

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

FILE NO.
295/FC-AP

DATE OF INSTITUTION
21.05.2013

DATE OF DECISION
20.01.2015

1) RADHEY SHAM CHOUDHARY S/O AMAR NATH R/O 1-AKHNOOR ROAD,
JAMMU. **(PETITIONER)**

VERSUS

- 1) DARSHAN SINGH S/O WARAYAM SINGH R/O TOPH SHERKHANIA,
JAMMU;
 - 2) PURAN SINGH S/O SURAM SINGH R/O TOPH SHERKHANIA, JAMMU;
 - 3) JARNAIL SINGH S/O -----DO-----;
 - 4) BIASO DEVI WD/O -----DO-----;
 - 5) KAMLESH KUMARI D/O -----DO-----;
 - 6) RAJ KUMARI D/O -----DO-----;
 - 7) SANTOSH KUMARI D/O -----DO-----;
 - 8) SANDLAN DEVI D/O BHAGAT SINGH R/O VILLAGE DERA BABA GALI,
TEHSIL UNA, HIMACHAL PRADESH;
 - 9) SOMA DEVI D/O DHAN DEI AND BHAGAT SINGH R/O -----DO-----;
 - 10) PAWAN KUMAR S/O SITA DEVI R/O DANANDRI, TEHSIL AND DISTRICT
UNA, HIMACHAL PRADESH;
 - 11) KIRAN BALA D/O -----DO-----.
- (RESPONDENTS)**

In the matter of:

**Revision petition against the order dated 25.03.2013
passed by the Settlement Commissioner Jammu and
Kashmir in revision petition titled, “Radhey Sham Vs.
Darshan Singh” whereby the revision petition**

preferred by the petitioner herein against the order dated 30.04.2010 passed by the Settlement Officer, Jammu was dismissed and with the prayer to set aside the same.

For Petitioner --- Advocate Anil Khajuria

For Respondents (2-7 & 9) --- Advocate Dara Singh

For Respondents (1, 10 & 11) --- Advocate M.L.Bhat

For Respondent No. 8 --- Ex Parte

J U D G E M E N T

- 1) Briefly stated, facts of the case are that in the year 1988, one Haim Dei Wd/O Balwant Singh R/O Top Sherkhania, Jammu filed an application before the Assistant Commissioner (R), Jammu for partition of land measuring 177 Kanals and 12 ½ Marlas falling under different Khasra numbers in Khewat No. 18. On 03.06.1989, the AC (R), Jammu rejected her claim. Thereafter, she filed an appeal before the Deputy Commissioner, Jammu who vide his order dated 17.08.1991 remanded the case to the AC (R) Jammu for fresh enquiry. However, later on, the case was withdrawn and transferred to the AC (G), Jammu for disposal who conducted an enquiry into the matter and passed an order dated 24.06.1993, by virtue of which the said land got partitioned.
- 2) Aggrieved, Sagara Singh and Suram Singh, two co-sharers challenged the order passed by the AC (G) in appeal before the Director Land Records (Collector Agrarian Reforms) Jammu, who examined the matter and upheld the order impugned vide an order dated 15.01.1994. This order was challenged by them in revision before the Settlement Commissioner, J&K

who vide order dated 27.08.1994 dismissed the revision petition and uphold the order passed by the Director Land Records, Jammu. This order was further assailed before this court. But subsequently the same was withdrawn in anticipation of some compromise arrived at between the parties. This court had formally allowed the withdrawal vide an order dated 10.03.1995. Therefore, the Tehsildar Jammu attested the mutation No. 5865 dated 16.05.1995 indicating therein the shares of each shareholder as per the order of the Assistant Commissioner (G), Jammu and the said compromise between the parties.

- 3) Afterwards, one Radhey Sham, the petitioner herein moved the Hon'ble High Court of J&K challenging the order passed by this court, but it came to be dismissed on 13.03.2002 as meritless. In parallel, he also filed an appeal against the order dated 16.05.1995 passed on the mutation No. 5865 before the Director Land Records (Settlement Officer) Jammu to the extent it related to the land falling under Khasra No. 333 on various grounds. The court below vide its order dated 09.08.2003 accepted the appeal and set aside the order passed on mutation No. 5865. Accordingly, the case was remanded to the Tehsildar, Jammu for fresh enquiry with regard to the interest of the state, if any, and also to determine the share of **Hissadars** in accordance with the partition order preceded by the **sanadnama** partition and preparation of Tatima Shajra. Furthermore, it ordered that the share of the petitioner be earmarked from the share of Suram Singh on the basis of the consent given by the co-sharers before the Tehsildar at the time of attestation of the said mutation.
- 4) Complying with the directions, the Tehsildar Jammu conducted an enquiry and passed order dated 29.10.2004 on mutation No. 5865 declaring land measuring 29 Kanals and 18 Marlas falling under Khasra No. 333 and 333 (min.) in the **Hissadari** possession of Suram Singh. The petitioner claims to have purchased this land measuring 29 Kanals and 18 Marlas from Suram Singh by virtue of sale deeds duly registered from 29th December, 1990 to 3rd March, 1992.
- 5) Aggrieved, one Dharam Singh and others filed an appeal before the Settlement Officer Jammu. The court below disposed of the matter on

30.04.2010 by holding the order of the Tehsildar Jammu illegal and set aside the same. It further observed that the order passed by the Assistant Commissioner (G) Jammu is a well considered one and directed that the same be implemented in letter and spirit.

