



...RESPONDENTS

(BY SMT.NILOUFER AKBAR., AGA)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER DATED 22/05/2023 PASSED IN WP NO.25582/2022 AND PERUSE THE SAME BY ALLOWING THE WRIT APPEAL.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

Heard learned advocate Mr. Jagadeeshachari for the appellant.

2. The appellant herein is the original petitioner who has preferred this writ appeal under Section 4 of the Karnataka High Court Act, 1961. The challenge in the appeal is addressed to the order dated 22.05.2023 passed by learned Single Judge dismissing the writ petition.

2.1 What was prayed in the writ petition was to set aside the orders dated 01.07.2021 and 18.07.2022 passed by the



respondents concerned. It was next prayed to direct respondent No.2 – Tahsildar, Shikaripura Taluk, to make *Khatha* as per the registered Will dated 30.12.2019 in favour of the petitioner.

3. The case of the petitioner in his writ petition was, *inter alia*, that the property bearing Survey No.2 admeasuring 5 acres 24 guntas situated at Udugani Village, Shikaripura Taluk, Shivamogga District, belonged to him and that he was the absolute owner of the property. The petitioner has two sisters – respondent Nos.5 and 6, it was stated. It was the case that respondent Nos.5 and 6 had obtained a gift deed from the mother and that the gift deed was executed by fraud and misrepresentation.

3.1 It was the case of the petitioner that the mother of the petitioner had acquired the property in question by gift deed executed by her husband late Mohammad Aswak. It was the further case that the petitioner had been staying in Saudi Arabia and when returned to India, it came to his notice that respondent Nos.5 and 6 conspired and forced the mother to execute a Will in their favour. The Will was a registered Will, it was stated.

3.2 The petitioner challenged the mutation entry made in favour of respondent Nos.5 and 6 by filing Regular Appeal which was



dismissed. Against the said order of dismissal, further appeals were filed by the petitioner which all came to be dismissed leading the petitioner to file the instant writ petition.

4. Learned Single Judge dismissed the writ petition by the impugned order. It was reasoned that the mother of the petitioner and respondent Nos.5 and 6 was the owner of the property who had executed a gift deed transferring the same in favour of respondent Nos.5 and 6. It was reasoned further that whether the gift deed was valid or not and whether respondent Nos.5 and 6 had got valid title over the property was the matter to be established before the civil court.

4.1 The mutation entries were made by the revenue authorities entering the names of respondent Nos.5 and 6 on the basis of the gift deed. It was observed that if the petitioner was to succeed before the civil court in the proceedings he may institute, revenue entries would remain subject to the outcome of such civil proceedings. The challenge to the mutation entries by the petitioner met with concurrent dismissal before the revenue authorities upto appeal before the Assistant Commissioner and also resulting into dismissal of revision by the Deputy Commissioner.



5. The weighty aspect which dissuades the court from exercising the writ jurisdiction is that the dispute between the parties is essentially in relation to validity of the gift deed. This dispute involves civil rights. In the ultimate analysis, what is to be adjudicated is whether respondent Nos.5 and 6 have got valid title over the property or not and whether the Will referred to by the petitioner and alleged to have been executed fraudulently and by misrepresentation is valid or not.

5.1 It is in light of these aspects that the assertion of the appellant that he is the absolute owner of the property will have to be examined. Decision on all issues would require leading of evidence and determination of civil rights amongst the parties. It involves adjudication into titular rights of the parties. It is trite principle that the dispute regarding property rights cannot be gone into in the writ jurisdiction. The parties have to take recourse to civil court.

5.2 The contested property rights cannot be dealt with in writ jurisdiction. The writ court can at the best take notice of the property rights of the parties which are already established rights. When a party is claiming under the disputed Will, the writ court would not be able to adjudicate it, for, it is a matter of leading



evidence. In the same way when the gift deed is the derivative document, whereunder the parties claim their respective title rights and dispute one another's claims, the adjudication has to be done by the civil court. The remedy before the civil court would be proper remedy in such circumstances.

5.3 This is reiterated by the Supreme Court in **Sohan Lal vs. Union of India and Another (AIR 1957 SC 529)** observing thus,

“We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

(para 5)

5.4 The above principle has been recognized statutorily in the proviso to Section 135 of the Karnataka Land Revenue Act, 1964.



Section 135 begins with the title “Bar of suits”. Proviso contemplates that if any person is aggrieved as to any right of which he is in possession, by an entry made in any of the record or register maintained, he may institute a suit against any person who denies or is interested to deny his title to such right, for declaration of his right. The entry in the record or in the register shall be amended in accordance with such declaration which may be given by the civil court, it is provided.

6. The reasoning supplied and the view taken by the learned Single Judge to dismiss the petition and further observing that if the petitioner is to succeed before the civil court, the revenue authorities would be bound to change the mutation entries to make in the name of the person who is held to be the owner of the property, is imminently just, proper and legal.

6.1 No error could be brooked in the impugned order of learned Single Judge.

7. The challenge in writ appeal is meritless. The same is dismissed.



In view of dismissal of the appeal, the interlocutory applications would not survive and they stand accordingly disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

THM
List No.: 1 SI No.: 49