

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION No.6867/2014(KLR-RR/SUR)

BETWEEN:

SRI P. CHINNAPPA
S/O LATE PAPANNA,
SINCE DECEASED BY HIS LRS

1. SRI VENKATESHAPPA,
S/O LATE P. CHINNAPPA,
AGED ABOUT 46 YEARS,
RESIDING AT KARANJI KATTE
KOLAR CITY-563101.
2. SMT. ANUSUYAMMA,
W/O NARAYANASWAMY,
AGED ABOUT 44 YEARS,
RESIDING AT KAKINATHA VILLAGE,
SUGATUR HOBLI,
KOLAR TALUK-563101.
3. SRI ARJUNA,
S/O LATE P. CHINNAPPA,
AGED ABOUT 42 YEARS,
RESIDING AT KARANJI KATTE
KOLAR CITY-563101.
- 4 SMT. VARALAKSHMI,
W/O NATARAJ,

AGED ABOUT 40 YEARS,
RESIDING AT AGRAHARA BEEDI,
NEAR KSRTC BUS STAND,
SHIDDLAGHATTA TOWN,
CHICKBALLAPUR DISTRICT

5. SRI ANAND,
S/O LATE P. CHINNAPPA,
AGED ABOUT 38 YEARS,
RESIDING AT KARANJI KATTE
KOLAR CITY-563101.

...PETITIONERS

(BY SRI S. VISWESWARAIAH, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REP. BY ITS PRICIPAL SECRETARY
DEPARTMENT OF REVENUE
M. S. BUIDLING
AMBEDKAR VEEDHI
BANGALORE-560001.
- 2 . THE DEPUTY COMMISSIONER
KOLAR DISTRICT
KOLAR-563101.
- 3 . SRI M. MUNIYAPPA,
S/O LATE MUNIVENKATASWAMY
SINCE DECEASED BY HIS LRS
- R3(1) SRI M. NARAYANASWAMY,
S/O LATE M. MUNIYAPPA,
AGED ABOUT 61 YEARS,
R/AT 1192, BEHIND SATYAMMA TEMPLE
UPPAR PET, KOLAR-563101.

- R3(2) SMT. M. LAKSHMAMMA
W/O H. RAJANNA,
AGED 68 YEARS,
R/O BESIDE EDEN PARK,
PALANAJOGIHALLI VILLAGE,
MALLATHAHALLI POST,
DODDABALLAPURA TALUK,
BANGALORE RURAL DISTRICT-561203.
- R3(3) SRI M. LAKSHMINARAYANA,
S/O LATE M. MUNIYAPPA,
AGED ABOUT 57 YEARS,
R/AT 1192, BEHIND SATYAMMA TEMPLE
UPPAR PET, KOLAR-563101.
- R3(4) SMT. M. NIRMALA,
W/O M. RAMAKRISHNA
AGED ABOUT 54 YEARS,
R/AT No. 41, NEAR PANDURANGA TEMPLE,
PALANAJOGIHALLI VILLAGE,
MALLATHAHALLI POST,
DODDABALLAPURA TALUK,
BANGALORE RURAL DISTRICT-561203.
- R3(5) SRI M. KRISHNAMURTHY,
S/O LATE M. MUNIYAPPA,
AGED ABOUT 49 YEARS,
R/AT 1192, BEHIND SATYAMMA TEMPLE
UPPAR PET, KOLAR-563101.
- R3(6) SRI M. MANJUNATHA,
S/O LATE M. MUNIYAPPA,
AGED ABOUT 42 YEARS,
R/AT 1192, BEHIND SATYAMMA TEMPLE
UPPAR PET, KOLAR-563101.

- 4 . SMT. MUNITHAYAMMA
W/O LATE K. M. MUNISWAMY
AGED ABOUT 39 YEARS
- 5 . SMT. RATHNAMMA
D/O LATE BUCHAPPA AND
SISTER OF LATE K. M. MUNISWAMY
AGED ABOUT 50 YEARS
- 6 . SRI MANJUNATHA
S/O LATE K. M. MUNISWAMY
AGED ABOUT 35 YEARS
- 7 . SRI BABU
S/O LATE K. M. MUNISWAMY
AGED ABOUT 38 YEARS
- 8 . AMMALU
D/O LATE K. M. MUNISWAMY
AGED ABOUT 25 YEARS
RESIDING AT UPPARPET
KOLAR-563101.

NO.4 TO 8 ARE RESIDING AT
UPPARPET
KOLAR-563101.

- 9 . SRI MUNISWAMY
S/O LATE THIRUKANNA
AGED ABOUT 55 YEARS
SINCE DECEASED BY HIS LRS

9(a) SRI M. RAMACHANDRA,
S/O LATE T. MUNISHAMAPPA,
AGED ABOUT 46 YEARS,
R/AT 9TH CROSS,
ANJANEYA TEMPLE ROAD,

KARANJI KATTE,
KOLAR CITY-563101.

