

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE AT
KOLAR.**

Dated this the 28th day of September 2015

Present:

**SRI.RAJENDRA BADAMIKA, B.Sc. LL.B., (Spl)
PRINCIPAL DISTRICT JUDGE, KOLAR.**

M.A. No. 18/2013

Appellants:

- 1) Sahadevappa, S/o late Muniyappa, 42 years,
- 2) M.Lakshminarayana, S/o late T.Muniyappa, 46 Yrs,
- 3) Muniyamma, W/o late Savana Doddappa, 54 Yrs,
- 4) Lakshmaiah, S/o late Savana Doddappa, 54 Yrs,
- 5) Ramappa, W/o late Savana Doddappa, 48 Yrs,
- 6) Perumalappa, S/o late Savana Doddappa, 45 Yrs,
- 7) Narayanappa, S/o late Savana Doddappa, 43 Yrs,
- 8) Nagaraja, S/o late Savana Doddappa, 41 Yrs,
- 9) Narayanappa, S/o late Munivenkatappa
@ Abbaiah, 55 Yrs,
- 10) Venkataswamy S/o late Munivenkatappa,
@ Abbaiah, 45 Yrs,

All are R/o Hasandahalli Village, Masthi Hobli,
Malur Taluk.

(Represented by Sri.**G.C.H.**, Advocate)

Vs.

Respondents:

- 1) Yellappa, S/o late Venkatagiriappa, 70 Yrs,
- 2) Venkateshappa, S/o Yellappa, 46 Yrs,
- 3) Beerappa, S/o Yellappa, 46 Yrs,
- 4) Abbaiah, S/o Yellappa, 35 Yrs,

All are R/at Hasandahalli village, Masthi Hobli,
Malur Taluk.

- 5) The Tahsildar, Malur Taluk, Malur.

(R1 to R3 represented by Sri.**A.L.N.**, Advocate
R4 represented by Sri.**E.Y.**, Advocate &
R5 represented by Sri.**D.G.P.**, Advocate)

JUDGMENT

The appellants have preferred this appeal U/s.4 of the Karnataka Village Offices Abolition Act challenging the order passed by the Tahasildar, Malur, in INA CR No.148/ 1978-79 dated 26.07.1988.

2. The appellants have contended that, the original barwardar Venkatagiriappa sold Sy.No.23 to Perumanna on 8/8/1967 and in turn he has executed a registered Will in favour of 1st appellant on 10/2/1992. It is also contended that, Sy.No.25 measuring 11 guntas was sold by barwardar Venkatagiriappa under a registered sale deed dated 19/10/1971 to Munivenkatappa, the father of appellants No.9 and 10 and they were not given any opportunity of being heard and the regrant order was passed in a mechanical way in favour of barwardar Venkatagiriappa.

3. Hence the appellants have filed this appeal challenging the said order on following grounds:

That the impugned order is perverse, illegal, capricious and one sided. That the learned Tahasildar, Malur while considering the regrant application of Venkatagiriappa had not made any efforts to ascertain the possession and he has also ignored the mortgage in this regard. That he has failed to consider the law laid down in this regard in the

decision reported in 1981(1) K.L.J. Page 1 (Lakshman Gowda Vs. State of Karnataka). That the learned Tahasildar has failed to note that, wide publicity was required to be given before passing a regrant order. But he did not take note of these aspects. That the appellants got information only when there was an attempt to alienate the lands and hence it is contended that, the order under appeal is unsustainable and calls for interference. Hence this appeal.

4. After registering the appeal, the notices have been issued to the respondents and they have appeared through their counsels. There was delay in filing the appeal and I.A.No.1 was filed in this regard and after recording the evidence, the I.A., came to be allowed by condoning the delay and appeal was admitted for hearing on merits.

5. The records of the trial court are also secured.

6. Heard the learned counsels for appellants and respondents and perused the records.

7. Now, the following point would arise for my consideration:

1) Whether the order under appeal is erroneous, illegal and capricious so as to call for interference by this court?

2) What order?

