

(2006) 11 KAR CK 0083

Karnataka High Court

Case No: Writ Petition No. 40480 of 2003

Smt. Neelagangavva

APPELLANT

Vs

Joint Director of Land
Records and Others

RESPONDENT

Date of Decision: Nov. 15, 2006

Acts Referred:

- Hindu Succession Act, 1956 - Section 15, 16

Citation: (2007) ILR (Kar) 1517 : (2007) 3 KCCR 190 SN

Hon'ble Judges: V.G. Sabhahit, J

Bench: Single Bench

Advocate: K.V. Narasimhan, for the Appellant; R.K. Hatti, High Court Government Pleader for Respondents-1 to 3 and 5 and M.B. Naragund and Sona Vakkund for Respondent-4, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.G. Sabhahit, J.

This writ petition is filed being aggrieved by the order passed by the Joint Director of Land Records dated 12-8-2003 allowing the revision and setting aside the order passed by the Deputy Director of Land Records, Bijapur, dated 6-2-2003 and directing the petitioner herein to approach the Civil Court and work out the remedy, in accordance with law.

2. It is the case of the petitioner that Sri Kallappa Kalyana Shetty had two wives Smt. Shobha and Smt. Mahananda, Smt. Shobha filed the suit for partition in O.S. No. 435 of 2000 and the said suit ended in a compromise in Lok Adalat and decree was passed on 19-2-2001 wherein the plaintiff and the defendant in the said suit being the wives of Kallappa Kalyana Shetty were allotted properties. The plaintiff in the said suit died and an application was filed by the defendant in the said suit claiming to be the wife of Kallappa Kalyana Shetty and having succeeded to the property u/s

15 of the Hindu Succession Act, 1956 being the heir of the husband. However, the petitioner claimed that Shobha, daughter of the petitioner has executed a Will on 3-5-2002 in her favour and even otherwise being the mother she is entitled to succeed to the properties and name of fourth respondent could not be entered in the revenue records. The City Surveyor directed the party to obtain succession certificate to make an entry after the death of Smt. Shobha. Being aggrieved by the same, fourth respondent preferred appeal before the Deputy Director of Land Records by order dated 26-2-2003 rejected the appeal and directed the parties to work out the remedy before the Civil Court. Being aggrieved by the said order, revision was preferred before the JDLR, and numbered as Rev. SR.68/2002-03 and the JDLR, by order dated 12-8-2003 allowed the revision and set aside the order passed by the DDLR, and directed the petitioner to work out the remedy in Civil Court. Being aggrieved by the same, this writ petition is filed.

3. I have heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the fourth respondent and the learned High Court Government Pleader appearing for respondents 1 to 3 and 5.

4. It is clear from the perusal of the material on record that the properties belonging to Kallappa Kalyana Shetty was divided between the Shobha and Mahananda his wives in a compromise decree was passed on 19-2-2001. After the death of Shobha there is rival claim to enter the name of mother of the petitioner-Shobha on the basis of the Will executed in her favour as the mother of the deceased Shobha. On the other hand, according to respondent 4 she being the first wife of Kallappa Kalyana Shetty, she is the heir of the husband and in view of the provisions of Section 15 being the heir of husband she has priority over the mother of the deceased in view of provisions of Sections 15 and 16 of the Hindu Succession Act. It is clear from the decree passed in OS. No. 434 of 2000 that the properties of the husband of Shobha and Mahananda devolves according to Section 16 of the Hindu Succession Act firstly, upon the sons and daughters. Admittedly Shobha did not have any issue and secondly, upon heirs of the husband and thirdly, upon the mother or the father and as per Section 16 among the heirs specified in Section 16 shall be preferred those in succeeding entry and therefore the order entering the name of the fourth respondent is justified and if at all the petitioner wants to come on record on the basis of the Will executed by Shobha in respect of which suit has already been filed by the petitioner in O.S. No. 200 of 2004 which is pending consideration on the file of Civil Judge (Senior Division), Jamkhandi, it is open to the petitioner to make an application for change of entry and decree passed in favour of the petitioner on the basis of the Will executed by the deceased in her favour. In any view of the matter, there is no merit in the contention. The JDLR, has no jurisdiction to pass an order in exercise of the power u/s 136(3) as the provisions mentioned in the section is not correctly stated and the power that is exercised by the JDLR, is the revisional power u/s 56 and mere mentioning of the wrong section while exercising the revisional power which is undisputedly available to the JDLR, would not be a

ground to set aside the order. Accordingly, I hold that there is no error or illegality in the order passed by the JDLR, impugned in this writ petition and accordingly, the writ petition is dismissed. However, the dismissal of the writ petition would not preclude the petitioner to make an application for change of entry if the petitioner succeeds in O.S. No. 200 of 2004 in obtaining decree on the basis of the Will executed by her daughter Shobha as any order passed by the revenue authorities is always subject to declaration that may be granted by the Civil Court and Civil Court will independently decide the suit without being influenced by the observations made in the order of the JDLR or this order.