



NC: 2024:KHC:2060
WP No. 11991 of 2021
C/W WP No. 6142 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 11991 OF 2021 (GM-RES)

C/W

WRIT PETITION NO. 6142 OF 2021 (GM-RES)

IN W.P.NO.11991/2021

BETWEEN:

1. SMT LAKSHMAMMA
AGED ABOUT 72 YEARS
W/O M K THIMMEGOWDA
2. SRI SRINIVAS @ SRINIVAS M T
AGED ABOUT 41 YEARS
S/O M K THIMMEGOWDA

BOTH ARE R/O
DODDAMAGGE VILLAGE AND HOBLI
ARAKALGUDU TALUK
HASSAN DISTRICT-573102

...PETITIONERS

(BY SRI. SHRIDHARAMURTHY H R.,ADVOCATE)



AND:

1. SRI M K THIMMEGOWDA
AGED ABOUT 86 YEARS
S/O M G KRISHNEGOWDA
R/O BARAGURU VILLAGE
DODDAMAGGE HOBLI
ARAKALAGUDU TALUK
HASSAN DISTRICT-573102
2. THE ASSISTANT COMMISSIONER
SAKALESHPURA DIVISION
SAKALESHPURA
HASSAN DISTRICT-573127



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3. APPELLATE TRIBUNAL
MAINTENANCE AND WELFARE OF
SENIOR CITIZEN AND DISTRICT MAGISTRATE
HASSAN DISTRICT
HASSAN-573201
REP BY DISTRICT MAGISTRATE,
HASSAN DISTRICT.

4. THE THASILDHAR
ARAKALGUDU TALUK
ARAKALGUDU-573102

...RESPONDENTS

(BY SRI. GIRISH B. BALADARE., ADVOCATE FOR R1;
SRI. BASAVARAJ GODACHI., AGA FOR R2 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS IN MAG/259/2019-20 PASSED BY THE R3 HEAR THE PARTIES AND ISSUE WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT TO QUASH THE ORDERS DTD.9.3.2021 IN IN MAG/259/2019-20 PASSED BY THE R-3 VIDE ANNEXURE-L AND ALSO QUASH THE ORDER DTD.27.6.2019 IN SO.HI.NA.RA.(M.A.G) 25/2019-20, PASSED BY THE R-2 VIDE ANNEXURE-H AND DIRECT THE R-4 TO RESTORE THE MR NO.T19/2016-17 IN RESPECT OF PROPERTY BEARING SY NO.102/5 MEASURING 2 ACRES 9 GUNTAS, SITUATED AT BARAGUR VILLAGE, DODDAMAGGE HOBLI, ARAKALAGUDU TALUK AND CONSEQUENTLY RESTORE NAME OF R-2 IN RESPECT OF THE SAME AND ETC.

IN W.P.NO.6142/2021
BETWEEN:

M K THIMMEGOWDA
S/O M G KRISHNEGOWDA
AGED ABOUT 86 YEARS
R/O BARAGURU VILLAGE
DODDAMAGGE HOBLI
ARAKALAGUDU TALUK
HASSAN DISTRICT-573201

...PETITIONER

(BY SRI. GIRISH B. BALADARE., ADVOCATE)

AND:



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1. SMT LAKSHMAMMA
W/O M K THIMMEGOWDA
AGED ABOUT 59 YEARS
2. SRI SRINIVAS
S/O M K THIMMEGOWDA
AGED ABOUT 39 YEARS

BOTH ARE R/O
BARAGURU VILLAGE
DODDAMAGGE HOBLI
ARAKALGUDU TALUK
HASSAN DISTRICT-573102

3. THE ASSISTANT COMMISSIONER
SAKALESH PURA DIVISION
SAKALESH PURA
HASSAN DISTRICT-573201

...RESPONDENTS

(BY SRI. SRI. SHRIDHARAMURTHY H R., ADVOCATE FOR R1 & R2;
SRI. BASAVARAJ GODACHI., AGA FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, DIRECTIONS OR ORDER TO QUASH THE ORDER DATED 9.3.2021 IN MAG/259/2019-20 PASSED BY THE APPELLATE TRIBUNAL, MAINTENANCE AND WELFARE OF SENIOR CITIZEN AND DISTRICT MAGISTRATE COURT, HASSAN DISTRICT, HASSAN AS PER ANNEXURE-E, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THESE WRIT PETITIONS, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioners in W.P.No.11991/2021 are before this Court seeking for the following reliefs:



- a. Call for records in MAG/259/2019-20 passed by the R3, hear the parties and issue writ of certiorari or any other appropriate writ to quash the orders dated 9.3.2021 in MAG/259/2019-20 passed by the R3, vide Annexure-L and also quash the order dated 27.06.2019, in SO.HI.NA.RA(M.A.G)25/2019-20, passed by 2nd Respondent vide Annexure-H and direct the R4 to restore the MR No. T19/2016-17 in respect of property bearing Sy.No.102/5, measuring 2 Acres 9 guntas, situated at Baragur Village, Doddamagge Hobli, Arakalagudu taluk and consequently restore name of R2 in respect of the same.*
 - b. And pass such other orders as this Hon'ble Court deems fit to pass, in the interest of justice and equity.*
2. The petitioner IN W.P.No.6142/2021 is before this Court seeking for the following reliefs:

 - a. Issue a writ of certiorari or any other appropriate writ, directions or order to quash the order dated 09.03.2021 in MAG/259/2019-20 passed by the Appellate Tribunal, Maintenance and Welfare of Senior Citizen and District Magistrate Court, Hassan District, Hassan as per Annexure-E, in the interest of justice and equity.*
 - b. Grant such others relief's as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity.*
3. The parties are referred to in terms of W.P. No.11991/2021.



4. The petitioner No.1 is the wife and petitioner No.2 is the son of respondent No.1. It is claimed that in the year 1993, a partition deed was executed between petitioner No.1 and his children including petitioner No.2, in furtherance of which land to an extent of 2 acres 20 guntas in Sy.No.102 of Baraguru village, Doddamagge Hobli, Arakalgudu taluk, came to be allotted to petitioner No.2-son, in furtherance of the same mutation was carried out in terms of M.R. No.3/1992-93 and thereafter petitioner No.2 is stated to be in possession of the property.

5. Respondent No.1- father filed the proceedings initially under Section 136 of the Karnataka Land Revenue Act, 1976 ['KLR Act' for short] but subsequently, inserted Section 23 of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ['Act of 2007' for short] before the Asst. Commissioner in the year 2019 assailing the



mutation carried out in the name of petitioner No.2 in the year 2016-17 in respect of Sy.No.102/5.

6. The Asst. Commissioner allowed the claim of respondent No.1 by directing entry of the name of respondent No.1, father to be effected in respect of Sy.No.102/5 by setting aside MR no.19/2016-17. It is aggrieved by the said order that petitioner No.1 and 2 filed appeal before the Appellate Authority. The Appellate Authority by way of impugned order dated 27.06.2019 of the Asst. Commissioner directed the entry of the name of Lakshamma- petitioner No.1 and M.K.Thimmegowda- respondent No.1 in respect of Sy.No.102/5. It is aggrieved by the said orders that the petitioners in both the matters are before this Court.

7. Sri.Girish B.Baladare, learned counsel for the petitioner in W.P. No.6142/2021 would submit that there is an admission made in the proceeding before



the Asst. Commissioner that the land is a self acquired property of M.K.Thimmegowda. If that be so, partition could not have been effected and the entries made in pursuance thereto are required to be set-aside, it is what was done by the Asst. Commissioner. The Deputy Commissioner could not have directed insertion of the name of Lakshamma, first wife of M.K.Thimmegowda merely because appeal has been filed because she had no personal right, title and interest in the property.

8. Sri.Shridharamurthy.H.R, learned counsel appearing for the petitioners Smt.Lakshamma and Srinivas in W.P. No.11991/2021 would submit that partition having been effected on 15.01.1990 and MR entry made in favour of Srinivas vide MR No.3/1992-93 what has been challenged is MR No.319/2016-17 which has nothing to do with the partition. So long as the partition continues to be in effect and MR No.



3/1992-93 was not challenged, the Asst. Commissioner could not have directed deletion of T19/16-17 which related to a portion of the property covered under MR No. 3/1992-93 and as such, the order of the Asst. Commissioner being bad in law, an appeal was filed by Lakshamma and Srinivas. The Deputy Commissioner instead of appreciating the facts on record had directed addition of name of Lakshamma along with Srinivas in the mutation register without deciding the issue.

9. His further submission is that no proceeding under Section 23 of the Act of 2007 could be filed with reference to a partition deed, more so when there is no particular covenant in the partition deed by Srinivas agreeing to take care of M.K.Thimmegowda pursuant to the partition and or that the consideration for the partition is not of Srinivas taking care of Thimmegowda who is now residing with his second wife and son M.T.Chandrashekhar. On these grounds, he submits that both the orders of



the Asst. Commissioner and that of the Deputy Commissioner are required to be set-aside.