8. After hearing the arguments and perusing records, I proceed to answer the above points as under:

Point No.1 : In **AFFIRMATIVE**

Point No.2 : As per final order for the following:

REASONS

Point No.1:-

9. It is an admitted fact that, the disputed lands bearing Sy.Nos.23 and 25 have been regranted in the name of Barwardar Venkatagiriyappa and respondent No.1 claims to be the fostered son of said Venkatagiriyappa. It is the specific allegation of appellants that, in 1963, 1971 and 1972, the original barwardar Venkatagiriyappa has executed sale deeds pertaining to the suit properties and mortgage deed was also executed. The original sale deeds and mortgage deed are produced by the appellants. On perusal of these documents, it is evident that, the original barwardar along with respondent No.1 together sold these lands in favour of father of appellants under sale deed of 1971-72. Further, the original mortgage deed was also executed in 1963. Further, the respondent No.1 claims to be the fostered son of deceased original barwardar Venkatagiriyappa, but he never claims to be an adopted son and no Will was executed in his

favour. Hence he cannot become a class-I heir of Venkatagiriyappa and as such, question of he inheriting the properties does not arise at all.

10. Apart from that, the sale deeds and mortgage deed are registered documents and these documents are produced at Ex.P4 to P8. Further Ex.P9 is the encumbrance certificate, which is also refers regarding transaction. The original barwardar did not disclose the mortgage and some of sale deeds. But the order of Tahasildar clearly disclose that, the regrant holder Venkatagiriyappa has sold 10 guntas out of Sy.No.23 to the father of appellants Nos. 3 to 8. But, though there was a reference regarding the sale deeds and mortgage deed, the learned Tahasildar did not choose to issue notice to the purchasers for the best reasons known to him. It is not the case of the respondents that, the notice has been issued on the appellants. The order of learned Tahasildar itself discloses that, he had knowledge and the same has been admitted by the father of respondents in his application itself, but he did not issue any notice and as such the appellants have been denied an opportunity of they being heard in this regard. Under such circumstances, when the appellants were not given any notice and when they does not have any information regarding regrant then this order does not bind them. Further they are claiming interest in the properties on the basis of the sale deeds and the learned Tahasildar ought to have

considered validity of the sale deeds in this regard in pursuance of decision reported in **1981(1) K.L.J. Page 1** and **ILR 1994 KAR 159**. The order of the Tahasildar itself, which is marked at Ex.P1 clearly discloses that, he has referred regarding sale of 10 guntas out of Sy.No.23, but he did not thought it fit to issue notice to the purchasers and straight away regranted the lands. It is to be noted here that, Venkatagiriappa had already violated the regrant conditions and question of regranteeing in his favour does not arise at all. All these questions ought to have been answered by the Tahasildar, but he did not consider any of these aspects and in a mechanical way, without even application of mind, he has passed the impugned order. Hence the order under appeal is erroneous and illegal and appellants were deprived of putting forward their claim and hence it calls for interference. As such I am constrained to answer the point under consideration in the affirmative.

Point No.2:-

11. In view of my findings on the above point and reasons assigned thereunder, the appeal needs to be allowed and accordingly, I proceed to pass the following:

ORDER

The appeal is allowed.

The impugned order passed by the learned Taluka Executive Magistrate/Tahasildar, Malur, in INA CR 148/1978-79 dated 26/7/1988 is set aside.

The matter is remanded back to the learned Taluka Executive Magistrate/Tahasildar, Malur, with a direction to give an opportunity to the appellants by issuing notice to them and then pass an appropriate order in accordance with law.

Under the circumstances, the parties are directed to bear their own costs.

Send back the lower court records along with a copy of this judgment to learned Taluka Executive Magistrate/Tahasildar, Malur, for due compliance.

Dictated to the Judgment-writer, transcribed and computerized by her, corrected, pronounced and then signed by me on this the 28th day of September 2015.

(RAJENDRA BADAMIKA)
PRINCIPAL DISTRICT JUDGE, KOLAR.

ms/-*