

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22nd DAY OF SEPTEMBER 1998

PRESENT:

THE HON'BLE MR.JUSTICE Y.BHASKAR RAO

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THE HON'BLE MR.JUSTICE N.S. VEERABHADRAIAH

WRIT APPEAL No. 1174/96 C/w.

WRIT APPEAL No. 1015/1996.

Between: (1174/1996)

1. Baburao,  
S/o. Sathyappa Padanad,  
Major, Occ:Agriculture  
R/o. Sankonatti,  
Taluk Athani,  
District Belgaum.

2. Suresh  
S/o. Baburao Padanad,  
Major, Occ:-do-  
of -do-

3. Chandrakanth  
S/o. Baburao Padanad,  
Major, Occ: Advocate,  
R/o. -do-

4. Sripal,  
S/o. Baburao Padanad,  
Major, R/o.-do-

..APPELLANTS

(By Sri. K.S.Savanur, Advocate for appellants)

A n d:

1. The State of Karnataka  
by its Secretary  
to the Revenue Department,  
M.S.Building, Bangalore-1.

2. The Deputy Commissioner,  
Court Compound at and  
Taluka - Athani,  
District- Belgaum.
3. The Tahsildar  
at Athani,  
District Belgaum.
4. Ramappa  
s/o. Annappa Padanad,  
Major, Occ:Agriculture  
S/o. Sankonatti
5. Adinath,  
S/o. Hanappa Padanad,  
Major, Occ:Agriculture  
R/o. -do-

.. RESPONDENTS

(By Sri. P.G.C.Chengappa, AGA for R1 to 3)

Between: (1015/1996)

Laxmanna Annappa Padanad,  
Major, Occ:Agriculture,  
R/o. Sankonatti village,  
Taluk, Athani,  
District Belgaum.

.. APPELLANT.

(By Sri. Mahantesh S.Hosmath, Adv. for Appellant))

A n d:

- 1) The Deputy Commissioner  
Belgaum District,  
Belgaum
- 2) The State of Karnataka,  
by its Secretary  
Revenue Department,  
M.S.Building, Bangalore-1

3) Ramappa Annappa Padanad

4) Adinath Ramappa Padanad,

Both are Majors, Occ: Agril,  
R/o. Sankonatti Village,  
TalukAthani,  
District: Belgaum

5) Baburao Styappa Padanad

6) Suresh Baburao Padanad

7) Chandrakant Baburao Padanad

8) Shripal Baburao Padanad

.. RESPONDENT

All are Majors, Occ:Agril  
R/o. Sankonatti Village,  
Taluk: Athani  
District: Belgaum.

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These Writ Appeals are filed under Section 4 of the Karnataka High Court Act, praying to set aside the order dt. 19.2.1996 in W.P.Nos. 3052/96 and 4412/96 respectively.

These Writ Appeals coming on for hearing this day, BHASKAR RAO J., delivered the following:

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J U D G M E N T

These Writ Appeals are filed assailing the order of the learned single Judge in Writ Petition No. 3052/96 C/w. 4412/96.

2. One Sathyappa Padanad was the original owner of the disputed lands. His son Baburao filed a suit in O.S. 16/91 on the file of the learned civil Judge at Athani and in that suit compromise was arrived at between the parties and a compromise petition dated 1-7-94 was filed the court by accepting the same, passed a final decree dated 23-7-94. That decree being not appealed against, it has become final between the parties. After the compromise decree was passed, the parties have approached the Tahsildar to enter their names and to make a mutation in the revenue records according to the compromise decree. Accordingly, an order was passed. Against that order, without filing an appeal, a Revision was filed before the Deputy Commissioner. The Deputy Commissioner held that all the interested parties are not given any notice, and an order was passed setting aside the order of

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the Tahsildar and the matter came to be remanded to the Tahsildar, Athani, to dispose of the matter afresh, after issuing notices to all the interested persons and after following the procedure laid down in Sections 128 and 129 of the Karnataka Land Revenue Act. Against that, Writ Petitions came to be filed.

3. Learned single Judge after considering the contentions of the parties, dismissed the Writ petitions. Against that, the present Writ Appeals are filed.

4. Learned Counsel for the appellants firstly contended that the Revision itself is not maintainable under Sec. 136(3) of the Karnataka Land Revenue Act as they have not taken the matter in Appeal and that the Revision is not filed within limitation.

5. Chapter VI of the Karnataka Land Revenue Act deals with record of rights:

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Sec.127 provides for Record of Rights:-

(1) A record of rights shall be prepared in the prescribed manner in respect of every village and such record shall include the following particulars:-

- (a) the names of persons who are holders, occupants, owners, mortgagees, landlords of tenants of the land or assignees of the rent or revenue thereof,
- (b) the nature and extent of the respective interest of such persons and the conditions or liabilities (if any) attaching thereto;
- (c) the rent or revenue (if any) payable by or to any of such persons; and
- (d) such other particulars as may be prescribed.

(2) The record of rights shall be maintained by such officers in such areas as may be prescribed and different officers may be prescribed for different areas.

(3) When the preparation of the record of rights referred to in sub-section (1) is completed in respect of any village, the fact of such completion shall be notified in the Official Gazette and in such manner as may be prescribed.

Sec. 128 deals with Acquisitions of rights to be reported:- (1) any person acquiring 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 or revenue thereof, shall report orally or in writing his acquisition of such right to

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prescribed officer of the village within three months from the date of such acquisition and the said officer shall at once give a written acknowledgment of the receipt of the report to the person making it.

