



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 21st day of September 2007

PRESENT

THE HON'BLE MR. JUSTICE S.R. BANNURMATH

AND

THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA

WRIT APPEAL NO. 599/2007 (KLR-RES)

BETWEEN:

1. Sri Devidas,
Son of Balasu Naik,
Aged about 54 years,
Occ: Agriculturist,
R/o Gaonkarwada Shirwad,
Karwar,
Dist. Uttara Kannada.
2. Sri Bhikaji @ Balu,
Son of Balasu Naik,
Aged about 48 years,
Occ: Agriculturist,
Rest -do-
3. Sri Sainath,
Son of Balasu Naik,
Aged about 45 years,
Occ: Agriculturist,
Rest -do-.

... APPELLANTS

(By Sri Vigneshwar S. Shastry, Adv.)

AND:

1. The Deputy Commissioner,
Uttara Kannada District,
Karwar.

2. The Assistant Commissioner,
Karwar Sub-Division,
Karwar,
District Uttara Kannada.
3. The Tahsildar and Taluka
Executive Magistrate,
Karwar,
District Uttara Kannada.
4. Sri Rohidas,
Son of Gurunath Naik,
Major, R/o Gaonkarwada
Shirwad, Karwar,
District Uttara Kannada.
5. Smt. Saraswathi,
Wife of Gurunath Naik,
Major, rest -do-

... RESPONDENTS

(By Sri P.G. Mogali, Adv. for R-4 & 5)

This Writ Appeal is filed under Section 4 of the Karnataka High Court Act praying to set aside the order passed in Writ Petition NO. 8387/2006 dated 21.2.2007.

This Writ Appeal coming on for Admission, this day, BANNURMATH J., delivered the following:

ORDER

Aggrieved by the dismissal of the writ petition No.8387/06 by the order dated 21.2.2007 passed by the learned Single Judge, the present appeal is filed.



2. The appellants are the writ petitioners and they had approached this Court challenging the order dated 22.3.2006 passed by the Deputy Commissioner confirming the orders of the Assistant Commissioner and the Tahsildar dated 24.2.2006 and 5.3.2004 respectively.

3. It is to be noted that the petitioners claim to be the owners of land bearing Sy.No.38/2 measuring 1 acre 13 guntas of Shirwad village in Karwar Taluk. The respondents-4 and 5 are the neighbouring land owners of Sy.No.38/1D measuring 17 guntas and 8 annas. According to the appellants when they were in peaceful possession and enjoyment of their property, the 5th respondent behind the back of the appellants, got her land surveyed on 22.6.2001 and the Survey Report showing the encroachment on the part of the appellants to an extent of 2 guntas and 08 annas was found. According to the appellants, relying upon such one sided survey, the 5th respondent had approached the Tahsildar, Karwar, to take action under Section 142 of the Karnataka Land Revenue Act ('the Act' for short) against them. Based on the same, after issuing notice to the appellants and considering their detailed objections, by the



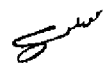
impugned order dated 5.3.2004, Tahsildar, relying upon the Survey Report and Sketch of the year 2001, directed the appellants to vacate the encroached portion of 2 guntas and 8 annas. Aggrieved by the same, the appellants had approached the Assistant Commissioner and the Deputy Commissioner by filing appeal and revision petitions. Both the Assistant Commissioner and the Deputy Commissioner dismissed the appeal and revision petitions respectively filed before them. Being aggrieved by the same, the appellants have approached this Court and the learned Single Judge of this Court has also affirmed all the orders. Hence, the present appeal.

4. The main contention of the learned counsel for the appellants is that Section 142 of 'the Act' does not give jurisdiction to the authorities especially the Tahsildar to grant an order of eviction, unless the case arises from settlement as provided under Section 141 of 'the Act'. In this regard, the learned counsel has relied upon the judgment of the learned Single Judge of this Court in the case of **CHANNAPPA & ANOTHER -vs- DEPUTY COMMISSIONER & OTHERS** reported in **ILR 1999 KAR 3847**.




It was held therein that, the Tahsildar has no jurisdiction under Section 142 of 'the Act' unless the parties submit to the settlement by arbitration to that effect in writing and only when Section 141 is complied with, Section 142 of 'the Act' comes into operation.

5. On perusal of the provisions of Sections 141 and 142 of 'the Act', in our view the conclusion arrived at by the learned Single Judge in the aforesaid decision is clearly erroneous. Under Section 141 of 'the Act', it is provided that, when there is a dispute regarding boundaries between two or more parties and if they agree to settle the dispute by arbitration, provision is made to settle such boundary dispute by way of arbitration under Section 141 of 'the Act'. Whereas, section 142 is totally an independent provision. Basically, when there is a dispute regarding boundaries, it is the authorities to measure/Survey the lands and settle the disputed area. The meaning of the word 'Settlement' used in Section 142 of 'the Act' is different from the word 'Settlement' used in Section 141 of 'the Act'. Section 141 speaks about the settlement of dispute whereas Section 142 is to settle or determine the boundaries and as such in our



view both are totally independent provisions. In fact, as long back as in the year 1986, a learned Single Judge of this Court in the case of **PATEL DODDAKEMPEGOWDA -vs- CHIKKEEREGOWDA** reported in **ILR 1986 KAR 2404** has considered the scope and object of Section 142 of 'the Act' and as held thus:

"In this connection, Section 140(2) and Section 142 of the Act may be read with advantage. Sub-section(2) of the Section 140 empowers the Tahsildar to decide the dispute concerning the boundary of a holding which has not been surveyed or when a dispute arises at any time after the completion of a survey, what is noteworthy in this provision is that the dispute relates to the boundary and not to any encroachment. Section 142(2) clarifies with more lucidity the further power exercisable by the Tahsildar under Section 140(2) of the Act. After the Tahsildar decides the dispute concerning the boundary under Section 140(2) of the Act, he has further the power to summarily evict any land holder who happens to be wrongfully in possession of any land which has been adjudged in the settlement of a boundary."



6. In our view, this is the correct interpretation and proposition of law, in so far as scope and object of Section 142 of 'the Act' is concerned. Rule of 'per incurium' applies where the Court omits to consider a binding precedent of the same Court or the Superior Court rendered on the same issue or where a Court omits to consider any relevant provisions of the statute while deciding that issue. As such, we find that, the decision of the learned Single Judge of this Court in Channappa's case, referred to supra is 'per incurium' for not considering the earlier decision in the case of DODDAKEMPEGOWDA's referred to supra, and also for not noticing the relevant provisions of the 'the Act'. As such, we over rule the decision rendered in Channappa's case (ILR 1999 KAR. 3847), as not laying down the law correctly.

7. It is also to be noted that though the appellants claim that the survey was conducted by the 5th respondent without notice to them, in our view, atleast when the same came to their notice, they should have challenged the same. It is only on failure to challenge the same, at the time of hearing by the Tahsildar, it has become final and as the



boundary dispute between the parties had been settled and determined by the competent authority exercising jurisdiction under Sub-Section (2) of Section 142, the Tahsildar was justified in taking action. These aspects have been considered by all the three authorities as well as by the learned Single Judge of this Court. Hence, we do not find any merit in this appeal. **Accordingly, the appeal is rejected.**

Sd/-
Judge

Sd/-
Judge

TL/Nsu.