

PETITIONER:
SMT.PUTTAHONNAMMA

Vs.

RESPONDENT:
C. GANGADHARA MURTHY & ORS.

DATE OF JUDGMENT: 02/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (2) 511 1996 SCALE (2)348

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard the counsel for the parties. This appeal by special leave arises from the order of the Division Bench of the Karnataka High Court dated April 21, 1994 made in W.P. No.1628/92. The High Court in the impugned order has held that since the appeal under Section 50 of the Karnataka land Revenue Act, 1956 [for short, the "Act"] has not been preferred by the appellant, the revision under Section 56 is not maintainable. Therefore, it has remitted the matter to the Assistant Director of Survey & Settlement and Land Records for disposal of the matter in accordance with law in the light of the order made by the Deputy Assistant Director of Land Survey & Settlement Officer in Annexure-A dated August 7, 1989. The facts are not in dispute. They are as under:

In a family partition on February 11, 1953, the properties were divided between two branches. In furtherance thereof, a further partition had taken place on May 8, 1967 in which the properties have been divided between the appellant's husband and the respondents. For the demarcation of boundaries, the appellant had applied to the Assistant Director, Land Records to mutate the lands in her name with the boundaries thereunder. The Assistant Director by his proceedings dated October 14, 1986 demarcated the lands. Feeling aggrieved, the respondents filed an appeal under Section 49 of the Act before the Deputy Director Land Records who had allowed the appeal and set aside the order by proceedings dated August 7, 1989 and remitted the matter to the Assistant Director to proceed with demarcation in the light of the directions given in the order.

The appellant filed a revision under Section 56. The Joint Director by his order dated 26, 1991 allowed the revision and set aside the order of the appellate authority and confirmed the order of the Assistant Director. The respondents filed a revision under Section 56 to the

Director. The Director by his order dated September 16, 1991 dismissed the same. In a further revision filed by him the Karnataka Administrative Tribunal by order dated January 1, 1992 dismissed the revision holding that no second revision is maintainable under Section 56. The respondents filed the writ petition in the High Court. As stated earlier, the Division Bench has allowed the writ petition with the above direction.

A contention was raised in the High Court that since the second appeal has been provided under Section 50 of the Act, the revision under Section 56 is not maintainable. The High Court accepted the said contention and allowed the writ petition in part and remitted the matter to the Assistant Director as referred to earlier. The High Court while holding that the second revision is not maintainable has held further that the order passed by the Joint Director, namely, 1st revisional authority was a nullity for want of jurisdiction. The conclusion in that behalf is that since the appeal under Section 50 would lie against the order under Section 49, failure to avail of the remedy under Section 50, the appellant became disentitled to avail of revisional jurisdiction under Section 56; therefore, the order of the Joint Director was held to be without jurisdiction and a nullity. Accordingly, it remitted the matter to the primary authority for disposal.

The question, therefore, is: whether the High Court is right in its conclusion that without availing the remedy of second appeal under Section 50, the party would be precluded to avail the remedy of revision under Section 56. Section 50 reads thus:

"50. Second Appeal (1) A second appeal shall lie against any order passed in a first appeal under Section 49 :-

(a) if such an order is passed by the Assistant commissioner, to the Deputy Commissioner;

(b) if such an order is passed by the Deputy Commissioner, to the Tribunal;

(bl) if such an order is passed by the Assistant Superintendent for Settlement or the Assistant Superintendent of Land Records, to the Director of Survey, Settlement and Land Records;

(c) if such an order is passed by the Deputy Commissioner of land Records or Deputy Commissioner for Settlement or by the Director of Survey, Settlement and Land Records to the Tribunal.

(2) An order passed on second appeal shall be final."

Section 56 reads thus:

(56. Power of revision:-(1) The Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner, and any Survey Officer not inferior in rank to a Superintendent of Land Records or an Assistant Settlement Officer in their respective departments, may call for and examine the record of any inquiry or the proceedings of

any subordinate officer under this Act or under Section 54 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of the proceedings of such officer. Proviso [* * *]

Explanation:-For the purposes of this sub-section,

(i) Special Duty Commissioner shall be deemed to be not subordinate to the Deputy Commissioner; and

(ii) all revenue officers shall be deemed to be subordinate to the Tribunal.

