

State of Karnataka and Others

Vs

K. V. Khader

Civil Appeal No. 2763 of 1987

(M.H. Kania, R.M. Sahai JJ)

28.02.1990

JUDGMENT

KANIA, J. -

1. This is an appeal by special leave against the judgment and order of a learned Single Judge of the Karnataka High Court in Regular Second Appeal No. 17 of 1987 filed in the said High Court.

2. As we are generally in agreement with the reasoning and conclusion in the judgment of the Karnataka High Court relied upon by the learned Single Judge in the impugned judgment, the appeal can be disposed of shortly.

3. About 250 acres of wooded evergreen land in the district of Coorg was given by a grant to the ancestors of the respondent over a hundred years ago. The said district was a Scheduled District under the control of the Governor General of India. The terms of the said grant which is very old are not available but there is no dispute that the said land was granted to the ancestors of the respondent.

4. On November 1, 1899 Regulation No. 1 of 1899, called the Coorg Land and Revenue Regulation, 1899 came into force in the district of Coorg. We propose to refer to the said Regulation as "the Coorg Regulation". It applied to the entire territories administered by the Chief Commissioner of Coorg. We may at this stage take a brief note of some of the relevant provisions of the Coorg Regulation as they stood at the time relevant for the purpose of this appeal. The Coorg Regulation was enacted in order to amend and declare the law in force in Coorg in respect of the land and land revenue. Regulation 4 of the Coorg Regulation prescribes the classes of Revenue Officers. One of these is the Chief Commissioner and one other is the Revenue Officer. Chapter VI of the Coorg Regulation deals with the records of rights and annual records. Regulation 29 in this chapter provides that there shall be a record of rights for every estate. Clause (2) of Regulation 29 states that when it appears to the Chief Commissioners that a record of rights for an estate does not exist or that the existing record of rights for an estate requires special revision, the Chief Commissioners shall by notification direct that a record of rights be made or that the record of rights be specially revised, as the case may be. Regulation 30 inter alia provides that the nature and extent of the interest of the landholders, tenants or assignees of land revenue in the estate shall be stated in the record of rights. Regulation 35 deals with the restrictions on variations of entries in records and, generally speaking, provides that entries in records-of-rights or annual records cannot be varied except as provided in clauses (a) to (c) thereof. Clause (a) of Regulation 35, the only possible relevant clause for the purposes of this appeal, provides that entire can be varied in accordance with the facts admitted or found by inquiry under Regulation 34 of the Coorg Regulation. Regulation 40 provides that any person who is aggrieved as to any right of which he is in possession by an entry in

a record of rights can file a declaratory suit to establish his right. Shri Gustav Haller, Settlement Officer, Coorg made his report by way of proposals for Land Revenue Resettlement of the Province of Coorg, on February 18, 1910 to the Secretary to the Chief Commissioner of Coorg. The contents of the report shows that it was made after examining the revenue settlements made earlier. Pursuant to the said report a patta was given to the ancestors of the respondent in 1912 granting the aforesaid lands and in that patta there was an endorsement reading "redeemed coffee sagawali malai". The word "sagawali" means cultivation and the word "malai" means "hill". It is common ground that the word "redeemed" used in this entry would show that the price of the standing timber on the said land had been paid by the grantee by the time when the patta was made. It may be mentioned here that in the settlements in Coorg where the land was granted with the endorsement "unredeemed", it meant that the standing timber had not been paid for and the grantee would have to pay for the same if the grantee wanted to cut the trees and remove the timber from the land. In 1918 it appears that pursuant to an order made by the Commissioner the said entry has been altered to "unredeemed" showing that the trees had not been paid for.

