

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Shri S.S.Nakul, IAS  
Deputy Commissioner,  
Uttar Kannada, Karwar.



No. RB/RTR/CR-45+46/09-10

**Between**

1. Smt. Dashamati Babani Sail  
R/o Devbagh, Chittakula Tq: Karwar
2. Rumo Vilas Belkar  
President Narasinha Devastan Committee Chittakula, Karwar  
(Represented through Advocate Sri. K R Desai)

.... Revision Petitioners

**V/s**

1. Jnaneshwar Shankar Gajinakar  
Since deceased by his LR  
Smt. Shamala Kom Jananeshwar Gajinakar  
(Represented through Advocate Sri. B.S. Pai)

.... Respondent

**Sub:** Revision Petition filed u/s 136(3) of Karnataka Land Revenue Act 1964 against the Mutation entry No. 1049 and 11806 of Chittakula village in Karwar Taluk.

**Preamble:**

The petitioners have filed two separate revision petitions against the order of Assistant Commissioner, Karwar in file No. RTS/AP/CR-14+15/08-09 dated: 20-11-2009. Both the entries under challenge are subsequent mutation entries and are related to the same land. So both the revision petitions were clubbed together for a common disposal. Notices were issued to both parties.

**The brief facts of the case are as follows:**

The suit property in Sy No. 237 of Chittakula village totally comprising 1-23-0 (A-G-A) was originally shared by 1) Janu Khemu Ambi 2) Tippu Kosa Ambi 3) Nuna Rumo Ambi and 4) Yesu Peru Ambi. After the death of Tippu Kosa Ambi vide Mutation entry No. 7056 dated: 13-05-1938, Kosa Tippu Ambi's name was mutated as legal heir. The said Kosa Tippu Ambi orally relinquished his right in favour of Yesu Peru Ambi. This Yesu Peru Ambi sold his acquired right to the father of the Respondent No.1 through registered sale deed dated: 09-05-1938. Another joint owner, Janu Khema Ambi died on 18-12-1951 and the name of his wife Janu Ambi was mutated as per Mutation entry No. 10134 dated: 20-07-1953. Later Yesu Peru Ambi died and his 1/8th share of right in the suit property was inherited by his wife Smt. Janaki Yesu Ambi vide impugned Mutation entry No. 11806 dated: 21-12-1957. The said Janaki Yesu Ambi executed a gift deed dated: 30-11-1996 in favour of Appellant No.2 Narasinha Devastan Committee Chittakula. As per the gift deed, an extent of 0-17-0(A-G-A) area was mutated in the name of Appellant No. 2 vide impugned mutation entry No. A1049 dated: 22-01-1997. Against the certification of Mutation entry No. 11806 and A1049 the Respondent filed appeal before Assistant Commissioner, Karwar and Assistant Commissioner, Karwar vide order dated: 20-11-2009 set aside the Mutation entry No. A1049. Being aggrieved by this order the revision petitioners filed revision petition before this court.

The Advocate for the Appellant filed memo along with additional documents. But not filed any written arguments. So the appeal memo is considered as the written argument.

1. The impugned order passed by Assistant Commissioner, Karwar is illegal.



2. The impugned Mutation entry No.A1049 was certified on 22-01-1997 and after a lapse of 11 years the Respondent challenged the entry before Assistant Commissioner, Karwar and Assistant Commissioner, Karwar without seeking condonation of delay with Affidavit admitted the appeal and passed the impugned order.
3. The Respondent has also challenged the Mutation entry No. 11806 which was certified on 21-12-1957 in favour of Appellant No.1 after a lapse of 51 years after the death of her husband.
4. Mutation entry No. 1049 was certified on 22-01-1997 and Mutation entry No. 11806 was certified on 21-12-1957. Two separate appeals connecting two separate Mutation entries certified on different dates cannot be disposed by passing common order as the cause of action also stands different.
5. From 1997 the Appellant No.1 has paid the land revenues and the area is in their actual possession. But the Respondents have not taken any steps to claim the right by filing suit before Civil Court. Revenue Courts have no jurisdiction to entertain appeals after a lapse of 51 years.

