

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

REGULAR SECOND APPEAL NO.55/2013 (DEC)

DATED: 25-06-2020

JAVARAPPA @ JAVARAI AH S/O LATE CHIKKARAMAIAH VS. RAMAIAH  
AND ANOTHER

J U D G M E N T

This Regular Second Appeal arises out of the judgment and decree dated 24.09.2012 passed in R.A.No.598/2011 by the Presiding Officer, Fast Track Court-IV, Mysuru, which in turn arises out of the judgment and decree dated 15.04.2011 in O.S.No.1129/2006 passed by the I Additional First Civil Judge and JMFC, Mysuru.

2. By the impugned judgment and decree, the First Appellate Court dismissed the appeal of the plaintiff and confirmed the judgment and decree of the trial Court dismissing the suit of the plaintiff/appellant for declaration etc.

3. To facilitate hearing of the appeal on admission, the learned counsel for the appellant and learned High court Government Pleader submitted the copies of Exs.P1 to P3 in the suit and the Circular

in RD 46 ASD 2005 dated 12.03.2008 issued by the Revenue Department, Government of Karnataka. The same are taken on record. The appellant was the plaintiff and respondents 1 and 2 were defendants No.1 and 2 before the trial court.

4. The brief facts of the case are as follows:

i) One Ramaiah and Sannamma were the couple. Ramaiah died on 06.07.1984 and Sannamma died on 09.04.1998. The appellant filed application before the second respondent/Tahsildar, Mysuru claiming that he is the only son/surviving heir of Ramaiah and Sannamma and for issue of Survivorship certificate accordingly. On the basis of such application second respondent said to have conducted enquiry and issued Survivorship certificate as per Ex.P3 dated 11.03.2005 to the effect that the appellant is the only son/surviving heir of late Ramaiah and Sannamma.

ii) Thereafter first respondent applied to the second respondent claiming that he is also the son of Ramaiah and Sannamma and suppressing the said fact, appellant has obtained the certificate as per Ex.P3 fraudulently. Therefore, he sought cancellation of the certificate Ex.P3 and issue of fresh survivorship certificate

showing himself and the appellant as the sons of Ramaiah and Sannamma.

iii) On such application, the second respondent conducted an enquiry. On hearing both of them the second respondent passed order as per Ex.P1 dated 21.04.2006 accepting the first respondent's contention, canceling Ex.P3 the Survivorship Certificate dated 11.03.2005 and issued Ex.P2 fresh Survivorship Certificate dated 21.04.2006 in favour of both appellant and first respondent.

5. The appellant filed O.S.No.1129/2006 before the trial court seeking declaration that the modified order passed by the second respondent on 21.04.2006 is illegal and that Ex.P3/certificate dated 11.03.2005 issued in his favour is legal. He contended that the first respondent is not the son of his parents late Ramaiah and Sannamma and the second respondent failed to appreciate the material produced in the case.

6. The respondents contested the suit filing their written statements. They contended that, if the appellant had any grievance against the order

passed by the second defendant under Exs.P1 and P2, his remedy was by way of appeal under Section 49 the Karnataka Land Revenue Act, 1964 ('the Act' for short), therefore, the suit was hit by Sections 49 and 63 of the Act and the jurisdiction of the Civil Court is barred in such matters.

7. Respondent No.1 further contended that himself and the appellant are the sons of Ramaiah @ Chikkaramaiah and Sannamma, suppressing that fact appellant obtained Survivorship certificate dated 11.03.2005, on revelation of the true facts the second respondent rightly passed the orders under challenge. The second respondent further contended that the suit was bad for non compliance of Section 80 of CPC i.e., issuance of statutory notice to the Government before institution of the suit.

8. On the basis of such pleadings, the trial Court framed the following issues:

ISSUES:

1. Whether the plaintiff proves that he is entitled for the relief of declaration as claimed in the plaint?

2. What other relief is the plaintiff entitled to?
3. What order or decree?

9. The parties adduced the evidence. The appellant got himself examined as P.W.1 and his witnesses as P.Ws.2 to 4 and got marked Exhs.P1 to P16. On behalf of respondent No.1, D.Ws.1 to 3 were examined and Exhs.D1 to D6 were marked.