10. Heard learned counsel for the parties. Perused papers.

11. The questions that arise for consideration in the present matter are:

i. **Whether the proceeding under Section 23 of the Act of 2007 could be filed in respect of a partition deed?**

ii. **Whether in the present case, the orders passed by the Asst. Commissioner and that of the Deputy Commissioner are proper and correct?**

12. **Answer to Point No.1: Whether the proceeding under Section 23 of the Act of 2007 could be filed in respect of a partition deed?**

12.1. This aspect is no longer *res integra*. A coordinate Bench of this court vide order dated 25.03.2019 in W.P. No.36601/2017 and other connected matters has categorically come to a conclusion that a partition deed is not covered under Subsection (1) of Section 23 of the Act of 2007 and such a partition deed cannot be



questioned in a proceeding under Section 23 of the Act of 2007.

12.2. Hence, I answer point No.1 by holding that the challenge to a partition deed could not be made under Section 23 of the Act of 2007.

13. **Answer to Point No.2: Whether in the present case, the orders passed by the Asst. Commissioner and that of the Deputy Commissioner are proper and correct?**

13.1. Taking into consideration my answer to point No.1, it would be seen that what has been challenged before the Asst. Commissioner is in fact not even the partition deed but MR entry T19/2016-17 which is the entry relating to renumbering of Sy.No.102 falling to the share of Srinivas as Sy.No.102/5.

13.2. The said MR No.T19/16-17 does not relate to any transfer of title being recorded but only records the renumbering of Sy.No.102 as Sy.No.102/5. The name of Srinivas relates to a



partition deed dated 15.01.1990 in furtherance of which MR No.3/92-93 was entered in the mutation register. Thus neither the partition nor MR No.3/1992-93 had been challenged before the Asst. Commissioner as aforesaid which is only a resurvey and renumbering of MR No.T19/16-17 which was challenged. Thus, in effect there is no particular challenge to even the partition deed in the proceeding before the Asst. Commissioner.

13.3. In that view of the matter, the Asst. Commissioner could not have set-aside MR No.T19 and directed the insertion of the name of Thimmegowda when the partition deed dated 15.01.1990 and MR No.3/1992-93 continue to be in existence.

13.4. Insofar as the proceedings before the Deputy Commissioner are concerned, Lakshamma and Srinivas having filed the appeal, the



Deputy Commissioner has only tried to pass an order inserting the names of the contesting parties without ascertaining whether the Deputy Commissioner could have adjudicated the dispute in an appeal from the petition under Section 23 and without ascertaining the rights of the parties.

13.5. Merely because Lakshamma is the first wife of M.K.Thimmegowa, it would not be required of the Deputy Commissioner to direct the insertion of her name in the mutation register, more particularly when a partition deed is of the year 1990 and MR No.3/1992-93 continues to be in existence.

13.6. These two important documents neither been considered by the Asst. Commissioner nor the Deputy Commissioner. If they had been so considered, it would have been clear to both of



them that they are not authorized to exercise jurisdiction under Section 23 of the Act of 2007 in respect of the partition deed.

13.7. Hence, I pass the following:

ORDER

- i. W.P. No.6142/2021 is dismissed. W.P. No.11991/2021 is allowed. The order of the Asst. Commissioner dated 27.06.2019 in No.So.Hi.Na.Ra(M.A.G) 25/2019-20 Annexure-H is quashed, as also the order of the Deputy Commissioner in NO.MAG/259/2019-20 at Annexure-L are quashed.
- ii. Respondent No.4-Tahsildar is directed to restore the name of Srinivas, S/o M.K.Thimmegowada in the mutation register in respect of MR No.3/1992-93.
- iii. Liberty is however reserved to M.K.Thimmegowda to challenge the partition by filing appropriate suit.
- iv. Lakshamma and Srinivas are restrained in any manner transferring, dealing with the property covered under Sy.No.102/5 earlier covered under Sy.No.102, measuring 2 acres 9 guntas bearing reference to MR No.3/1992-93 for a period of 45 days from today.



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- v. In the event if the petitioner not filing a suit within the said period and or obtaining an injunction from the trial Court, this order of injunction would automatically lapse. Needless to state once a suit is filed, it is for the trial Court to pass injunction or not. The trial Court shall deal with the said matter without being influenced by the observations made hereinabove.

Sd/-
JUDGE

LN
List No.: 1 SI No.: 22