



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE R DEVDAS

WRIT PETITION NO. 3965 OF 2018 (KLR-RES)

BETWEEN:

M L SRINIVASAMURTHY
SINCE DEAD REPRESENTED BY HIS
LEGAL REPRESENTATIVES

01. SMT. K.PRABHAVATHI
W/O LATE SRINIVASA MURTHY M.L.,
AGED ABOUT 65 YEARS
HOME MAKER

02. M.S. SANTOSH
S/O LATE SRINIVASA MURTHY M.L.,
AGED ABOUT 45 YEARS
EMPLOYEE & AGRICULTURIST

03. M.S.SANDEEP
S/O LATE SRINIVASA MURTHY M.L.,
AGED ABOUT 42 YEARS
EMPLOYEE & AGRICULTURIST

ALL ARE R/O J-55, 1ST CROSS
BEHIND KANTEERAVA PRESS
PARK EXTENSION, DURGIGUDI
SHIVAMOGGA
SHIVAMOGGA-577 201

AND THEY ARE REP. BY THEIR GPA HOLDER
PRAMOD A.V.,
S/O A.N.VASANTHA MADHAVA RAO

Digitally signed
by JUANITA
THEJESWINI
Location: HIGH
COURT OF
KARNATAKA



AGED ABOUT 42 YEARS
AGRICULTURIST
R/O LAKSHMIVENKATESHA KRUPA
2ND CROSS, KEERTINAGARA
SHIVAMOGGA CITY-577204.

...PETITIONERS

(BY SRI. S V PRAKASH., ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF REVENUE
M S BUILDING,
BENGALURU-560 001
BY ITS PRINCIPAL SECRETARY
2. THE DEPUTY COMMISSIONER
SHIVAMOGGA DISTRICT
SHIVAMOGGA-577 201
3. THE ASSISTANT COMMISSIONER
SHIVAMOGGA SUB-DIVISION,
SHIVAMOGGA-577 201
4. THE TAHASILDAR
BHADRAVATHI TALUK,
BHADRAVATHI-577 201
SHIVAMOGGA DISTRICT
5. M L MADHUSUDHAN
S/O M R LAKSHMAIAH,
AGED ABOUT 72 YEARS
R/O "TOTADHAMANE"
MADARIPALYA, URAGODUR POST,
SHIVAMOGGA CITY-577 201

...RESPONDENTS

(BY SRI. V.SESHU., HCGP FOR R1 TO R4
SRI. PRADEEPJ. S., FOR SRI. N.SUBBA SHASTRY.,
ADVOCATES FOR R5
SRI. P.N. HARISH., ADVOCATE FOR IMPLEADING
APPLICANT-SRI.M.L.NANDAKUMAR)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 18.01.2018 PASSED BY THE DEPUTY COMMISSIONER, SHIVAMOGGA DISTRICT, SHIVAMOGGA THE SECOND RESPONDENT HEREIN IN R.MISC.NO.26/2016-17 (RD/00/500000/350487) AT ANNEXURE-S CONFIRMING THE ORDER DATED 01.04.2016 PASSED BY THE ASSISTANT COMMISSIONER AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R DEVDAS

ORAL ORDER

The original petitioner and respondent No.5 are brothers along with another brother who has filed an impleading application before this Court viz., Sri.M.L.Nandakumar. The petitioner is before this Court raising a challenge to the impugned order passed by the Assistant Commissioner, Shivamogga Sub-Division, at Annexure-M in proceedings bearing No.PDA 08/2014-2015 dated 01.04.2016 and the order of the Revisional Authority, i.e., Deputy Commissioner, Shivamogga District, at Annexure-S in proceedings bearing No.R.Misc.No.26/2016-2017 dated 18.01.2018.



2. The brief facts giving a background to the present writ petition is that, there was an unregistered partition deed entered between the three brothers on 22.11.1985. Though the partition took place in the year 1985, the revenue entries were not mutated and therefore, the impleading applicant filed an application before the Tahsildar, Shivamogga Taluk, against both the other brothers and the Tahsildar took up the matter in proceedings bearing No. RR/DS/CR 31/1996-97 and passed an order on 13.11.1996 declining to enter the names of the parties on the strength of an unregistered partition deed. Thereafter, the impleading applicant-Sri.M.L.Nandukumar filed an appeal before the Assistant Commissioner invoking Section 136(2) of the Karnataka Land Revenue Act, 1964, in proceedings bearing No.PDA 110/1996-1997. The Assistant Commissioner allowed the appeal by order dated 23.07.1997, directing the Tahsildar to mutate and enter the names of the three brothers in the revenue records in terms of the partition deed.



Thereafter, the Tahsildar proceeded to pass an order of mutation in M.R.No.105/1999-2000 at Annexure-C, mentioning the extent of lands in the three survey numbers. Accordingly, the RTCs contain the information regarding the extent of land in each of the three survey numbers in respect of the three brothers. However. Sri.M.L.Mudhusudhan-respondent No.5 herein filed an appeal before the Assistant Commissioner in the year 2008-2009 calling in question the mutation order in M.R.No.105/1999-2000, arraigning the petitioner herein as respondent No.2 and did not implead the present impleading applicant-Sri.M.L.Nandukumar in the said proceedings.

