

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF JULY 2016

BEFORE

***THE HON'BLE MR.JUSTICE S. ABDUL NAZEER***

***WRIT PETITION NO.45205/2012 (KLR-RR/SUR)***

Between:

P.Ramaiah,  
Aged about 62 years,  
S/o late Puttaiah,  
R/a Kalkere Village,  
Krishnarajapura Hobli,  
Bangalore East Taluk,  
Bangalore – 560 036. .... Petitioner.

(By Sri A.Keshava Bhat, Adv. For Sri S.K.Acharya, Adv.)

And:

- 1 The Deputy Commissioner,  
Bangalore District 560 001.
- 2 The Assistant Commissioner,  
Bangalore North Sub Division,  
Podium Block, Dr.Ambedkar Road,  
Bangalore – 560 001.
- 3 The Special Tahsildar,  
Bangalore East Taluk,  
Krishnarajapuram,  
Bangalore – 560 036.

- 4 The Deputy Tahasildar,  
Bidarahalli Nada Kacheri,  
Bidarahalli, Bangalore East Taluk,  
Bangalore – 560 039.
- 5 P.Sonnappa,  
Aged about 69 years,  
S/o late Puttaiah,  
r/a Kalkere Village,  
Krishnarajapuram Hobli,  
Bangalore East Taluk,  
Bangalore – 560 036. .... Respondents.

(By Sri \* HCGP for R1 to R4  
Sri Prakash T. Hebbar, Adv. For R5)

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This Writ Petition is filed under Articles 226 & 227 of the Constitution of India, praying to quash the impugned order dated 12.10.2012 passed in Revision Petition No.229/2010-11 on the file of the Deputy Commissioner, Bangalore District, etc.

This Writ Petition coming on for Further Orders this day, the Court passed the following:

**ORDER**

In this case, the petitioner has called in question the legality and correctness of the order at Annexure 'A' dated 12.10.2012 in revision petition No.229/2010-11 whereby the

first respondent has set aside the order passed by the second respondent at Annexure 'B' dated 26.8.2010. The subject matter of this case is immoveable property bearing Sy.No.52/2 measuring 1 acre of Maragondanahalli Village and Sy.No.124 measuring 12 guntas of Kalkere Village of K.R.Puram Hobli, Bangalore East Taluk.

2. P. Sonnappa, the 5<sup>th</sup> respondent herein filed R.A.No.156(A)/2008-09 before the second respondent to set aside and/or modify MR No.27/1988-89 and M.R.No.49/1976-77. The second respondent by his order at Annexure 'B' dated 26.8.2010 dismissed the appeal as barred by limitation as there was a delay of more than 20 years in filing the appeal. The revision petition filed by the 5<sup>th</sup> respondent has been allowed in the following terms:

**“15.** For the foregoing reasons, I pass the following order:

A. The impugned order dated 26.8.2010 passed by the first respondent-Assistant Commissioner

in R.A.No.156(A)/2008-09 is hereby set aside as also the impugned mutations in M.R.No.27/1988-89 dated 25.12.1989 and M.R.No.49/1976-77b in respect of the land measuring 02 (two) acres and 29 (twenty-nine) guntas in Sy.No.52/2 of Maragondanahalli Village and 39 (thirty-nine) guntas of land in Sy.No.124 of Kalkere Village, both in Bangalore East Taluk in favour of the fourth respondent, as they are contrary to law.

B. The second and the third respondents are directed to restore the revenue entries in the name of the petitioner to an extent of 1-00 acre in Sy.No.52/2 and 1-00 acre and 31 guntas in the said Sy.No.52/2 of Maragondanahalli Village in the name of the 4<sup>th</sup> respondent and also to accept the mutation to an extent of 12 (twelve) guntas in the name of the petitioner and 14 (fourteen) guntas in the name of the 4<sup>th</sup> respondent in Sy.No.124 of Kalkere Village, K.R.Puram Hobli, Bangalore East Taluk, as per the Registered Partition Deed dated 28.2.1962 vide document No.1202/1962-63.

“The revision petition is allowed in the above terms.”