10. The trial Court on hearing both the sides dismissed the suit on the following grounds:

i) The plaintiff is seeking declaration that the order dated 21.04.2006 passed by the second defendant/Tahsildar as per Ex.P1 is illegal. Against such order, an appeal is provided under Section 49 of the Act.

ii) Wherever such appeal is provided, Section 63 of the Act bars the jurisdiction of the Civil Court unless the Appellate remedy is availed.

iii) In holding so, the trial Court relied on the following judgments of this Court:

- i) State of Karnataka vs. Smt.Shakuntamma (2008 KLJ 79)
- ii) Rama Jois vs. Chief Secretary (ILR 1996 Kar. 715)

iii) Basavanni Shankar Ammanagi vs. Smt.Keshavva and others (2002(2) KLJ 317).

11. The plaintiff challenged the said judgment and decree before Fast Track Court IV, Mysuru in Regular Appeal No.598/2011. The First Appellate Court on hearing both the sides by the impugned judgment and decree dismissed the appeal concurring with the reasoning and findings of the trial Court.

12. Aggrieved by the said judgments and decree, the plaintiff has filed the above appeal. This being second appeal under Section 100 of CPC, can be admitted for hearing only if it involves substantial question of law.

13. The Hon'ble Supreme Court in *Santosh Hazari vs. Purushotham Tiwari*<sup>1</sup> and *Gurnam Singh v. Lehna Singh*<sup>2</sup> relying on its several earlier judgments has expounded as to what is the substantial question of law.

14. In *Santhosh Hazari's* case it was held as follows:

"14. A point of law which admits of no

two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. *To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter.* It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

(Emphasis supplied)

15. In para 26 of the judgment in *Gurnam Singh's* case referred to supra it was held as follows:

"26. ....As per law laid down by this Court in a catena of decisions, the jurisdiction

of High Court to entertain second appeal under Section 100 CPC after the 1976 Amendment, is confined only when the second appeal involves a substantial question of law. The existence of 'a substantial question of law' is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by this Court in case of *Kondiba Dagadu Kadam* (Supra), in a second appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being:

- (i) Contrary to the mandatory provisions of the applicable law; or*
- (ii) Contrary to the law as pronounced by the Apex Court; or*
- (iii) Based on inadmissible evidence or no evidence."*

(Emphasis supplied)

16. Sri Praveen Raikote, learned counsel for the appellant submits that Sections 61 to 63 of the Act are not applicable when the dispute relates to the private rights of the parties. He further submits that Section 63 applies only in respect of the matters referred to in Section 61 and the appellant's case did not fall into any of the categories specified in Sub-



Section (2) of Section

61. According to him, applicability of Sections 61 and 63 is the substantial question of law involved in the case. His other contention was that Sections 49, 61 to 63 apply only in case of the orders passed by the Tahsildar in exercise of the powers conferred under the Act and not with regard to Survivorship Certificate and that is the substantial question of law.

17. Per contra, learned High Court Government Pleader submits that the order in question was passed exercising the powers conferred on the Tahsildar by the circular of the Revenue department of Government, moreover the appellant himself had obtained similar certificate, therefore, there is no merit in the contention that issuance of such certificates is not relatable to the exercise of power under the Act. He further submits that the interpretation of Sections 49 and 61 to 63 of the Act by the learned counsel for the appellant is wholly erroneous.

18. In the light of the rival contentions, it is appropriate to examine whether the suit of the appellant was covered under Section 62 of the Act or

Sections 49,61 and 63 of the Act.

Reg. Sections 61 and 63 of the Act

19. Respondents contended that the suit was hit by Section 63 of the Act. Appellant's counsel contends that the suit was not covered under those provisions and was saved by Section 62 of the Act. His other contention was that the bar provided under Section 63 is related to the matters covered under Section 61 namely the orders passed under the Act and issuance of Survivorship certificate is not covered under the Act.

20. Sections 61 and 63 of the Act read as follows:

"61. Exclusive Jurisdiction of Revenue Courts and bar of jurisdiction of Civil Courts.—(1) Save as otherwise provided in this Act, or any other law for the time being in force, a Revenue Court shall have jurisdiction to determine, decide or dispose of, any matter which it is, by or under this Act, empowered to determine, decide or dispose of and no Civil Court shall exercise jurisdiction as to any of such matters.

