

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

FILE NO.
202/FC-AP

DATE OF INSTITUTION
04.04.2012

DATE OF DECISION
27.05.2015

- 1) ATTA MOHAMMED KHAN S/O SAIN JAGDEV DUTTA S/O OM PARKASH
R/O NARWAL BALA, TEHSIL AND DISTRICT JAMMU;
 - 2) KHURSHID ALI S/O -----DO-----;
 - 3) SHAM DIN S/O -----DO-----;
 - 4) KALA S/O -----DO-----;
 - 5) NOOR ALI S/O HASSAN DIN R/O -----DO-----;
 - 6) ANAYAT ALI S/O -----DO-----.
- (APPELLANTS)**

VERSUS

- 1) NOOR HUSSAIN S/O DIN MOHAMMED R/O NARWAL BALA, TEHSIL AND
DISTRICT JAMMU;
 - 2) RASHID AHMED S/O -----DO-----;
 - 3) NAZIR AHMED S/O -----DO-----;
 - 4) SETTLEMENT OFFICER, JAMMU;
 - 5) TEHSILDAR (S), JAMMU;
 - 6) NAIB TEHSILDAR (S), JAMMU
- (RESPONDENTS)**

In the matter of:

**A) Appeal against the ex parte order dated 12.07.2006
passed by the respondent No. 5 on an application
moved by the respondent No. 1 for partition of land
falling under Khasra No. 178 measuring 11 Kanals
and 13 Marlas situated at village Narwal Bala,
Tehsil and District Jammu;**

B) Remand case OWP No. 420/2007 and CMP Nos. 633/2007 and 1646/2009 dated 30.01.2012 made by the Hon'ble High Court of Jammu and Kashmir regarding the above stated matter.

For Petitioner No. 1 --- In person
For Respondent No. 1 --- Adv. Sahil Mirza, Adv. Anand Bhardwaj,
Adv. Abdul Waheed

J U D G E M E N T

- 1) The concise facts of the case are that one Din Mohammed, father of respondent No. 1-3 herein had filed an application before the Assistant Commissioner (G), Jammu for making up his deficiency of land in Khasra No. 166, 167, 169, 169 min., 176 and 178 (khewat No. 15) in village Narwal Bala, Jammu. After going through the relevant records, the Assistant Commissioner (G) vide order dated 01.03.1993 observed that the applicant is deficient of his land BY 05 Kanals and 12 Marlas which falls in his due share and directed that the same be made good after proper demarcation by taking into consideration *nakis* and *kamil*. It was further ordered that the possession of the opposite side except to the extent of that excess land shall not be disturbed.
- 2) Appellant No. 1 questioned the validity of this order of the Assistant Commissioner (G), Jammu before the Settlement Commissioner, Jammu and Kashmir who dismissed the petition in default. The application filed for its restoration also met with the same fate. Afterwards, the applicant moved the Tehsildar (S), Jammu to implement the orders of the Assistant Commissioner (G), Jammu who after seeking a report from the patwari/*girdawar qanungo* directed the Naib-Tehsildar (S), Bahu vide order dated 12.07.2006 to proceed on spot and hand over the possession of the land measuring 03 Kanals 04¼ falling under Khasra No. 178 to the respondents.

- 3) This order of Tehsildar (S) Jammu was challenged in appeal before the Settlement Officer, Jammu who vide order dated 17.07.2006 granted status quo in the matter. However, on 29.07.2006, the said court withdrew the said order on the ground that the said court was not competent to pass any orders in the matter. This order dated 29.07.2006 passed by the Settlement Officer, Jammu was challenged in revision before Joint Settlement Commissioner, Jammu and Kashmir who vide order dated 20.11.2006 observed that the partition of land was done by the Tehsildar (S), Jammu in compliance with the directions of the Assistant Commissioner (G), Jammu for meeting the insufficiency of 03 Kanals and 04¼ out of Khasra No. 178. The main dispute was still a matter of appeal before the Settlement Officer, Jammu. It was held by the said court that the order dated 29.07.2006 does not suffer from any legal infirmity and, therefore, dismissed the claim of the appellants.
- 4) In order to reach a just conclusion the matter, this court withdrew the appeal pending disposal in the court of the Settlement Officer, Jammu and transferred it to itself. Earlier, while examining the case from different angles, it was observed by this court that the order passed by the Assistant Commissioner (G) had attained finality as it was not challenged anywhere. The order was passed after providing an opportunity of being heard to both parties and the appellants had not questioned the procedure/rules followed by the AC (G). Keeping these aspects into consideration, this court dismissed the appeal and the order passed by the Tehsildar (S), Jammu was upheld.
- 5) Dissatisfied, the appellants herein moved the Hon'ble High Court of Jammu and Kashmir challenging the order passed by this court. The Hon'ble High court observed that the order passed by the Settlement Officer, Jammu vacating the status quo order proceeding on the premise that it was a consequential order pursuant to the AC (G)'s order dated 01.03.1993 and may not, therefore, be appealable, is found unsustainable. The order passed by the Settlement Officer, Jammu vacating the status quo order without dealing with the issues raised by the petitioners in their appeal pertaining to the manner in which the Tehsildar (S) had directed the

implementation of the AC (G)'s order is, therefore, unjustified. The Hon'ble High Court further observed that this court too appears to have committed the same mistake in dismissing the appeal in dealing with the issues raised by the petitioners inter alia urging that the partition proceedings were ordered to be conducted in violation of the partition rules and without notice to the petitioners. The order dated 25.04.2007 passed by this court, order dated 20.11.2006 passed by the Joint Settlement Commissioner and the order dated 29.07.2006 passed by the Settlement Officer, Jammu were thus set aside and the case was remanded to this court to hear the petitioners appeal afresh.

6) This court has gone through the case file as well as the developments in the case from time to time and observes that the deficiency of land of co-sharers can only be made good as per the law laid down regarding the partition of land. The Tehsildar (S), Jammu, it seems, had passed the order on the basis of the order passed by the Assistant Commissioner (G). This is strange because the officer who initiates the partition process can only pass such orders till the proceedings are determined. This court finds no instance in law where it has been provided that one Revenue Officer should order a partition completing a portion of the proceedings and then authorise a subordinate for completing the remaining part; except in a case where the revenue officer is retired or transferred, in which case a successor may complete the task. Therefore, this court feels that the procedure adopted in the instant case was illegal and is against the provisions of the J&K Land Revenue Act and the Partition Rules made thereunder.

7) Indeed, there is a detailed procedure established by law for partition of lands and the same has not been adhered to in the instant case. Without complying with those technical requirements, no partition of land can be attempted. Rule 16 of the Partition Rules provides for points to be considered in framing the methods of partition. Besides this, there are other points which are required to be taken into consideration in partition cases. It appears that the same have also not been followed in the present case.

- 8) Technically speaking, the significant requirements in the partition cases are the preparation of some records on the spot, writing of instrument of partition, putting the parties in separate possession, obtaining a written acknowledgement in this regard and only then attesting a mutation. In the instant case, the same has not been done. In nut shell, the partition of land looks more like a paper formality than an on-the-spot work.
- 9) For the reasons aforesaid and after a thoughtful consideration of the matter, the order dated 01.03.1993 passed by the Assistant Commissioner (G) along with the order dated 12.07.2006 passed by the Tehsildar (S), Jammu is set aside. The case is remanded to the Tehsildar concerned for a *de novo* enquiry into the matter with special reference to the observations made by this court for further appropriate necessary action thereafter. 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 **28th day**
of May, 2015 under my hand and Seal
of this Court.