside the sale deed and than to get the entry change in support of this contention following decisions are relied

(a) 1997(3)KLJ Pg. 120 DB registered sale deed entry made on the basis of Registered deed revenue court not to set aside the deed and there by the entry made on it remedy of the aggrieved party to approach the Civil Court.

(b)2007(3)KCCR Pg. 2069- The revenue authorities are not having the power to adjudicate the validity as well as the right, title and interest of the applicants over the property. Rights of the parties are subject to the result of the suit for declaration which is pending consideration and the order of the revenue authority to enter the name of the applicant on the basis of registered sale deed does not call for interference.

2. It is also evident that the property originally belonged to Mamajuni W/o Mahammad Saheb which was gifted to Jubeda by Registered Gift Deed and copy of it is also produced and possession is delivered in her favour. Under the Muslim Law Gift Deed requires no registration but actual position to be delivered to the done. Thus the contention of the Learned Advocate for the petitioner and decision relied is contrary to the law laid down by the Hon'ble Supreme Court 2014 AIRSCW Pg. 6261 - Gift Deed requires no registration but possession to be delivered is sufficient.
3. The father of the present petitioner has already filed the suit for declaration and partition in OS no. 63/2015 in the Court of Civil Judge Bhatkal. Since the matter is pending in Civil Court it is humbly prayed that the revision is kindly be dismissed to redress their remedies in Civil Court in the ends of justice.

Hence, he requested to reject the appeal.

The question before this court is :-

1. Whether Revenue Courts has jurisdiction to decide about the genuineness of the documents pertaining to mutation entries when the mutation entry is already affected .
2. Whether Revenue Officer is authorised to do mutation entry as per Registered Sale deed .

Answer :-

1. Negative
2. affirmative

On perusal of the lower court records written arguments of both the parties it is pertinent to note that The suite land Sy. No 477/5 an extent of 0-2-4 (A-G-A) of Susagadi Village of Bhatkal Taluka was the property of appellant, Respondent No.1 and 2 i.e, Smt. Bibi Jubeda w/o Ibrahim Ahamed Gangavali and Abdul Jabbar S/o Usman Gani Askari colluding together with another person called Fakki Ismail Peerzada without the knowledge of appellant by creating forged and unregistered Gift Deed (hiba) in favor of grandmother of the appellant Smt Mamujani kom Mohammed Saheb Peerzade as per mutation entry No. H82/2012-13 dated 23-11-2012. Fakki Ismail Peerzade being the GPA holder of Smt. Mamujani kom Mohammed Saheb Peerzade sold his property to Smt. Bibi Jubeda w/o Ibrahim Ahamed Gangavali under Registered Gift deed dated no. 1637/2013-14 dated: 26-3-2014 and her name were duly entered in RTC of Sy. No. 477/5 of Susagadi village as per mutation entry no. H226/2013-14 dated: 29-4-2014. Subsequently Smt. Bibi Jubeda W/o Ibrahim Ahamed Gangavali sold this property to Respondent No.2 Shri Abdul Jabbar S/o Usman Gani Askari as per Registered Sale deed

No. BTL-1-01213-2014-15 dated 24-01-2015 as per mutation entry No.H161/2014-15 dated 03-03-2015. The appellants claims that the Gift deed (Hiba) made as per General power of attorney executed in the name of Fakki Ismail Peerzada is forged fabricated and unregistered and the mutation entry No.H226/2013-14 dated: 29-4-2014 made on the basis of forged fabricated and unregistered Gift deed is illegal. Against this mutation entry the appellant challenged before Assistant Commissioner, Bhatkal and Assistant Commissioner, Bhatkal by his order dated: 25-2-2016 rejected the appeal with a reason that matter is pending before Hon'ble Senior Civil Judge Honnavar in the O.S No. 22/2014 and O.S. No. 24/2015 is pending before Hon'ble Civil Judge Bhatkal, action will be taken as per orders of the Hon'ble Civil Court. The matter is sub-judice . As registered sale deed cannot be questioned in revenue courts. Respondent creating of forged Gift Deed cannot be argued in revenue court appropriate civil court to be approached. Hence I proceed the following order.

No. RB/RTR/CR-09/2016-17

Date: 20-03-2017

Order

Revision petition is dismissed and Assistant Commissioner, Bhatkal order no. RTS-AP-SR-06/2015-16 dated: 25-2-2016 is upheld.

(Order dictated to the Stenographer, not computerized, verified and pronounced in open court on 20-03-2017)



[Handwritten Signature]
20/3/17
**Deputy Commissioner,
Uttara Kannada, Karwar.**

Copy to:-

1. Advocate Sri. K.R.Desai and Sri. K. T. Gouda for information.
2. Assistant Commissioner, Bhatkal for information and necessary action with Lower court file No. RTS/AP/SR-06/2015-16 dated: 25-02-2016. page No.1 to page No.
3. Tahasildar Bhatkal for information and necessary action.