

Karnataka High Court C.N. Nagendra Singh vs The Special Deputy Commissioner ... on 28 May, 2002 Equivalent citations: ILR 2002 KAR 2750, 2002 (6) KarLJ 391 Author: N Jain Bench: N Jain, H Rangavittalachar, N Kumar JUDGMENT N.K. Jain, C.J. 1. A learned Single Judge of this Court has made this reference vide order dated 30-11-2001 passed in W.P. No. 19065 of 2001, to a larger Bench, to explain the scope, power and jurisdiction of the Revenue Officer under the provisions of Sections 127 to 129 of the Karnataka Land Revenue Act, 1964 (for short the "Act"), in view of the judgment in Lakshmi v. Assistant Commissioner, 1996(6) KLD 255. Therefore, by order dated 1-4-2002 passed by the Hon'ble Chief Justice, this reference is placed before us on 8-4-2002. 2. Brief facts leading to the order of reference, as alleged, are: Lands bearing Sy. Nos. 38/1, 39 and 41 situated at Chunchanaghatta Village, Bangalore South Taluk, originally belonged to late Hari Singh, the grandfather of the petitioner. Sri Hari Singh died on 13-4-1979, bequeathing the above said lands in favour of the petitioner under a Will dated 12-10-1959. The petitioner made an application for change of mutation in his name in respect of the aforesaid lands on the basis of the Will. The third respondent by his order dated 29-5-1982 ordered for a change of mutation. The said order was challenged by respondents 4 and 5 before the second respondent-Assistant Commissioner who set aside the order of the Tahsildar and remanded the matter to the Tahsildar for fresh enquiry. On remand the third respondent-Tahsildar by his order dated 28-2-1987 rejected the application of the petitioner and directed the parties to approach the competent Civil Court. Aggrieved by the said order the petitioner preferred an appeal to the Assistant Commissioner who dismissed the same. The revision against the said order was dismissed by the Deputy Commissioner. It is against these orders the petitioner preferred this writ petition, 3. Sri S.K. Venkata Reddy, learned Counsel appearing for the petitioner, contended that the revenue authorities were not justified in directing the parties to approach the competent Civil Court to establish their title to the property in question. The Revenue Officer being Revenue Court who is empowered to enquire into or to decide any question arising for determination between the parties to any proceedings is bound to hold an enquiry regarding the genuineness or otherwise of the Will set up by the petitioner for the limited purpose of making an entry in the mutation register and therefore the order directing the petitioner to approach the Civil Court is wholly erroneous. A mutation entry in the revenue records is not a document of title and therefore by holding a limited enquiry in respect of the genuineness of the Will the Revenue Authority could enter the name of the petitioner in the revenue records and in support of the said submission he relies on the decision of the Supreme Court in Babu Verghese and Ors. v. Bar Council of Kerala and Ors, . 4. On the other hand, the learned Counsel appearing for respondent 3, Sri B. Anand submits when the Will set up by the petitioner has been disputed by respondents 4 and 5, the Revenue Court is not competent to go into the genuineness or otherwise of the Will set up by the petitioner as the same falls within the exclusive jurisdiction of the Civil Court, as such the revenue authorities were fully justified in directing the parties to approach the Civil Court for adjudication and therefore he submits the orders

passed by the Revenue Courts are in accordance with law and not liable to be set aside. The learned Counsel Sri B. Anand, for respondent 3-Tahsildar, has also not disputed the legal position that a particular thing is to be done in a manner prescribed, but merely by having a Will in his favour, the petitioner cannot get his name entered in mutation register, which prima facie needs to be satisfied by a declaration from the competent Court. He further submitted that in the instant case the name of the legal heir has already been entered in the record of rights and the petitioner can get his name entered after getting the order from the competent Court. 5. Therefore, the point that arise for our consideration is what is the scope, power and jurisdiction of the Revenue Officer under the provisions of Sections 127 and 129 of the Act and whether the Revenue Officer is competent to hold an enquiry and decide the question of genuineness of a Will in proceedings under Section 129 of the Act. 6. It will be appropriate to refer to the relevant provisions of the Act 1964, which was enacted with an intention to consolidate and amend the law relating to land, the assessment and recovery of land revenue, the land revenue administration and other matters. Section 2(24) of the Act defines Revenue Officer. According to the definition Revenue Officer means every officer of any rank whatsoever appointed under or employed for the purposes of this Act. Section 24 of the Act declares Revenue Officers to be Revenue Courts. It states that a Revenue Officer, not below the rank of a Tahsildar while exercising power under this Act, or any other law for the time being in force, to inquire into or to decide any question arising, for determination between the State Government and any person or between parties to any proceedings, shall be a Revenue Court. Section 25 of the Act saves inherent powers of a Revenue Court. 7. Section 127 of the Act deals with preparation of record of rights in the prescribed manner. Section 128 of the Act deals with report of acquisition of rights and Section 129 deals with registration of mutations and register of disputed cases. If any person acquires by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent of revenue thereof, he shall report orally or in writing his acquisition of such right to the prescribed officer who in turn shall enter in the register of mutations every such report made to him. If any objections are received to any such entry the prescribed officer shall also enter the particulars of the objections in a register of disputed cases and thereafter he shall enquire into the said objections and dispose of the same in such manner as may be prescribed. A bare perusal of Section 128 makes it clear that the name cannot be entered in the record of rights merely on the basis of Will. The above definition reveals that there is no mention of Will. So according to petitioner's Counsel even putting the Will before the Revenue Court, one has to get a declaration from a competent Court, that is letters of probate and thereafter he can get his name entered in the mutation register. That apart, even according to petitioner's Counsel the mutation entry will not confer any right. Then there is no purpose of entering the petitioner's name. The argument cannot be accepted that the Revenue Officer can consider the Will, as he is not competent to decide the right under the Will. As per Section 135 a formal or a