5. For several years no problem arose because it appears that no question arose of cutting any trees, but later, in recent years, the respondent applied for permission of appellant 1 to cut and remove some of the trees from the land granted to the respondent. The said application was rejected on the ground that the seigniorage payable on the value of the timber standing on the land granted had not been paid and hence, before the trees could be cut and the timber removed, seigniorage payable on the value of the timber standing on the land granted had not been paid and hence, before the trees could be cut and the timber removed, seigniorage in respect of the trees could be cut and the timber removed, seigniorage in respect of the trees would have to be paid. The respondent filed a suit in the Court of Civil Judge, Madakeri for a declaration that the said land granted to him was redeemed in tenure and hence no payment of seigniorage could be demanded in respect of the trees to be cut and removed. In that suit, the respondent inter alia claimed that the alteration of the relevant entry from "redeemed" to "unredeemed" in the record of rights pertaining to the said lands, made pursuant to the order of the Commissioner, was void as the procedure prescribed by law had not been complied with the alteration in the entry not having been directed to be made by an authorised person. The trial court decreed the said suit and granted the declaration. The appellants preferred an appeal against the said decision to the District Court but the said appeal was dismissed. The appellants then preferred a second appeal to the High Court of Karnataka which dismissed the same as set out earlier.

6. We find that the question which has arisen in this appeal arose before a Division Bench of the Mysore High Court in *State of Mysore v. Kainthaje Thimmanna Bhat* ((1968) 2 Mys LJ 227). It is common ground that the facts in that case are in pari materia with the facts in the present case. It was held by the Division Bench that the presumption that the entries relating to the change of tenure should be taken to have been lawfully and regularly made in the course of the performance of official duties and in due compliance with the procedure enjoined by law could not be drawn in that case. If the order in question for revision of the record of rights had been one that was made in exercise of the power under Regulation 29 of the Coorg Regulation, which is the provision which should have been resorted to for the purpose of preparation and revision of record of rights, the order should have been issued and published by the Chief Commissioner of Coorg by notification and no such notification or publication of the same in the same in the official Gazette had been shown to the court. The order for correcting the entry was issued by the Commissioner and not by the Chief Commissioner as enjoined by Regulation 29 of the Coorg Regulation and there was no reference on the record to any such notification having been issued Regulation 29. Moreover, it was not apparent who had made the alteration, altering the word "redeemed" to "unredeemed", in the

Jambandi Register. It was further held that under Regulation 39, the presumption as regards the truth of the entries arises one when the entries in the record of rights have been made in accordance with law for the time being in force and if the provisions of the relevant rules had been complied with. In the case before the Division Bench, that presumption could not be drawn, because in the absence of a notification issued by the Chief Commissioner, it was not possible to predicate whether the procedure enjoined by the rules had been followed at that time of effecting the change in the entry. It was held that the suits in question were not barred by Section 145(vi) and (viii) of the Coorg Regulation as the suits did not question the right of the government to levy seigniorage nor the liability of the plaintiffs to pay but the plea was that seigniorage had already been levied and paid. The suits were not barred by time under Article 14 of the Limitation Act, 1908 as no relief was prayed for in the nature of setting aside an order of a government officer but the claim made for a declaration that the impugned order altering the entry was void and non est and hence, liable to be ignored. We agree with these conclusions which were upheld on appeal by the District Court and the High Court.

7. We would, however, like to give an additional ground which supports the conclusion that the said change in the entry from the word "redeemed" to "unredeemed" was not made according to law. We find from a number of judgments that identical orders changing the word "redeemed" to the word "unredeemed" in the relevant entries have been uniformly made in a large number of cases which would suggest that these changes were made pursuant to a special revision of the record of rights in respect of a number of properties and was not in individual change in a particular entry in the record of rights of a particular plot of land. Under Regulation 29 of the Coorg Regulation, this could have been done only pursuant to a direction or order of the Chief Commissioner but no such order or direction or a notification to that effect appears to be on the record. The result is that the said change must be held to be on the record. The result is that the said change must be held to be unauthorised in law void and of no legal effect. In view of what is set out earlier, a detailed discussion regarding this contention is not called for. We may also point out that the same view regarding a similar change of an entry in the record of rights was taken by a learned Single Judge of the Karnataka High Court in Regular Second Appeals Nos. 693 and 694 of 1977. Petitions for special leave being Special Leave Petitions Nos. 3812-13 of 1985 were preferred by the State of Karnataka against the said decision and the said petitions for special leave were dismissed summarily by this Court on March 10, 1986. In these circumstances, the only thing which surprises is that the State has against chosen to reargue the same question before this Court probably only because large stakes are involved.

8. In our opinion, there is no merit in the appeal and the same is dismissed with costs.

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