Further the counsel for the appellant filed memo along with the application of Jnancshwar Gajinakar for survey in which he has clearly admitted that he has got right over 0-35-0(A-G-A) out of 1-23-0 (A-G-A).

Hence he requested to allow the appeal by restoring the impugned Mutation entry.

The Advocate for the Respondent not filed any written or oral argument. So it has been decided to dispose the case on the records available in the file.

On perusal of the Lower Court Records, written argument of Appellant and the order of Assistant Commissioner, Karwar reveals that in the suit Sy.No. 237 of Chittakula village of Karwar Taluka one Smt. Janaki Yesu Ambi executed a gift deed for an extent of 0-17-0(A-G-A) in favour of Narasinha Devastan Committee Chittakula dated 30-11-1996. In pursuant to this deed the President Narasinha Devastan Committee Chittakula name was mutated for an extent of 0-17-0 (A-G-A) in the suit property vide the impugned mutation entry No. A-1049 dated 22-1-1997. The total extent of the Sy.No. 237 is 1-23-0 out of this respondent's father has got clear title for an extent of 0-15-12 (A-G-A) by the order of Land Tribunal Karwar, dated 1-8-1979. Further respondent's father acquired right over 0-15-12 (A-G-A) under registered sale deed executed by Yesu Peru Ambi. Thus total extent of owned by the respondent's father is 1-10-12 (A-G-A). This means that respondent's father Shanker Sairu Gajinakar was absolute owner for a total extent of 1-10-12 (A-G-A). Therefore the remaining extent in the suit land would be just 0-12-4. That being so there is no explanation as to how the revision petitioner could get right and title over total extent of 0-17-0 guntas of land. Further, the gift deed executed by the Smt Janaki Yesu Ambi is an unregistered document. As per section 17 of The Transfer of Property Act any immovable property of the value of more than Rs. 100/- can only be transferred under registered deed. Thus viewed from any angle the gift deed has no legal sanctity.

So far as point of limitation is concerned, under section 136(2) of Karnataka Land Revenue Act 1964, an appeal or revision should be filed within 6 months either from the date of the order or knowledge of the order. Admittedly the appeal before the Assistant Commissioner, Karwar was not filed before the period of limitation. The challenged mutation entry No. A1049 was mutated on 6-12-1996. So all so mutation entry No. 11806 was mutated on 21-12-1957 and appeal was filed before Assistant Commissioner, Karwar on 10-9-2008, which is beyond the period of Limitation. But at



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the same time the order of Assistant Commissioner reveals that the appellant there in had filled delay condonation application under section 5 of limitation act supported by affidavit explaining the reasons for delay. Learned Assistant Commissioner has accepted the reasons for the delay in the back ground of peculiar facts and circumstances of the case. There are no cogent reasons to deviate from the finding given on the point of limitation, especially when the appellants hearing claim right over 0-17-0 of land by virtue of unregistered gift deed. Therefore in this background peculiar facts and circumstances of this case learned Assistant Commissioner is right in condoning the delay. Hence, I proceed the following Order.

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Date: 27-03-2017

**Order**

Revision petition is dismissed. Assistant Commissioner Karwar order no. RTS/AP/CR-14+15/08-09 dated: 20-11-2009 is upheld.

(Order dictated to the Stenographer, got Computerized, verified and pronounced in open court on 27-03-2017)



*[Signature]*  
27/3  
Deputy Commissioner  
Uttara Kannada, Karwar

**Copy to:-**

1. Advocate Sri. K. R. Desai and Sri. B. S. Pai for information.
2. Assistant Commissioner, Karwar for information and necessary action with Lower court file No. RTS/AP/CR-14+15/08-09 dated: 20-11-2009. page No.1 to page No.
3. Tahasildar Karwar for information and necessary action.