- 6) Dissatisfied, the petitioner herein challenged the order passed by the Settlement Officer Jammu in revision before the Settlement Commissioner, J&K. The court below examined the matter in detail. One of the key observations made by it was that order dated 16.05.1995 passed on mutation No. 5865 was the outcome of the partition order dated 24.06.1993 which had attained finality by virtue of the order dated 10.03.1995 passed by this court and therefore, was beyond the purview of reopening. Secondly, the possession by one co-sharer is deemed as possession by and on behalf of all co-sharers. If this rule is not followed, intra family disputes would arise tearing apart blood relations. For that reason, one co-sharer can't alienate the land of another. Thirdly, in pursuance of Sec. 31 of the J&K Agrarian Reforms Act, 1976 there was a blanket ban for alienation of land except 2 Kanals for residential purposes and land alienated against the express provisions of law would attract the application of the said provision along with Sec. 13 of the said Act leading to escheatment of the land to State. In the instant case sales have taken place from 12/1990 to 03/1992 and undoubtedly attract the said Sec. 31 of the Act of 1976.
- 7) This court has diligently gone through the case file and the other connected record. It has been observed that the dispute in the matter arose only after the order was passed on partition by the AC (G), Jammu. The observation made by the court below regarding the finality of the order passed on mutation No. 5865 is not correct. Any such order can be said to be final when the same is implemented in the record as well as on the spot. But till date, the partition has not been implemented on the spot and therefore, the order under contemplation is not final. Moreover, it is said that the parties had entered into a compromise before this court earlier finalising the partition. However, the said Suram Singh after selling the land in question to the petitioner was debarred/estopped from making any such

compromise as the interest of the petitioner was involved in the matter which was itself created after his action.

- 8) Additionally, the Tehsildar Jammu attested mutation No. 5865 on the basis of the partition order passed by the Assistant Commissioner (G) and a compromise arrived at by some of the co-sharers before this court earlier. This is strange because the officer who initiates the partition process can only pass orders on the mutation concerning the same. This court finds no instance in law where it has been provided that one Revenue Officer should order a partition and then authorise a subordinate for attestation of a mutation in that behalf; 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 for the process is illegal and against the provisions of the J&K Land Revenue Act and the partition rules made thereunder.
- 9) 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 to those technical requirements, no partition of land can be done. Rule 16 of the Partition rules provides for points to be considered in framing the methods of partition. It is laid down therein that it shall be clearly ascertained if the applicant's share only is to be separated or whether any of the co-sharers wish their shares to be separated. Besides this, there are other points which are required to be taken into consideration in partition cases. It appears that the same has also not been followed in the present case. Moreover, it is also required to be ascertained as to whether Haim Dei only wanted her share to be separated or other co-sharers also wanted the partition of their land.
- 10) 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.

- 11) In addition to this, Rule 46 of the Standing Order 23-A dealing with the subject of attestation of mutations lays down that in deciding mutation cases, arising out of succession to a right, officers should look into two principal factors: first possession and the second right. In cases of transfer of a right, however, it is necessary to state whether possession has actually been transferred on the spot. In cases of sale, mortgage, redemption of mortgage, gift, private partition etc., if it is found that possession has not changed, the mutation should be rejected irrespective of the fact that the parties agree to transfer the possession at some future time. This infers that possession plays a significant role in the attestation of the mutations. But in the instant case, the possession of the land measuring 29 Kanals and 18 Marlas falling under Khasra No. 333 and 333 (min.) remained with the petitioner herein and still the Tehsildar Jammu attested the mutation No. 5865 which is totally against the law.
- 12) As far as the sale deeds and attestation of mutations in favour of the petitioner herein are concerned, the court below has adopted two theories. On one side, it speaks that the land attracts the provisions of the Sec. 31 read with Sec. 13 of the Agrarian Reforms Act, 1976 thereby escheating it to the State. On this count it can be gathered that the said land came under the share of Suram Singh. On the other, it suspects that the land under dispute came under the share of Haim Dei and Suram Singh sold the same illegally.
- 13) Further, from an examination of the certified copy of written arguments filed by Suram Singh and others before the civil court indicates that the possession of land in question was passed on to Amar Nath, father of the petitioner herein in the year 1968 on rent basis through a deed dated 31.12.1968 for carrying on the business of "Lakdi Taal" or Timber Depot. The possession since then has remained with the petitioner's father and the petitioner. Significantly, "**Land**" as defined under the J&K Agrarian Reforms Act, 1976 includes only those lands which were used for agricultural purposes or the purposes subservient to Agriculture in Kharif, 1971 as well as structures on such land used for purposes connected with the agriculture, areas covered by or fields floating over water, forest lands

and wooded wastes and trees standing on such lands. It is, therefore, required to be ascertained as to whether this land was actually used for agricultural purposes on the determinant date or not. Until and unless, the status of land is clear viz., was the property under consideration came under the definition of “**Land**” as defined under the above stated Act, the provisions of Sec. 31 and 13 of the said Act can’t be invoked.

