



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 241 OF 2025 (KLR-RES)

BETWEEN:

SRI. ULLAS KOTIAN YANE ULLAS K. V,
S/O THE LATE VITTAL KUKYAN,
AGED ABOUT 50 YEARS,
RESIDING AT PALLATHARU HOUSE,
KODIMBADY VILLAGE AND POST,
PUTTUR TALUK, DAKSHINA KANNADA
DISTRICT - 574 325.

...PETITIONER

(BY SRI. JANARDHANA G, ADVOCATE)

AND:

1. GOVERNMENT OF KARNATAKA,
MINISTRY OF REVENUE, VIDHANA SOUDHA,
DR. B.R. AMBEDKAR ROAD,
BENGALURU - 560 001,
REPRESENTED BY ITS REVENUE SECRETARY.
2. THE DEPUTY COMMISSIONER,
DAKSHINA KANNADA DISTRICT,
MANGALURU - 575 001.
3. THE ASSISTANT COMMISSIONER,
ADALITHA SOUDHA,
PUTTUR SUB DIVISION,
PUTTUR - 574 201, DAKSHINA KANNADA.





4. THE REVENUE INSPECTOR,
UPPINANGADY HOBLI,
PUTTUR TALUK - 574 241,
DAKSHINA KANNADA DISTRICT.

5. SRI. K.V. PURUSHOTHAMA KUKYAN,
S/O THE LATE VITTAL KUKYAN,
AGED ABOUT 56 YEARS,
RESIDING AT "SRIPATTARABHIMA",
FLAT NO.308, VISHWAS ANMOL,
VYASANAGARA, KPT,
BEJAI POST, MANGALORE - 575 004.

...RESPONDENTS

(BY SMT. B.P. RADHA , AGA FOR R1 TO R4)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER OF THE R-2 DATED 06.12.2024 PASSED IN RAP NO. 146/2023 UNDER ANNEX-G TO THE WRIT PETITION AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned petition is filed assailing the order of respondent No.2-Deputy Commissioner, as per Annexure-G, who has reversed the order passed by respondent No.3-Assistant Commissioner and has directed the



Tahsildar to restore the name of the original owner, namely, Kamamma, who is none other than the mother of the petitioner and respondent No.5.

2. Facts leading to the case are as under:

The subject matter of the petition is agricultural land measuring 1 acre 85 guntas in Sy.No.27/RS/5 and 0.5 acres in Sy.No.27/RS/3, both situated at Kodimbady village. A closer scrutiny of the writ averments clearly reveals that there is no dispute that these two lands were admittedly owned by the mother of the petitioner and respondent No.5, namely, Kamamma, who acquired these properties under akrama-sakrama scheme on 21-04-1999. On the death of the said Kamamma, the petitioner, based on a will dated 05-11-2019, got his name mutated. Respondent No.5, who is none other than the brother of the petitioner herein, feeling aggrieved by the mutation, questioned the same before the Assistant Commissioner. The Assistant Commissioner dismissed the appeal on the premise that respondent No.5 has already



approached the civil court by filing a partition suit. The Deputy Commissioner, however, has reversed the order passed by the Assistant Commissioner and has directed to restore the name of the original owner, Kamalamma, pending consideration of the suit.

3. Learned counsel for the petitioner citing the judgment rendered by the Apex Court in the case of ***Suraj Bhan and others vs. Financial Commissioner and others reported in (2007) 6 SCC 186*** and also judgment rendered by the division bench in W.A.No.4429/2011, tried to persuade this Court that the Deputy Commissioner erred in reversing the order of the Assistant Commissioner. This Court is not inclined to accede to the arguments advanced by the learned counsel for the petitioner. This Court has given its anxious consideration to the law laid down by the Apex Court in the judgment cited supra. I have also given my anxious



consideration to the judgment rendered by the division bench in an unreported judgment in W.A.No.4429/2011.

4. The core question that draws the attention of this Court is as to whether the petitioner, who is admittedly the sibling of respondent No.5, can get his name mutated to the revenue records based on an alleged will executed by his mother, Kamamma. The full bench of this Court in the case of ***C.N.Nagendra Singh vs. Special Deputy Commissioner, Bengaluru, reported in ILR 2002 KAR 2750***, while answering the reference, has held that the revenue courts are prevented from recording the statements of the parties and therefore, the question of establishing the genuineness of the will cannot be ventured into in a mutation proceeding and has to be left to the discretion of the competent civil court. Even if respondent No.5 has filed a suit in partition, that in itself cannot constitute a ground to retain the name of the



petitioner on the strength of the will alleged to have been executed by his mother, Kamalamma.

5. Since relations are not in dispute and the petitioner and respondent No.5 are tracing inheritance rights through their mother, it becomes more relevant and significant in retaining the mother's name till rights of the parties are fully adjudicated in the pending partition suit. The petitioner is asserting exclusive title based on a will and has to prove the will in the manner known to law. Unless the petitioner is able to prove the genuineness of the will, adhering to strict compliance under Section 63 of the Indian Succession Act, 1925, read with Section 68 of the Indian Evidence Act, 1872, the petitioner does not acquire right as contemplated under Section 128 of the Karnataka Land Revenue Act, 1964, to get his name mutated based on a will. Will either be registered or not registered does not create a right in favour of legatees. The legatee, who claims to be a beneficiary under the will,



has to substantiate it and prove it. Unless respondent No.5 is non-suited in a partition suit, the petitioner could not have got his name mutated to the revenue records. These significant details are rightly adverted to by respondent No.2-Deputy Commissioner.

6. The order of respondent No.3-Assistant Commissioner, in dismissing the appeal on the premises that respondent No.5 has already approached the civil court does not align with the principles laid down by the full bench of this Court in the judgment cited supra and also runs contrary to the mandate prescribed under Section 128 and 129 of the Karnataka Land Revenue Act, 1964. In that view of the matter, this Court is not inclined to grant any indulgence. The order passed by respondent No.2-Deputy Commissioner, is in accordance with law. Therefore, writ petition is devoid of merits and liable to be dismissed.



Accordingly, the writ petition is devoid of merits and stands dismissed.

All contentions are kept open.

This order will not be an impediment for the petitioner herein to lead cogent evidence and substantiate the genuineness of the will in the pending suit.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

HDK
List No.: 1 Sl No.: 37
CT: BHK