

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 9542 OF 2010

N. KRISHNAMURTHY

Appellant (s)

VERSUS

SPECIAL DEPUTY COMMISSIONER AND OTHERS

Respondent(s)

WITH

CONTEMPT PETITION (C) NO. 269 of 2010 in C.A. NO.9542/2010

O R D E R

Civil Appeal No.9542/2010:

This appeal is directed against judgment dated 16.3.2009 of the Division Bench of the Karnataka High Court whereby the writ appeal filed by the appellant against the order passed by the learned Single Judge in Writ Petition No. 4002/2002 was dismissed and Writ Appeal No.1722/2007 filed by Smt. Subbamma was allowed.

The writ petition filed by the appellant questioning orders dated 15.1.2002 and 11.10.2002 passed by the Assistant Commissioner, Bangalore, North Taluk, Sub-Division, Bangalore and Special Deputy Commissioner, Bangalore respectively cancelling the mutation entries in IHC No.11/87-88 and MR

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43/87-88 was disposed of in the following terms:

"In the result, I make the following order:

i)The order dated 15.1.2002 passed by the Assistant Commissioner in RA No. 59/01-02 and the order dated 11.10.2002 passed by the Deputy Commissioner in revision petition No. 132/2001-02 to the extent of acting aside the mutation entries bearing Nos. IHC 11/87-88 and MR 43/87-88 are upheld. However, the observations findings and conclusions reached by both the authorities in their orders in so far as deciding the title to the property with reference to the earlier sale deeds, mortgage deeds etc. are unsustainable and the same are quashed.

ii)The matter stands remitted to the Assistant Commissioner to restore on file the appeal No.59/2001-02 and arrive at a finding as to which of the nearest earlier entries prior to the impugned entries had been made in accordance with law after following the procedure contemplated under Section 129 of the Act and such determined entry is ordered to be retained in the revenue records.

iii)On such determination, if either of the parties is aggrieved that such earlier entry though made as per procedure is contrary to the right and title claimed by such party, it shall be open to such party to have the issue settled before the Civil Court and thereafter seek reversal of the entry based on the decree.

iv)Consequently, the writ petition stands disposed of with the above observations and directions with no order as to costs."

The appellant and Smt. Subbamma challenged the order of the learned Single Judge by filing separate writ appeals. The Division Bench agreed with the learned Single Judge that the revenue entries do not create any right or title in respect
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of the properties in question and held that the learned Single Judge had correctly appreciated the scope of Section 136 of the Karnataka Land Revenue Act. The Division Bench then proceeded to set aside the remand order passed by the learned Single Judge and declared that mutation entry has to be in the name of Smt. Subbamma, whose name was shown as Khatedar in the revenue records prior to 1987-88. This is reflected in paragraph 13 of the order of the Division Bench, which is extracted below:

"13. So far as entries in the name of the 4th respondent in the writ petition, there was no challenge whatsoever by the writ petitioner or any one claiming under him. In that view of the matter, the learned Single Judge was not justified in holding that the Assistant Commissioner has to determine as to which of the nearest earlier entries came to be made in accordance with law and after reaching such conclusion, said mutation entry shall be directed to be retained in the mutation register. By this observation, the learned Single Judge has again created the same difficulty for the authority to inquire in detail and then conclude which entry is in accordance with law. If there is a dispute with regard to the title and right over the property, the revenue authorities cannot decide the said issues. Under the circumstances, one has to uphold the orders of the Appellate Authority and the Revisional Authority. When once the entries

consequent to IHC. II/1987-88 and MR. No.43/1987-88 are set aside, automatically, the entry has to be in the name of the person i.e., 4th respondent whose name was shown as khathedar in the revenue records prior to the mutation entries of 1987-88."

We have heard Shri P.S. Patwalia, learned senior
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counsel appearing for the appellant and Shri Kailash Vasdev, learned senior counsel appearing for the respondents and carefully perused the record.

In our view, the concurrent finding recorded by the learned Single Judge and the Division Bench of the High Court that the mutation entries do not confer title upon the persons in whose favour such entries are made does not suffer from any legal infirmity. We are also of the view that the Division Bench rightly set aside the remand order passed by the learned Single Judge because prior to 1987-88, revenue entries stood in the name of Smt. Subbamma and her predecessor.

The appeal is accordingly dismissed. However, liberty is given to the appellant to file civil suit for determination of his title over the property in dispute. If the appellant files suit, then the same shall be decided by the concerned Court on its own merits keeping in view the pleadings and evidence produced by the parties without being influenced by the observations made in the order of the learned Single Judge as also in the impugned judgment.

CONTEMPT PETITION (C) NO. 269 of 2010:

In view of the order passed today in Civil Appeal No.9542 of 2011, the contempt petition is dismissed.
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.....J.
(G.S. SINGHVI)

.....J.

(ASOK KUMAR GANGULY)

NEW DELHI,
JULY 04, 2011.

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ITEM NO.35

COURT NO.11

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 9542 OF 2010

N.KRISHNAMURTHY

Appellant (s)

VERSUS

SPECIAL DEPUTY COMMISSIONER & ORS

Respondent(s)

WITH CONMT.PET.(C) NO. 269 of 2010 In C.A.No.9542/2010

Date: 04/07/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s)

Mr. P.S. Patwalia, Sr.Adv.
Mr. Anand Sanjay M. Nuli, Adv.
Mr. Aman P. Singh, Adv.
Mr. Debasis Misra, A.O.R.[Not present]
Mr. V.N. Raghupathy, A.O.R.[Not present]

For Respondent(s)

Mr. Kailash Vasdev, SR. Adv.
Mr. Girish Ananthamurthy, Adv.
Ms. Sudha S.N., Adv.
Mrs. Vaijyanthi Girish, A.O.R.[Not present]
[for respondent no.4]

UPON hearing counsel the Court made the following

O R D E R

CIVIL APPEAL NO(s). 9542 OF 2010:

In terms of signed order, the appeal is dismissed. However, liberty is given to the appellant to file civil suit for determination of his title over the property in dispute. If the appellant files suit, then the same shall be decided by the concerned Court on its own merits keeping in view the pleadings and evidence produced by the parties without being

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influenced by the observations made in the order of the learned Single Judge as also in the impugned judgment.

CONTEMPT PETITION (C) NO. 269 of 2010:

In view of the order passed today in Civil Appeal No.9542 of 2011, the contempt petition is dismissed.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Order is placed on the file)