(1-A) [* * *]

(2) If, any case, it shall appear to the Tribunal or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, Tribunal or such officer may pass such orders as may be deemed fit:

Provided that no order shall be modified, annulled or reversed unless notice has been served on the parties interested and opportunity given to them of being heard.

(3) No application for revision under this Section and no power of revision on such application shall be exercised against any order in respect of which an appeal under this Chapter has been preferred and no application for revision shall be entertained unless such application is presented within a period of four months from the date of such order:

Provided that any Revenue Officer or Survey Officer referred to in subsection (1) may exercise power under this section in respect of any order against which no appeal has been preferred under this Chapter, at any time within three years from the date of the order sought to be revised.

Explanation;- In computing the period of limitation for the purpose of this subsection, any period during which any proceeding under this section is stayed by an order or an injunction by Any court shall be excluded."

It is seen that against the order passed by any of the enumerated officers, the remedy of first appeal has been provided under Section 49. Against the appellate orders under Section 49, Section 50 gives right of second appeal. Section 56 envisages that the Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner may call for and examine the record of any enquiry or the proceedings

of any subordinate officer under the Act or under Section 54 of CPC for the purpose of satisfying itself or himself, as the case may be, as to this legality or propriety of the proceedings of such officer. Sub-section [3] provides that no application shall be exercised against any order in respect of which an appeal under this Chapter "has been preferred" (Emphasis supplied) and no application for revision shall be entertained unless such application is presented within a period of four months from the date of such order. Two limitations have been prescribed for exercising the revisional power under Section 56, namely, the application which seeks revision of the appellate order under Section 49 has not preferred any second appeal as provided under Section 50 of the Act; since Section 50 falls under that Chapter, the application shall be filed within a period of four months from the date of the appellant order. In other words, if the aggrieved party has availed of the remedy of second appeal under Section 50, he has been precluded to again avail the revisional remedy under Section 56. It does not follow that the party who had not availed the second appellate remedy under Section 50 is also prohibited to file the revision under Section 56. It would be clear under the scheme of the Act that the hierarchy of remedial forums prescribed are the appeal under Section 49, second appeal under Section 50 and only a revision under Section 56 of the Act and choice to avail of remedy of second appeal or a revision under Section 50 or 56 is left to the aggrieved party. The further scheme is that the revisional authority has power to suo motu correct legality or propriety of the proceedings of any subordinate officers specially and obviously when it touches the interest of the State.

Filing a second appeal is a statutory remedy available to an aggrieved party. If the party fails to avail of the remedy and seeks the remedy of revisional jurisdiction, the party is not precluded from availing of the revisional jurisdiction Merely because the selfsame person failed to avail of the remedy of second appeal under Section 50. It would be one of the alternatives available to an aggrieved party. The phrase "has been preferred" make the matter manifest that on availing of the remedy under Section 50, the remedy under Section 56 gets exhausted. It would appear that the High Court proceeded on the basis of the language of the unamended sub-section (3) of Section 56 which existed prior to Amendment Act 33/1975. Therein, the language appears to be that when the party failed to avail of the second appellate remedy, the revisional jurisdiction under Section 56 was prohibited. But after the Amendment Act 33/1975 the language is differently worded. Therefore, the party who had availed of the remedy of second appeal under Section 50, is prohibited to avail of the revisional remedy under Section 56. The High Court, therefore, was incorrect in its conclusion that the party who did not file second appeal under Section 50, is prohibited to avail of the remedy of revision under Section 56. The order of the Joint Director, thereby, is not a nullity or without jurisdiction since the remedy under Section 56 is available to the appellant.

It is contended by Shri Santosh Hedge, learned senior counsel appearing for the respondents that in view of the above conclusion, the High Court had not gone into the correctness of the order passed by the Joint Director. Though the respondent had availed of successive unsuccessful revisional remedies, we do not propose to express any opinion on merits. We set aside the order of the High Court

and remit the matter to the High Court for consideration of the case according to law.

The appeal is allowed. No costs.

JUDIS