summary inquiry under this Act shall be judicial proceedings and not otherwise. The cardinal principle of law is that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. Admittedly, the word 'Will' has deliberately not been used by the legislation and we cannot give a different meaning by adding the word 'Will'. In view of the above discussion, mutation entry cannot be effected on the basis of the Will as suggested and argued. 8. Rule 43 of the Karnataka Land Revenue Rules deals with settlement of disputes. It states every case entered in the register of disputed cases shall be enquired into and decided by the Sheristedar or by any officer of the Revenue Department equal or superior in rank to him on an appointed day of which due notice shall be given to the parties concerned. It categorically states the proceedings of the enquiry shall be oral and held in the public and there shall be no recording of statements and depositions. The only record shall be the decision of the officer holding the enquiry, in the register itself, which shall contain a brief summary of the facts elicited during the enquiry and the grounds for the decision. Of course an appeal is provided against such decision to the Assistant Commissioner in charge of the Sub-Division whose decision shall be final. Therefore, it becomes clear every Revenue Officer who is authorised to hold an enquiry in respect of disputed cases is a Revenue Court. The very fact that he is prohibited from recording the statements and depositions of the parties makes it clear that no substantial rights of the parties in respect of the disputed property can be gone into by such Revenue Court. If title or right set up by one party to an immovable property is disputed by the other party such title to the property cannot be enquired into by the Revenue Courts much less any decision be rendered for any purpose whatsoever. In the first place the Revenue Court constituted under the Act can only go into questions of assessment, recovery of land revenue and land revenue administration and it has no jurisdiction to go into the question of title in respect of an immovable property which exclusively vests in the Civil Court. 9. Considering Rule 43, when a person claims title to a property under a Will for the purpose of getting a mutation entry in the revenue records before any such entry is made the Revenue Court should prima facie be satisfied that the said document is genuine and valid even in the absence of any dispute as the said Will comes in the way of natural succession. By virtue of Section 128 when the owner of the land dies, the title to the said property passes on to the legal heir by succession or survivorship or inheritance and the property vests with such a legal heir without there being any document and purely based on the relationship of the deceased with the legal heir. A Will can come into operation only after the death of the executant. If a Will is set up to deprive, a legal heir who had acquired title to the property either by succession, survivorship or inheritance, the person claiming under the Will has to show better title. If the Will is disputed strict proof of Will as required under Sections 63 and 64 of the Succession Act is to be provided. 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 for any purpose whatsoever before the Revenue Court in an enquiry would not arise. Under these circumstances,

the Revenue Courts have no jurisdiction to go into the genuineness or validity of the Will or to the question of title in respect of the land in dispute. The decision of the Revenue Court has to be necessarily based on the undisputed facts. The Revenue Court cannot go into the disputed questions of relationship, status of the parties' title to the property or genuineness or otherwise of a document or challenge to the documents on the ground of fraud, undue influence, misrepresentation or mistake. As such, the petitioner cannot take advantage of Rule 43 in the case of a Will. 10. From the foregoing discussion it is clear that the Revenue Officer has no jurisdiction to enquire into and decide the dispute regarding the genuineness of a Will even for the limited purpose of making an entry in the mutation register as it falls exclusively within the jurisdiction of the Civil Court and we answer accordingly.