3. Learned Counsel for the petitioner submits that a plain reading of the order passed by the Assistant Commissioner clearly shows that according to respondent No.5 who is the appellant therein the dispute was in respect of Sy.No.14. The Assistant Commissioner has noticed in the order, in detail, the extent of lands fallen to



the share of each of the brothers in all the three survey numbers. The three sets of lands have been divided equally amongst the brothers, the Assistant Commissioner dismissed the appeal on 11.08.2009. The said order passed by the Assistant Commissioner attained finality. However, once again respondent No.5 filed another appeal before the Assistant Commissioner once again invoking Section 136(2) of the Act and this time raising a contention regarding Sy.No.13. The petitioner herein, who was arrayed as a respondent in the proceedings, entered appearance and filed objections contending that the appeal is not maintainable, since an appeal was earlier filed by the same party and the issue has been decided and therefore, the second appeal is hit by the principles of *res judicata*. Nevertheless, the Assistant Commissioner proceeded to allow the appeal by order dated 01.04.2016 directing the Tahsildar to reconsider the matter in terms of Sections 127 and 128 of the Act. Aggrieved by the same, the petitioner herein preferred a revision petition before



the Deputy Commissioner in proceedings bearing No.R.Misc.26/2016-2017.

4. Learned Counsel for the petitioner points out to the impugned order that although the Deputy Commissioner accepted the contention of the petitioner that the second proceedings initiated at the hands of respondent No.5 herein was hit by the principles of *res judicata*, nevertheless, since in the earlier proceedings what was contested was regarding Sy.No.14 and this time what is contented is regarding Sy.No.13, the Deputy Commissioner dismissed the revision petition filed by the petitioner, more so, while noticing that the matter has been remanded back to the Tahsildar and the parties will have an opportunity to have their say before the Tahsildar. It is pointed out that the Deputy Commissioner has also directed the Tahsildar to ensure that the extent of lands in respect of each of the three survey numbers is mentioned in the revenue records in terms of the partition deed.



5. Learned Counsel for the petitioner further submits that having admitted that the second proceedings under Section 136(2) of the Act, was hit by the principles of *res judicata*, nevertheless, without even considering the question as to whether delay was condonable and though the application for condonation of delay was filed, no orders are passed on the application for condonation of delay, the Deputy Commissioner has proceeded to pass the impugned order. Learned Counsel further submits that now the issue has become disputed question of title and therefore, the matter cannot be decided by the revenue authorities. Moreover, the petitioner has already filed a suit in O.S.No.620/2020, on the file of V Additional Civil Judge and JMFC., Shivamogga, seeking permanent injunction restraining respondents No.5 & 6 and the impleading applicant herein from interfering with the peacefull possession and enjoyment of the suit schedule property, which includes all the three survey numbers and



therefore, learned Counsel would submit that the parties should be directed to await the outcome of the suit.

6. Per contra, learned Counsel for respondent No.5 submits that the suit filed by the petitioner is only for permanent injunction and not for declaration of the rights of the parties. Learned Counsel for the impleading applicant submits that any orders that would be passed by this Court would affect the rights of the impleading applicant and therefore, without hearing the impleading applicant no orders should be passed.

7. Having heard the learned Counsel for the petitioner, learned Counsel for respondent No.5, learned Counsel for the impleading applicant, learned High Court Government Pleader and perused petition papers, this Court is of the considered opinion that the issue now touches upon disputed questions of title. It will not be open for the revenue authorities to decide regarding the change in the extent of lands in terms of the mutation orders already passed in the year 1999-2000. If



respondent No.5 is of the opinion that the suit filed by the petitioner is only for permanent injunction and it will not decide the rights of the parties, it is always open for respondent No.5 to file a suit separately seeking a declaration of the rights of respondent No.5. The learned Counsel for respondent No.5 submits that a counter claim has been filed by respondent No.5 along with the written statement, however, there again a declaration is not sought. Therefore, if it is permissible in law for the parties to convert the suit into one for declaration, it is open for them to file necessary applications to convert the suit and the counter claim into one for declaration of the rights of the parties. Liberty is also reserved to the impleading applicant to take necessary steps in this regard.

8. With these observations, writ petition is ***partly allowed*** while setting aside the impugned order passed by the Assistant Commissioner, Shivamogga Sub-Division, at Annexure-M in proceedings bearing No.PDA 08/2014-2015 dated 01.04.2016 and the order of the Revisional



Authority, i.e., Deputy Commissioner, Shivamogga District, at Annexure-S in proceedings bearing No.R.Misc.No.26/2016-2017 dated 18.01.2018. All contentions are kept open.

Ordered accordingly.

9. In view of disposal of the main petition, pending Interlocutory Applications, do not survive for consideration and are accordingly disposed of.

**Sd/-
(R DEVDAS)
JUDGE**

DL
CT: JL