

**THE COURT OF FINANCIAL COMMISSIONER REVENUE
(COMMISSIONER AGRARIAN REFORMS)
JAMMU AND KASHMIR AT JAMMU**

FILE NO.
403/FC-ARC/AP

DATE OF INSTITUTION
13.02.2013

DATE OF DECISION
21.04.2015

1) ABDUL RASHID S/O ABDULLAH R/O FAZLABAD, TEHSIL SURANKOT,
DISTRICT POONCH.

(APPELLANT)

VERSUS

2) GHULAM AHMED S/O WALIA R/O FAZLABAD, TEHSIL SURANKOT,
DISTRICT POONCH;

(RESPONDENT)

3) QADRA S/O ABDULLAH R/O FAZLABAD, TEHSIL SURANKOT, DISTRICT
POONCH.

(PROFORMA RESPONDENT)

In the matter of:

A) Appeal against the judgement and decree dated 20.10.2011 passed by the Collector, Agrarian Reforms (ACR) Poonch whereby the decree of adverse possession has been passed against the appellant with regard to land measuring 04 Kanals and 10 Marlas falling under Khasra No. 999 and 1000 in village Fazlabad, Surankot, Poonch;

B) Application for transfer of the above titled case.

For Appellant	---	Adv. Rameshwar P. Sharma, Adv. Rohit Gupta, Adv. Dara Singh
For Respondent No. 1	---	Adv. A. G. Sheikh, Adv. Shakoor A. Malik
For Respondent No. 2	---	Nemo

J U D G E M E N T

- 1) The present controversy concerns land measuring **04 Kanals and 10 Marlas** falling under the above noted location. Briefly stated, the respondent No. 1 herein filed an application before the Collector, Agrarian Reforms (Assistant Commissioner Revenue), Poonch for a declaratory decree of adverse possession with regard to the land under consideration. The Collector after perusing the record and calling for a report from the Tehsildar concerned observed that the respondent No. 1 is in continuous possession of the said land for the last more than 12 years on account of which he has become an owner by way of adverse possession.
- 2) Aggrieved, the appellant herein moved this court in appeal challenging the order passed by the Collector, Agrarian Reforms (Assistant Commissioner Revenue), Poonch. On the day of presentation, the case was transferred to the court of the Additional Deputy Commissioner (Commissioner Agrarian Reforms), Poonch for disposal under law. However, pending disposal of the case before the ADC, Poonch, the appellant filed an application for transferring the case to this court or to any other court of competent jurisdiction. This court, thereafter, deemed it just and proper to transfer the case to itself for disposal.
- 3) The essential pre-requisite to establish adverse possession is that the possession of adverse possessor must be neither by force nor by stealth nor under the license of the owner. It must be adequate in continuity, in publicity, open, exclusive, hostile and in extent to show that the possession is against the interests of the owner. The moot question in the instant case to be considered is whether such a possessor of land can claim right of adverse possession by filing a suit. This court is of the view that the right of acquisition of title in like cases can only be pleaded when the occupant defends his/her right of possession on the land. This is not a right which can be invoked automatically after the expiry of 12 years from the time occupancy begins. It may accrue only when the original owner of a land comes to evict a possessor.

- 4) However, in the instant case, the record indicates that the type of land falling under Khasra No. 999 is **Kap. Sec. 20-B** of the Big Landed Estates Abolition Act, 2007 (Smvt.) expressly prohibits the transfer of such lands or any interest therein. It even provides that no document relating to the transfer of such lands shall be admitted for registration. A decree of adverse possession can be incorporated in the revenue record only after its registration in the court of law. Therefore, in the circumstances, this court holds that the occupant can't acquire any title over this land.
- 5) Moreover, an examination of the relevant record, along with the written submissions filed by both parties, shows that the appellant was not given an opportunity of being heard by the Collector, Agrarian Reforms (Assistant Commissioner Revenue), Poonch. The impugned order has a reference of an affidavit which was sworn in by the father of the appellant in favour of the respondent No. 1 herein. Further, the respondent No. 1 in his written objections admits for a *de novo* enquiry in case no notice was served on the appellant and the proforma respondent.
- 6) Having considered the facts and circumstances of the case and for the reasons aforesaid, the appeal is allowed and the judgement and the "decree" dated 20.10.2011 passed by the Collector, Agrarian Reforms (Assistant Commissioner Revenue), Poonch are set aside. The case is remanded to the Collector, Agrarian Reforms concerned for a *de novo* enquiry in the matter for taking further necessary appropriate action in the matter. No costs. Interim directions, if any, shall stand vacated. The case file be relegated to records after due completion.

Sd/-

(Dr. Arun Kumar) IAS
Financial Commissioner Revenue
(Commissioner Agrarian Reforms)
Jammu and Kashmir, Jammu

Announced today on this the **21st day of April, 2015** under my hand and Seal of this Court.