- 14) One more issue which has drawn attention of this court is that the said Suram Singh is claimed to have already sold land measuring 30 Kanals and 06 Marlas before the initiation of partition proceedings. This is required to be verified as to whether he had sold land before 1968 or after that, when the petitioner claims his father to have come into the possession of the said land. This will help in ascertaining the lands Suram Singh considered coming in his share as the land measuring 29 Kanals and 18 Marlas has been shown in his self cultivation as share holding in 1964.
- 15) In addition, respondent Nos. 2 to 7 and 9 have submitted that the joint holdings of the parties were falling in Khewat No. 18, 21, 25, 26 and 58 and Khewat Shamilat Deh of the said village. But Haim Dei, mother of Resp. No. 1 for reasons best known to her, moved the application for segregating her share in respect of the land falling in Kheawt No. 18 only. They have, therefore, prayed that all this land should be partitioned to avoid any future litigation.
- 16) Furthermore, the petitioner has put forth many averments with regard to the technical infirmities committed by the subordinate revenue authorities. **Firstly**, that the petitioner was a necessary party in the partition and other proceedings as he was an owner in possession of the land under consideration. But he was not heard and therefore, the outcome of these proceedings are *non est* in the eyes of law and not binding on the petitioner. **Secondly**, that the jurisdiction of the civil court had been invoked in the matter where the suit challenging the sale deeds was dismissed in default and this aspect was ignored by the revenue fora below opining that the sale deeds were null and void. The dispute which was initiated by the respondents in the civil court could not have been

adjudicated by the Settlement Commissioner or any other forum below as the share holders at their own free will and volition had invoked the jurisdiction of the civil court and were thus estopped from raising this plea before the revenue court. **Thirdly**, that Dharshan Singh had obtained a power of attorney from Sita Devi and Soma Devi, the legal heirs of Dhan Dei who had initiated the suit for partition. This power of attorney was subsequently withdrawn by both of them during the proceedings before the Settlement Officer in the year 2007, yet the said Darshan Singh kept on pursuing the case illegally without any authority. Not only this, after the death of Sita Devi, he moved an application for and on behalf of the present legal heirs namely, Pawan Kumar and Kiran Bala on 03.01.2009 before the said Settlement Officer, which was readily accepted without even calling for objections from the petitioner. This move was time barred as the same was filed one year after the death of Sita Devi. Strangely, this was kept for arguments on 12.09.2009, despite the same being accepted earlier. Therefore, the proceedings were of no significance and had vitiated, thus abating the appeal. **Fourthly**, that the Settlement Officer wrongfully dealt with the issue of compromise deed presented on behalf of Soma Devi and Sandlan Devi, entered with the petitioner herein whereby the respondents had conceded the right of the petitioner to the land in question. Not only this, the SO after recording the statement of the respondent No. 8 and 9 herein dropped their names from the proceedings but vide order dated 30.04.2014 accepted their appeal showing them as being represented by the attorney holder, Darshan Singh. **Fifthly**, that all courts below including the one of Settlement Commissioner have failed to return any finding on the point of jurisdiction assumed by the Assistant Commissioner (G) as the entire Jammu district had fallen under the jurisdiction of officers in Settlement. **Sixthly**, that the partition was sought to be done in respect of 16 Khasra numbers yet the partition was wrongfully accepted for three khasra numbers viz., 333, 301 and 305 which was a glaring illegality. In addition, the partition was sought in respect of 177 Kanals and 12 Marlas whereas while handing down the decision by the AC (G), the partition was affected in respect of land measuring 202 Kanals.

Lastly, that the partition was sought in respect of 177 Kanals and 12 Marlas but the decision of the AC (G) covers 202 Kanals of land. Thus, the order was not in accordance with the rules framed for partition of land under the Land Revenue Act, 1996 (Smt.).

- 17) The counsel for the petitioner has made many more points. Nonetheless, this court by going into the merits of the case and for the reasons discussed above holds that the order passed by the court of the Settlement Commissioner does not stand the test of law. The same is, therefore, set aside. In addition, the order passed by the AC (G), Jammu along with the mutation No. 5865 attested in this regard is also set aside. However, the order dated 09.08.2003 passed by the Director Land Records is upheld.
- 18) Moreover, if it is found that the Suram Singh was holding land in excess of what he was legally entitled to, any of the co-sharer whose land was held and disposed of by him may be suitably compensated out of his share in the other Khewats mentioned herein above. The same shall be in the interest of justice and shall set all controversies at rest. The case in that background is remanded to the Tehsildar concerned for a *de novo* enquiry in the matter with reference to the observations made by this court and for taking further appropriate necessary action. The enquiry shall be conducted on the spot and in the presence of all the parties concerned as well as other respectable citizens of the area. 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 **20th day of January, 2015** under my hand and Seal of this Court.