

ITEM NO.41

COURT NO.12

SECTION IVA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 29462/2008

(Arising out of impugned final judgment and order dated 18/09/2008 in WA No. 1294/2008 passed by the High Court Of Karnataka at Bangalore)

Y.M.MAHADEVAMMA

Petitioner(s)

VERSUS

S.SHADAKSHARI SWAMY &amp; ORS.

Respondent(s)

(with appln. (s) for directions and exemption from filing O.T., permission to file additional documents, interim relief and office report)

(FOR FINAL DISPOSAL)

WITH

SLP(C) No. 16378/2009

(With appln.(s) for c/delay in filing SLP and Office Report)

Date : 29/02/2016 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s) Mr. G.V. Chandrashekar, Adv.  
Mr. N.K. Verma, Adv.  
Ms. Anjana Chandrashekar, Adv.

Mrs. Vaijyanthi Girish, Adv.

For Respondent(s) Mr. P. K. Jain, Adv.

Mr. C. Badri Nath Babu, Adv.  
Mr. S.K. Manjunath, Adv.  
Mr. V.V. Ragudev, Adv.  
Mr. Rameshwar Prasad Goyal, Adv.

Mrs. Vaijyanthi Girish, Adv.

UPON hearing the counsel the Court made the following

O R D E R

There is a dispute about the suit property which bears Khata

No. 246 (Old Sy. No. 54/1) situated in Byrapura, T. Narasipur Taluk, Karnataka. Both the petitioner as well as the respondents are claiming their rights over the said property. According to the petitioner this land had come to his share by virtue of some family arrangements which were made much prior to the year 1980. It so happened that the petitioner had approached the Gram Panchayat for transferring the said Khata in her name on 09.12.1983. The Gram Panchayat passed the resolution transferring the said Khata in her name. According to respondent no.1 he was not aware of the same and when he came to know about the aforesaid transfer of Khata in the name of the petitioner, he made representation to Gram Panchayat for transferring the Khata in his name. It was rejected by the Gram Panchayat. Challenging that order, respondent no. 1 filed appeal under Section 269 of the Karnataka Panchayatraj Act before the Executive Officer, Gram Panchayat. This appeal was allowed by respondent no. 2. The order of respondent no. 2 was challenged by the petitioner by filing the writ petition in the High Court. The learned Single Judge allowed the said writ petition holding that the appropriate remedy was to file a civil suit. For arriving at this conclusion, the learned Single Judge *inter alia* gave the following reasons:

"Undoubtedly, neither the order transferring the Katha of the said property into the name of Jayashekar Swamy, nor into the name of the first petitioner in the year 1983, are called in question in appeal by the third respondent. Without questioning the said two orders of the Gram Panchayat, no appeal was maintainable against the endorsement, Annexure 'K'. the order impugned which set aside the enforcement, and directed the entry of the name of the third respondent as kathedar by deleting the names of the first

petitioner and late Jayashekar Swamy, is without authority of law and unsustainable."

The Division Bench, in intra court appeal filed by respondent no. 1, has set aside the aforesaid order holding that it is the appeal under Section 269 which is the proper remedy and not the Civil Suit.

In the aforesaid background, the question before us is as to whether the appropriate remedy is by way of a Civil Suit or Appeal under Section 269 of the Karnataka Panchayatraj Act. Section 269 reads as under:

"269. Appeals[(1)] Any person aggrieved by any original order of the Grama Panchayat under this Act, unless appeal is provided elsewhere in this Act, may within thirty days from the date of such order appeal to the Executive Officer.]

(2) The Appellate Authority may after giving an opportunity to the appellant to be heard and after such enquiry as it deems fit, decide the appeal and its decision shall be final.

(3) Any appeal under sub-section (1) pending before the Zilla Parishad shall on the date of commencement of the Karnataka Panchayat Raj Act, 1993 stand transferred to the Assistant Commissioner and such appeal shall be decided by him as if it has been filed before him."

It is clear from the above that against any original order passed by the Gram Panchayat, statutory remedy of appeal is provided. Therefore, it cannot be said that the appeal is not maintainable and to that extent order of the learned Single Judge was rightly set aside. However, as pointed out above, the learned Single Judge of the High Court had observed that respondent no. 1 had not challenged the order passed by the Gram Panchayat but had

only questioned the endorsement. That is a matter which is to be gone into by the Executive Officer/Appellate Authority, in case, respondent no. 1 wants to amend the appeal, he can file an appropriate application, which of course shall be dealt with in accordance with law and it would be open to the respondents to contest the said application on all the grounds available to them in law.

With the aforesaid observations the special leave petitions are dismissed.

(Ashwani Thakur)  
COURT MASTER

(Tapan Kr. Chakraborty)  
COURT MASTER