...RESPONDENTS

(BY SRI Y.D. HARSHA, AGA FOR R1 & R2;
SRI VEERANNA G. TIGADI, ADVOCATE FOR R3(1) TO R3(6);
SRI G.A. SRIKANTEGOWDA, ADVOCATE FOR R4, R5 AND R8;
SRI SURESH G HEGDE, ADVOCATE FOR R9(a);
R6 AND R7 ARE SERVED BUT UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSE A WRIT OF CERTIORARI OR ANY OTHER WRIT DIRECTION ORDER FOR QUASHING THE ORDER PASSED BY THE SECOND RESPONDENT IN CASE No.RA 33/2011-12 DATED 22.1.2014 PRODUCED AT ANNEXURE-M TO THIS PETITION BY ALLOWING THE WRIT PETITION ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners have filed the present writ petition for a writ of certiorari to quash the order passed by the 2nd respondent - Deputy Commissioner made in R.A. No.33/2011-12 dated 22.1.2014 allowing the Revision Petition and setting aside the order passed by the Assistant Commissioner in R.A. No.475/08-09 dated 3.6.2011 and

also the order passed by the Tahasildar in RRT DS(S)(T) 9/2006-07 dated 9.3.2009 in respect of Sy.No.82 measuring 4 acres 9 *guntas*.

2. It is the case of the petitioners that the property bearing Sy.No.82 of Keelukote village, Kasaba hobli, Kolar taluk measuring 2 acres 14 *guntas* originally belonged to one late K.M. Muniswamy, the husband of Respondent No.4, the brother of Respondent No.5 and father of Respondent Nos.6 to 8. During the life time of late K.M. Muniswamy, the Mutation was transferred by inheritance vide IHCR 70/1982-83 and accordingly, mutation was transferred into his name in respect of Sy.No.82 measuring 2 acres 5 *guntas* as per MR No.1/1982-83. The said late K.M. Muniswamy along with his children had sold the said land in favour of the original petitioner – P. Chinnappa on 11.9.2003 under the registered sale deed. The revenue authorities entered the name of the original petitioner in the revenue records in respect of the land in question.

3. When the things stood thus, the original petitioner and his family members effected partition through a registered partition deed in respect of Sy.No.82/2 measuring 2 acres 5 guntas. Accordingly, the original petitioner – Chinnappa got 10 guntas and his children were also allotted certain extent of land in Sy.No.82/2. The original petitioner and his children are in possession and enjoyment of the property, which is evident from the RTC extracts. In the meanwhile, the 3rd respondent had preferred an appeal before the Assistant Commissioner, Kolar challenging the M.R. No.1/1982-83 standing in the name of vendor of the original petitioner and after enquiry, the matter was remanded to Tahasildar, Kolar taluk and who passed an order transferring khatha i.e., half share to the 3rd respondent and half share to the 9th respondent in RRT No.2/2002-03. That was the subject matter of appeal in R.A. No.200/2003-04 before the Assistant

Commissioner, who allowed the appeal and remanded the matter to the Tahasildar to hold fresh enquiry.

4. It is further case of the petitioners that after remand, the Tahasildar held enquiry and passed an order dated 9.3.2009 to register *khata* in the name of the original petitioner based on the registered sale deed dated 11.9.2003. The 3rd respondent being aggrieved by the order passed by the Tahasildar dated 9.3.2009, preferred an appeal before the Assistant Commissioner, Kolar in R.A. No.475/08-09 and the said appeal came to be dismissed on 3.6.2011. Being aggrieved by the said order, the petitioner filed revision before the Deputy Commissioner in R.A. No.33/2011-12. The Deputy Commissioner without considering the material on record, proceeded to set aside both the orders passed by the Assistant Commissioner and the Tahasildar by the impugned order dated 22.1.2014. Hence, the present writ petition is filed for the relief sought for.

5. I have heard the learned counsel for the parties to the *lis*.

6. Sri S.Visweswaraiah, learned counsel for the petitioners contended that the impugned Order passed by the Deputy Commissioner exercising powers under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964, ignoring the registered sale deed dated 11.09.2003 made in favour of the petitioner by one K.M.Muniswamy and his children is contrary to law, cannot be sustained. He further contended that the respondent Nos.3 to 9 claiming under the registered Will dated 26.10.1974 have to approach the competent civil Court. The same has not been considered by the Deputy Commissioner. He further contended that the Deputy Commissioner mainly proceeded to allow the revision on the basis of the decree passed in O.S.No.281/1989 filed by one M.Muniyappa in respect of site measuring East West 61 feet North South 12 feet bearing khatha No.1190 (New

No.1352) assessment No.1297 situated at Division No.II, Upparpet, Kolar Town, and same was confirmed in R.A.No.21/1994 filed by one K.M.Muniswamy, the vendor. He further contended that the said decree does not pertain to Sy.No.82 measuring 2 acres 5 guntas situated at Keelukote village, Kasaba Hobli, Kolar Taluk. Therefore, the Deputy Commissioner is not justified in reversing the order passed by the Assistant Commissioner and the Tahsildar. Hence, sought to allow the writ petition.