3. The contention of the learned Counsel for the petitioner is that the mutation as per Annexure ‘F’ has been accepted on the basis of the consent of the 5<sup>th</sup> respondent. There was a delay of more than 20 years in filing the appeal challenging the said order. In the application at Annexure ‘G’ filed under Section 5 of the Limitation Act, no reasons have been assigned for the delay except stating that he had no knowledge of the passing of the order. It is argued that setting aside the mutation order by the first respondent is contrary to law. He has taken me through the statement of objections at Annexure ‘C’ filed by the petitioner before the first respondent wherein he has assigned reasons for justifying his claim of title of the property. Learned Counsel argues that the third respondent while condoning the delay has allowed the revision petition without assigning cogent

reasons. It is further argued that the 5<sup>th</sup> respondent claims title to the property. If that is so, the dispute has to be adjudicated by the Civil Court.

4. On the other hand, learned Counsel appearing for the 5<sup>th</sup> respondent has sought to justify the impugned order. It is his submission that the petitioner has no title to the property in question. The acceptance of mutation on the basis of an agreement to sell is not permissible in law and it is beyond the scope of Section 128 of the Land Revenue Act, 1964 ('Act' for short). The revisional authority has clarified this position in his order. He has taken me through various documents in support of his contention that the 5<sup>th</sup> respondent is the owner of the property. It is his further submission that the earlier acceptance of mutation in respect of the lands in M.R.No.27/1988-89 standing in the name of the 5<sup>th</sup> respondent has not been set aside. The delay in filing the appeal cannot be attributable to the 5<sup>th</sup> respondent. The

5<sup>th</sup> respondent had no knowledge of the acceptance of mutation and he was not notified of the same. He prays for dismissal of the writ petition.

5. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

6. The mutation in M.R.Nos.27/1988-89 and 49/1976-77 has been accepted as per the order at Annexure 'F' dated 25.12.1989. There was a long delay of about 20 years in filing the appeal in R.A.No.156(A)/2008-09. It is evident that the order at Annexure 'F' has been passed on the basis of consent of the parties. Therefore, petitioner is not justified in contending that he had no knowledge of the order. The only explanation assigned for the delay in filing the appeal is that the said order has been passed in violation of the principles of natural justice. He had no knowledge about the passing of the

impugned order. The authorities have not communicated the said order of acceptance of mutation as required under law. As has been stated above, petitioner is not justified in contending that he had no knowledge of passing of the order at Annexure 'F' as it was passed on the basis of the consent of the parties. The period of limitation for filing the appeal under Section 136(2) of the Act is 60 days from the date of communication of the order or from the date of knowledge of the entry certifying it. The 5<sup>th</sup> respondent is not a stranger to the petitioner. He is admittedly the brother of the petitioner and is a resident of the same village. Taking into consideration these aspects, the second respondent has rejected the appeal.

7. The revisional authority has condoned the delay of about 20 years in filing the appeal without assigning cogent reasons. I am of the view that the revisional authority was not



justified in condoning the delay in filing the appeal and setting aside the well reasoned order of the appellate authority.

8. Apart from the above, there is a serious dispute in relation to title of the property between the parties. The petitioner contends that the mutation has been accepted on the basis of an agreement to sell, which is beyond the scope of Section 128 of the Act. The 5<sup>th</sup> respondent contends that he is the owner of the said property. It is well settled that revenue entries do not confer title. Proviso to Section 135 of the Act states that if any person is aggrieved as to any right of which he is in possession, by an entry made in any record or register maintained under Chapter XI, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his right under Chapter VI of the Specific Relief Act, 1877; and the entry in the record of register shall be amended in accordance with any such

declaration. Therefore, the aggrieved parties have to approach the Civil Court for appropriate reliefs.

9. Therefore, the order at Annexure 'A' passed by the first respondent in Revision Petition No.229/2010-11 dated 12.10.2012 is hereby quashed with liberty to the aggrieved parties to approach the Civil Court for appropriate reliefs.. Writ petition is accordingly allowed. No costs.

***Sd/-  
JUDGE.***

BMM/-