

(2018) 11 J&K CK 0127
In the Jammu And Kashmir High Court
Case No : CIMA No. 108 Of 2018

Abdul Hamid Bhat And Another

APPELLANT

Vs

Ghulam Ahmad Ganai

RESPONDENT

Date of Decision : 01-11-2018

Acts Referred:

Jammu And Kashmir Agrarian Reforms Act, 1976 — Section 4, 8

Citation : (2018) 11 J&K CK 0127

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : G. A. Lone

Final Decision : Dismissed

Judgement

Rashid Ali Dar, J

1. The appellants herein have called in question, in terms of the instant appeal, an order passed by learned Additional District Judge, Anantnag dated 08.07,2015 in suit titled Ghulam Ahmad Ganai v. Abdul Hamid Bhat, by which the ad-interim assistance granted earlier has been confirmed and the appellants herein restrained from causing any interference in possession of the applicant-respondent herein qua the suit land referred therein. The learned Trial Court after making reference to the contentions raised in the plaint and written statement while providing an opportunity of being heard to the parties came to the conclusion that a prima facie case has been made out by the respondent herein and balance of convenience also tilt in his favour. It is also stated that in case interim assistance were not been granted, irreparable loss is likely to ensue to the respondent.

2. The case as projected by the respondent-applicant in the plaint is that his father had been in cultivating possession of land measuring 4 kanals and out of which 2 kanals falling under the survey No. 918/185 and 2 kanals falling under survey No. 317 min at Khayar Pahalgam prior to 1969-70 as a tenant. The land

according to the respondent has been mutated in the name of State in terms of Section 4 of Agrarian Reforms Act on 22.04.1982 and later mutated under Section 8 of the said Act on 12.12.1989. It according to the respondent was being enjoyed by his father as an owner and the appellants herein could not disturb peaceful possession which stood confirmed by the competent authority. A case according to him was registered against the appellants herein in police station Ashmuqam in the year 2014, when they have made an attempt to disturb his possession and to encroach upon the land. The excuse of appellants (defendants therein) for causing interference was that they had challenged the attestation of the mutations in favour of the respondent-plaintiff.

3. In the written statement of which reference is found in the impugned order, it has been stated that entries in revenue record are the result of manipulation by patwari. The father of the plaintiff according to them had married his daughter Fazi with Abu Bhat. Fazi and respondent are stated in the written statement were the daughter and son Mohammad Jamal Ganai. Thus that exists no landlord tenant relationship between Jamal Ganai and Abu Bhat or Mst. Fazi or her father Jamal Gani. Another contention raised was that Abu Bhat had orally gifted the said land in favour of his wife Fazi and had later orally gifted in favour of the defendants and another one namely Ashiq Hussain. The possession having been surrendered, the mutations attested according to the defendants were in breach of provisions of Agrarian Reforms Act and Standing Order 23-A of Land Revenue Act. Jamal was dead at the time of mutation of the defendants and alternatively even they have right in the property left behind by her mother.

4. Mr. Lone, learned appearing counsel for the appellants contended that the learned trial Court could not rely on the mutations referred in the plaint for arriving the tentative satisfaction of making out a case prima facie for grant of injunction as the same had been challenged before the competent forum and as an interim measure, the said forum had directed the operation be kept in abeyance. It is also his contention that the mutation under Section 4 of the Agrarian Reforms Act, is in terms of the Act was mandated to be passed for the whole village covered therein for. The land which was not in personal cultivation of a landlord in Kharif 1971, mutation attested in derogation of this practice is to be eyed with suspension according to him, unless there are strong reasons to believe that a bona fide necessity was present for attestation of the mutation. Furthermore, a person who had passed away before the year 1971 could not be declared a prospective owner, as has been done vis-à-vis Jamal herein.

5. Considered the rival arguments.

6. To appreciate the merit of contention raised in Appeal, it would be proper to refer to the judgment of a three Judge Bench of the Hon'ble Supreme Court in the case of Skyline Education Institute (Pvt) Ltd. v. SL. Vaswani, reported in AIR 2010 SC 3221, Their lordships held that once the Court of first instance exercises its discretion for grant or refuse of relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material

placed before the Court and is supported by cogent reasons, the Appellate Court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the Appellate Court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.

7. Their Lordships referred to earlier decision of the Court in the case of *Wander Ltd. v. Antox India (P) Ltd*, reported in 1990 Supp (1) SCC 727, wherein the apex court had set aside the order of Division Bench of High Court with following observations at para 14:

"14. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

8. In the impugned order, the learned trial Court while examining the contentions raised on behalf of the defendants/appellants has made reference of revenue extracts in the form of Jamabandi and Khasra Girdawari. It had also referred to a report of revenue agency that suit land falling under khasra Nos. 180/185 and 317 min total 4 kanals are in possession of the plaintiff/respondent. It has also stated that the defendants-appellants herein have not been able to produce any record from which summary satisfaction can be recorded that they are in possession of the suit land. It has, however, been left open for the parties to establish the correctness and otherwise of mutations attested before the competent authority, while it has also noted that the proceedings before the competent authority has not been finalized. Extract of the Jamabandi referred Annexure-B to the appeal herein depicts and corroborates Jamal being in cultivating possession of land under survey Nos. 185 and 317. No material is available on file to hold prima facie the Appellate Court ignored to consider the document suggesting appellants or any of their predecessor in interest were possessing land in question.

9. In the light of above facts, I am of the opinion that the discretion exercised by the learned Trial Court in favour of the respondent for grant of injunction was not improper. There are prima facie no basis while examining the contentions raised in appeal to take a different conclusion. Accordingly, there appears to be no merit and substance in the appeal of the appellants. Same entails its dismissal and is,

accordingly, dismissed.