7. Per contra, Sri Veeranna G. Tigadi, learned counsel for the legal representatives of respondent No.3 and Sri G.A. Srikantegowda, learned counsel for respondent Nos.4, 5 and 8, Sri Suresh G. Hegde, learned counsel for respondent No.9(A), Sri Y.D.Harsha, learned Additional Government Advocate for respondent Nos.1 and 2, sought to justify the impugned Order passed by the Deputy Commissioner.

8. Sri Veeranna G. Tigadi, learned counsel for the legal representatives of respondent No.3 contended that M. Muniyappa, respondent No.3 herein filed O.S.NO.281/1989 for the relief of declaration and permanent injunction in respect of the property in question. In the said suit, the vendor of the present petitioner, one K. Muniswamy has taken a specific defence that under the registered sale deed dated 22.2.88 the said Muniswamy purchased from his sister as per Ex.D.3 i.e., subsequent to the Will dated 26.10.1974. There is a finding by the Civil Court about the registered Will. Therefore, the Deputy Commissioner is justified in relying upon the said judgment and decree and sought to dismiss the writ petition.

9. Having heard the learned counsel for the parties, the present petitioner is claiming the property bearing Sy.No.82 measuring 2 acres 5 gunats out of 4 acres 9 guntas situated at Keelukunte, Kasaba Hobli, Kolar Taluk under registered sale deed dated 11.09.2003 by vendor

K.M.Muniswamy, the husband of respondent No.4, brother of respondent No.5, father of respondent Nos.6 to 8. The respondent Nos.3, 9 claiming under the registered Will dated 26.10.74 challenged the mutation entry made in favour of K.M.Muniswamy before the Assistant Commissioner which came to be allowed and after remand, the Tahsildar accepted in favour of petitioner based on registered sale deed. The same was confirmed by the Assistant Commissioner which was reversed by the Deputy Commissioner.

10. On a careful perusal of the Order passed by the Deputy Commissioner clearly depicts that he proceeded to pass orders on the basis of the judgment and decree made in O.S.No.281/1989 confirmed in RA No.21/94 katha has been made. A careful perusal of the judgment and decree produced by the petitioner along with additional documents clearly indicates that M.Muniyappa filed suit for declaration, injunction in respect of site measuring 61 x 12 feet khatha

No.1190 new No.1352 situated at Division No.2, Upparpet, Kolar Town. Though the vendor of the present petitioner was a party to the 2nd defendant in the said suit, suit came to be decreed on 28.02.94 confirmed in R.A.No.21/94 by the appellate court clearly depicts that the said judgment and decree not in respect of Sy.No.82 at all, it is only in respect of site number. The Deputy Commissioner proceeded to pass the impugned Order based on the said decree which is contrary to the material on record.

11. The material on record clearly depicts that the petitioner is claiming under registered sale deed dated 11.09.2003 said to have been executed by Muniswamy who became owner of the property by the sale deed 22.02.1988 from his sister. The respondent claim under the registered Will dated 26.10.1974. It is for the petitioner to approach the competent civil Court to establish his right based on the registered document and it is for the Civil Court to decide the rights of the parties in respect of immovable properties.

The revenue authorities have no right to decide the right and title in respect of the immovable property. It is the exclusive domain of the Civil Court. Though several contentions are raised by the learned counsel for the parties, still, this Court has not expressed any opinion on the merits and demerits of the case. As already held, the revenue authorities cannot decide the rights of the parties claiming under the registered Will and registered sale deed. It is for the petitioner or the respondents to approach the competent Civil Court. Any decree to be passed by the Civil Court in respect of disputed property is always binding on the parties as well as revenue authorities.

12. Though the learned counsel for the petitioner submits that the sale deed produced by the Muniswamy is in respect of site and not respect of property in question, it is for the petitioner to establish before the civil court as to how he got the property from his vendor. In view of the above, it is for the petitioner to approach the competent

civil court to establish his right, title and interest in respect of the property in question. The order passed by the Deputy Commissioner reversing the order passed by the Assistant Commissioner and the Tahsildar is always subject to the result of the suit to be filed by the present petitioner and any decree to be passed in respect of the property in question is binding on the parties.

13. In view of the aforesaid reasons, the writ petition is **allowed**. The impugned Order dated 22.01.2014 passed by the Deputy Commissioner is kept in abeyance which will be subject to the result of the suit to be filed by the petitioner and any decree to be passed will be binding on the parties. All the contentions of both the parties are kept open.

Ordered accordingly.

Sd/-
JUDGE