(2) Subject to the exceptions hereinafter specified, no Civil Court shall exercise jurisdiction as to any of the following matters,

namely:—

(a) claims against the Government relating to any property appertaining to any office or for any service whatsoever;

(b) objections,—

(i) to the amount or incidence of any *assessment of land revenue* under this Act; or

(ii) to the mode of assessment or levy, or to the principle on which such assessment or levy is fixed; or

(iii) to the validity or effect of the notification of *survey or settlement*;

(c) claims connected with or arising out of any proceedings for the *realisation of land revenue or other demands recoverable as arrears of land revenue* under this Act, or any other law for the time being in force;

(d) claims to set aside, on account of irregularity, mistake, or any other ground, except fraud, *sales for arrears of land revenue*;

(e) claims against the Government,—

(i) to be *entered in the revenue survey or settlement records* or any land record as liable for the revenue or as superior holder, inferior holder, occupant, mortgagee, landlord or tenant;

(ii) to have any *entry made in any record of a revenue survey or settlement*; or

(iii) to have any such *entry either omitted or amended*;

(f) the *distribution of land or allotment of land revenue on partition* of any estate under this Act or any other law for the time being in force;

(g) *claims against the Government*,—

(i) to *hold land wholly or partly free from*

*payment of land revenue; or*

(ii) *to receive payments charged on or payable out of the land revenue; or*

(iii) *to set aside any cess or rate payable under the provisions of any law for the time being in force; or*

(iv) *respecting the occupation of waste or vacant land belonging to Government;*

(h) *claims regarding boundaries fixed under this Act or under any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks or survey marks:*

Provided that if any person *claims to hold* land wholly or partially exempt from payment of revenue under,—

(a) *any law for the time being in force expressly creating an exemption not before existing in favour of an individual, or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years; or*

(b) *any written grant from the Government expressly creating or confirming such exemption, such claim shall be cognizable by a Civil Court.*

63. Plaintiff to exhaust his right of appeal before instituting a suit or other proceeding against Government.—*No Civil Court shall entertain any suit or other proceeding against the State Government on account of any act or omission of the State Government or any Revenue Officer, unless the plaintiff first proves that previously to the institution of the suit or other proceeding, he has presented all such appeals allowed by the*

*law for the time being in force as, within the period of limitation allowed for bringing such suit or proceeding, it was possible to present."*

20. The perusal of the above provisions makes it clear that Section 61(1) provides for the exclusive jurisdiction of the Revenue Courts by virtue of the power conferred under the Act and bars the jurisdiction of the Civil Court in such matters. Section 61(2) specifically bars the jurisdiction of the Civil Court regarding the matters referred in clauses (a) to (h) relating to revenue assessment recovery etc. The trial Court and the First Appellate Court have not said that the suit is hit by Section 61, therefore, that does not become substantial question of law in this appeal.

21. So far as the applicability of Section 63 or its alleged interdynamics with Section 61, Section 63 makes it clear that wherever the appeal is provided against the order of the Revenue Officer unless such remedy is availed, Civil Court shall not entertain the suit. While imposing such bar, Section 63 does not qualify such orders of the Government or Revenue Officers with reference to Section 61. Section 63 does not state that it refers to the orders mentioned in Section 61. Therefore, the contention that the orders

contemplated under Section 63 are only the orders referred to in Sections 61 cannot be accepted.

22. The next question was to invoke Section 63 whether the order Ex.P1 and P2 were appealable under Section 49 of the Act. Section 49 reads as follows:

*“49. Appeals from original orders.—Save as otherwise expressly provided, an appeal shall lie from every original order passed under this Act or the rules made thereunder and from every order made in exercise of the powers conferred by section 54 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908).-*

*(a) if such an order is passed by a Revenue Officer subordinate to the Assistant Commissioner, whether or not invested or delegated with the powers of the Assistant Commissioner or the Deputy Commissioner, to the Assistant Commissioner;”*

23. Then the question is whether the order passed by the second respondent was the original order as contemplated under Section 49 of the Act. Section

11 of the Act deals with the duties and powers of the Tahsildar which reads as follows:

*“11. Tahsildars.—(1) The State Government shall, by notification, appoint to each taluk a*

Tahsildar who shall be the Chief Officer entrusted with the land revenue administration of the Taluk. He shall be subordinate to the Assistant Commissioner in-charge of the Taluk and where there is no such Assistant Commissioner, to the Deputy Commissioner of the District.