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the prescribed officer;

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the prescribed officer.

Explanation 1:- The rights mentioned above include a mortgage without possession but do not include an easement or a charge not amounting to a mortgage of the kind specified in Section 100 of the Transfer of Property Act, 1882 (Central Act No.4 of 1882)

Explanation II - A persons in whose favour a mortgage is discharged or extinguished or a lease determined acquires a right within the meaning of this Section.

(2) Notwithstanding anything contained in sub-Section(1), the State Government may, by notification, appoint any Revenue Officer to whom a report under sub-section(1) may be made, in which case such officer shall give a written acknowledgment of the receipt of such report to the person making it, and forward the report to the prescribed officer of the village concerned.

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(3) If any person makes a report under Sub-section(1) or sub-section(2) -

(a) after the period of three months but within the period of one year from the date of acquisition of the right the report shall be received on payment of a penalty of two rupees;

(b) after a period of one year from the date of such acquisition the report shall be received on payment of a penalty of not less than two rupees but not exceeding ten rupees, as may be ordered -

(i) by the Tahsildar, in case the report is made under sub section(1) to the prescribed officer, or

(ii) by the Revenue Officer, in case the report is made to such officer under Sub-section(2).

(4) No document by virtue of which any person acquires a right in any land as holder, occupant, owner, mortgagee, landlord or tenant or assignee of the rent or revenue thereunder, shall be registered under the Indian Registration Act, 1908 (Central Act 12 of 1908), unless the person liable to pay the registration fee also pays to the registering authority such fees as may be prescribed for making the necessary entries in the record of rights and registers referred to in Section 129; and on the registration of such a document, the registering authority shall make a report of the acquisition of the right to the prescribed officer.

Sec. 129 provides for Registration of mutations and register of disputed cases - (1) The prescribed officer shall enter in the register of mutations every report made to him under Sub-section(1) of Section 128 or received by him under sub-section(2) of sub-section (4) of the said section.

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(2) Whenever a prescribed officer makes an entry in the Register of Mutations he shall at the same time post up a complete copy of the entry in a conspicuous place in the chavadi and shall give written intimation to all persons appearing from the Record of Rights or Register of mutations to be interested in the mutation, and to any other persons whom he has reason to believe to be interested therein.

(3) Should any objection to any entry made under sub-section(1) in the Register of mutations be made either orally or in writing to the prescribed officer, it shall be the duty of the prescribed officer to enter the particulars of the objections in a Register of Disputed Cases.

(4) The objections entered in the Register of Disputed cases and such other objections as may be made during the enquiry shall be enquired in to and disposed of by such officer and in such manner as may be prescribed. Orders disposing of such objections shall be recorded in the Register of Mutations by such officer.

(5) The officer holding an enquiry under sub-section(4) shall have all the powers under Chapter III, that a revenue officer has in making formal or summary enquiry under this Act.

(6) Entries in the Register of Mutations shall be tested and if found correct or after correction, as the case may be, shall be certified by such officer as may be prescribed.

(7) The transfer of entries from the Register of Mutations to the record of rights shall be effected in the prescribed manner, provided that an entry in the Register of Mutations shall not be transferred to the Record of Rights until such entry has been duly certified.

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Where the record of rights are prepared under sec. 127 and 129, an aggrieved party has a right of appeal under Sec. 136(2) of the Act.

6. A Revision is provided under Sec. 136(3) of the Act to the Deputy Commissioner however, suomoto or on the application by the aggrieved party, to call for and examine any records made under Sec.127 or under Sec.129.

Sec. 136 of the Act reads:

136: Appeal and Revision - (1) The provisions of Chapter V shall not apply to any decision or order under this Chapter.

(2) Any person affected by an order made under sub-section(4) or an entry certified under sub-section (6) of Section 129 may within a period of sixty days from the date of communication of the order or the knowledge of the entry certified, appeal to such officer as may be prescribed by the State Government in this behalf and his decision shall be final.

(3) The Deputy Commissioner may, on his own motion or on application of a party, call for and examine any records made under Section 127 and Section 129 and pass such orders as he may deem fit;

Provided that no order shall be passed except after hearing the party who would be adversely affected by such order.

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7. By reading clause(3), it is evident that the legislature has provided power to the Deputy Commissioner to call for the records made under Sec. 129 on his own or an application of parties. This power of the Deputy Commissioner is not subject to the conditions that the party has to file the appeal first. The question for consideration is whether a direct revision lies or only an appeal lies. It is necessary to mention one example. If an individual gets mutation fraudently, the aggrieved party can approach the Deputy Commissioner in revision and the Deputy Commissioner can call for the records of such mutation even though appeal is provided. Otherwise the power under Sec. 136(3) becomes redundant. It is settled principles of law, that Legislature never provides any redundant powers in any enactment. Therefore, on this aspect it is evident that the deputy Commissioner's power on revision are independent of the appeal.

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8. The next question is whether sub clause(3) of Sec.136 shows that a revision lies against the order under 136(2). The reason is that the order passed by original authority on filing an appeal merges with the appellate order. Therefore, in view of the above, we hold that the deputy commissioner has got power of revision to call for the records made under Sec. 127 or 129 of the Act.

We do not see any merit in this appeal.

Appeal is dismissed.

No order as to costs.

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