
**Smt. Vasanthamma Murthy Vs The State of Karnataka and H V
Govindaraju**

Writ Petition No. 39574 of 2010 (LB-RES)

Court: Karnataka High Court

Date of Decision: Jan. 24, 2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 21 Rule 101, Order 21 Rule 97

Hon'ble Judges: A.S. Bopanna, J

Bench: Single Bench

Advocate: P. Venkata Shiva Reddy, for the Appellant; N.B. Viswanath, AGA. for R1, Smt. Ujwala Walwadikar, for R2 and Sri M.T. Nanaiaha and H.T. Jaganath for R4 and R3-Served, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.S. Bopanna, J.

The petitioner is before this Court assailing the mutation entry in M.R. No. 36/1993-94 as at Annexure-B to the petition.

The case of the petitioner is that she is the owner of the property bearing House list No. 81, khatha No. 1191/81 situate in Sy. No. 297 of

Hesaraghatta village and Hobli, Bangalore North Taluk. The said site is said to have been granted in favour of late Narasimha Murthy under a

"Hakku Patra" issued by the Government. The said Sri Narasimha Murthy is stated to have died on 21.08.1992. The petitioner claims to be the

wife of late Narasimha Murthy. It is in that context the petitioner claims to have succeeded to the said property and being entitled to have the

revenue entries maintained in the name of the petitioner. Apart from contending with regard to the relationship, the petitioner also contends with

regard to the manner in which the petitioner is said to be enjoying the property. Therefore, it is contended that the fourth respondent who has no

manner of right could not have sought for change of revenue entries to the name of the fourth respondent. In that regard, it is also the case of the

petitioner that the claim of the fourth respondent that he is the foster son of late Narasimha Murthy cannot be accepted inasmuch as the said late

Narasimha Murthy left behind his wife and children.

2. The fourth respondent on the death of late Narasimha Murthy claims right to the very same property in question. He contends that he is the

foster son of late Narasimha Murthy and therefore he has succeeded to the property on the death of late Narasimha Murthy. Reference is also

made to the nature of enjoyment of the property by contending that the fourth respondent had filed a suit in O.S. No. 1564/2008 against one Smt.

Gowamma who was residing in the said premises. The said suit is stated to have been decreed and for execution of the same, the execution

petition, has been levied in Ex. No. 3/2011. In that context, the fourth respondent claims right in respect of the property and seeks to justify the

order at Annexure-A and the mutation carried out in favour of the fourth respondent. Insofar as the proceedings pending in the execution petition,

there is no dispute and the petitioner herein has also filed an application under Order 21 Rule 97 of CPC on having come to know about the such

decree and has objected to the execution claiming right in respect of the said property.

3. Therefore, the above sequence of events would disclose that the rival claims to the property by the petitioner and the fourth respondent in any

event would have to be decided by the Executing Court while disposing of the application filed under Order 21 Rule 97 to 101 of CPC since the

law on that aspect is clear that the same would be considered as if it is in the nature of a suit. It is only the conclusion of the said proceedings and

the finality of the order to be passed therein that would determine the rights of the parties to enjoy the property in question. Certainly at that

juncture, either of the parties who succeeds in the said proceedings would be entitled to seek for revenue entries in that regard. At this juncture, the

only question is with regard to the nature in which the revenue entries are to be maintained till then and the same is to be regulated. Considering that

the order has been passed and the mutation entries have been entered into in the name of the fourth respondent, the same shall continue to exist till

the matter is decided in the civil proceedings. However, to protect the interest of the parties, the Grama Panchayat shall now indicate the pendency

of the civil proceedings in Ex. No. 3/2011 arising out of O.S. No. 1564/2008 in the khatha register and specify the same in the khatha extract that

may be issued to any of the parties while such applications are made. On conclusion of the proceedings, if either of the parties reproach the Grama

Panchayat based on the decision, the Grama Panchayat thereafter shall make necessary entries in that regard. It is further made clear that the

Executing Court, while deciding the rights of the parties, based on the application and the objections thereto, shall consider the ownership of the

property de hors the khatha entry which is presently been allowed to be retained which is only by way of interim arrangement. The other evidence

available on record shall be assessed by the Executing Court for deciding the rights without being influenced by the khatha entries which have been

effected.

In terms of the above, the petition stands disposed of No costs.