(2) *The duties and powers of a Tahsildar shall be such as may be expressly imposed or conferred upon him by this Act or any other law for the time being in force or as may be imposed by or delegated to him by the Deputy Commissioner under the general or special orders of the State Government.*"

24. Section 195 of the Karnataka Land Revenue Act, 1964 reads as follows:

"195. Delegation of powers.-(1) *The State Government may, by notification, delegate to any Officer or authority subordinate to it, any of the powers conferred on the State Government or any Officer subordinate to it under this Act, to be exercised by such Officer or authority, subject to such restrictions and conditions, if any, as may be specified in the said notification.*

(2) Notwithstanding anything contained in sub-section (1), the State Government shall not delegate any of its powers under Sections 3, 4, 6, 7, 8, 9, 10, 18, 20, 21, 40, 43, 48, 114, 115, 121 or 125 or the power to make rules under Section

197 or the power to remove difficulties under Section 201.”

25. The Government Circular No.RD 46 ASD 2005 dated 12.03.2008 issued by the Principal Secretary, Revenue Department, Government of Karnataka authorised the Tahsildar to issue the Survivorship Certificate. Therefore Ex.P.1 to 3 are deemed to have been issued by respondent No.2 in exercise of the powers delegated to him by the special order of the State Government under the aforesaid circular by virtue of Section 11(2) read with Section 195 of the Act. The said Circular was not challenged by the appellant in any proceedings. Contrary to that, invoking the very same powers the appellant secured the certificate Ex.P3 in his favour.

26. In the suit he himself sought declaration to the effect that Ex.P3 is legal. Therefore without any foundation in the pleadings in that regard, for the 1<sup>st</sup> time in this second appeal it is not open to the appellant to contend that Exs.P1 and P2 were not issued by the second respondent in exercise of power under Section 11 of the Act. Appellant cannot blow hot and cold



together.

27. This Court in *Basavanni* 's case referred to supra in the similar matter held that having regard to Section 63 of the Act, Civil Court's jurisdiction is barred. Therefore, there is no merit in the contention that the applicability of Sections 61 and 63 to the orders Ex.P1 to P3 is the substantial question of law.

Reg. Section 62 of the Act

28. Learned counsel for the appellant contended that appellant's suit was saved under Section 62.

Section 62 of the Act reads as follows:

62. Savings of certain suits.—Nothing in section 61 shall be held to prevent the Civil Courts from entertaining any of the following suits, namely:—

(a) suits against the State Government to contest the amount claimed or paid under protest, or recovered as *land revenue* on the ground that such amount is in excess of the amount authorised in that behalf by the State Government or that such amount had previous to such claim, payment or recovery been satisfied in whole or in part or that the plaintiff or the person whom he represents is not the person liable for such amount;

(b) suits between private parties for the purpose of establishing any *private right*, although it may be affected by any entry in any land record;

(c) suits between private parties *for possession* of any land being a whole survey number or subdivision of a survey number or a part thereof.

29. The declaration sought by the appellant in the suit was not with regard to recovery of the excess amount recovered as land revenue or establishing any private right or for possession as contemplated under Sections 62(a) to (c) of the Act. Contrary to that, he sought declaration with regard to the validity or legality of the orders under Exs.P1 to P3 passed by the Tahsildhar in exercise of the powers conferred on him by Special order of the Government under the circular referred to supra. As already held that was appealable under Section 49 of the Act. Therefore, there is no merit in the contention that the appellant's suit was the one saved under Section 62 of the Act.

30. In the light of the above discussion, it cannot be said that the judgments and decrees of the First Appellate Court and the trial Court were contrary to the mandatory provisions of the applicable law, or the law pronounced by the Apex Court, or based on inadmissible evidence or no evidence. The appeal involves no substantial question of law, therefore dismissed with costs.