

(2018) 07 J&K CK 0048

In the Jammu And Kashmir High Court

Case No : Letter Petent Appeal No..47 Of 2018 & Ia No.01 Of 2018, Caveat No.2628 Of 2018

Gurcharan Singh & Anr. @APPELLANT@Hash Surjit Kumar And Ors.

Date of Decision : 12-07-2018

Acts Referred:

Citation : (2018) 07 J&K CK 0048

Hon'ble Judges : Dhiraj Singh Thakur, J;Sanjay Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The instant Letters Patent Appeal by the appellants herein (respondent Nos.3 & 4 before the Writ Court) is directed against judgment dated

28.03.2018 passed by learned Single Judge in OWP No.1148/2017 titled Surjit Kumar & Anr. Vs. State of Jammu and Kashmir & Ors, by virtue of

which writ petition filed by respondent Nos.1 & 2 herein has been disposed of.Â

2. Learned counsel for the appellants has submitted that the appellants are aggrieved of the order dated 28.3.2018 whereby the learned Single Judge

has held that there is no scope of anyone to cause interference with the possession of the land measuring 1 kanal under Khasra no.18 situated at

Channi Himmat, Jammu, owned and possessed by the respondents No.1 and 2; that Single Judge has presumed that the respondent Nos. 1 and 2 are

the owners in possession of the said land on the basis of ex-parte decree which is under challenge before the Learned Sub Judge Jammu and where

the ex-parte decree has been stayed. The respondent Nos.1 and 2 are not owners in possession of the land in Khasra no. 18 measuring 1kanal

situated at Channi Himmat Jammu. That the respondent nos. 1 and 2 in para 5 of the writ petition have stated that one Gasitu S/o Channu was also in

possession of the land measuring 16 kanals as a gair maroosi prior to kharif 1971.Â That they have not mentioned that 16 kanals of land where Gasitu

was in possession as a gair maroosi of State land, however, the appellants have specifically stated in their reply that the said land measuring 16 kanals

19 marlas has been mutated in favour of the State, that means 16 kanals 19 marlas of land in Khasra no. 18 Channi Himmat Jammu is a State land

and Gasitu had no right on the State land as a gair maroosi. Said Gasitu died in 1980â??s and after his demise, the said land has not been shown in

possession of the respondent nos. 1 and 2 or in the name of their father.Â That the entries in the Khasra Girdawari of gair maroosi is not inheritable

right.Â

3. The case ofÂ appellants in the present appeal is that the respondents no.1 and 2 are neither owners nor in possession of the land measuring 01

kanal in Khasra no.18 min Channi Himmat Jammu and the respondent nos. 1 and 2 cannot rely upon the ex-parte decree of injunction passed by Sub

Registrar (Munsiff) Jammu on 27-9-1995 which has been challenged by the appellant no.2 and the operation of said ex-parte decree has been stayed

by the Learned Sub Judge JammuÂ vide its order dated 31-8-2006.Â

4. It is contended that the learned Single Judge has not considered the factual position that the decree of Sub Registrar (Munsiff) Jammu wherein the

Sub Registrar (Munsiff) Jammu has only mentioned about the possessory rights of Tej Ram and even the operation of the said decree was stayed by

the Sub Judge Jammu in the suit filed by the appellant no.2 is an error apparent on the face of record, which can precisely and exhaustively there

being an element of judicial error apparent on the face of record.Â The Learned Single Judge has passed the order impugned in the appeal based on

the ex-parte decree which was challenged and stayed and in the decree, there is no question of ownership of 01 kanal of land of the respondents No.

1 and 2 and the Learned Single Judge has passed the order without considering the documents annexed with the petition and the reply filed by the

appellants herein. Therefore, the Learned Single Judge has manifestly committed an error of law. As such, the order of the learned Single Judge of

this Court is liable to be quashed.Â

5. Heard counsel for appellants, who has reiterated all grounds taken in memo of appeal; whereas counsel for respondents who was on caveat has

supported the order of Single Judge. He has further argued that disputed question of facts cannot be called in question in LPA or writ petition. That

decree of civil court is always binding upon all other courts, unless it is set aside; so observation of learned Single Judge that possession of respondents

herein with regard to land measuring 1 kanal under khasra no.18, shall not in any manner be interfered with in view of clear decree dated 27.9.1995

passed by Sub Registrar Jammu, is correct.Â Â

6. We have given our thoughtful consideration to whole aspect of the matter.Â

7. From the perusal of documents annexed in file, it is evident that appellant Prithipal Singh has sold 7 marlas 6 sarsaiÂ of land under Khasra no.17

min situated at Channi Himmat to appellant no.1 vide sale deed duly registered on 22.08.2009; on the basis of said sale deed, mutation no. 4323 has

also been attested on 19.09.2009; respondent Nos.1 & 2/caveators challenged the said mutation before ACR in appeal; during pendency of appeal,

ACR passed an interim order of stay on 03.06.2014; this order was vacated on 09.07.2015 and an appeal was filed by petitioners before Additional

Deputy commissioner,Â who on 27.06.2016 directed ACR to reconsider the matter and meanwhile status quo on spot was directed to be maintained.

ACR on 21.07.2016 dismissed the appeal and has held that mutation has been attested on the basis of sale deed, and unless sale deed is annulled,

respondents herein have no case. Against the order of ACR, revision petition was filed before Divisional Commissioner, Jammu, which too, was

dismissed on 11.02.2017, holding that mutation has been passed on the basis of sale deed and unless sale deed is set aside, mutation cannot be set-

aside; Against the order of Divisional Commissioner, respondents 1 and 2 filed writ petition for quashing order dated 19.9.2009 passed on mutation;

order dated 21.7.2016 passed by ACR and order dated 11.2.2017 passed by Divisional Commissioner, Jammu. Learned Single Judge after hearing the

parties passed order impugned. The operative part of the impugned judgment of single judgeÂ reads as under:

â??It is the positive stand of the learned counsel for the respondent Nos.3 and 4 that they have no connection with the land measuring 1 kanal

covered under Survey No.18 situated at Chhani Himmat, Jammu, then the position of the decree of permanent prohibitory injunction in favour of the

petitioners, there is no scope for anyone to cause interference with the

possession of the land measuring 1 kanal under Survey No.18, owned by the petitioners.Â However, it is made clear that the observations made by the Assistant Commissioner (Revenue) Jammu (Appellate Authority) and then by the Divisional Commissioner, Jammu (Revisional Authority) shall be without any prejudice to the rights of the petitioners and in case, there is an issue regarding demarcation of the land, that is open to be looked into by the revenue authorities at the instance of either of the party.Â Possession of the petitioners vis-Â -vis 1 kanal of land covered under Survey No.18, of which they are the owners, shall not in any manner be interfered with in view of clear decree dated 27.09.1995, in their favour passed by the Court of Munsiff (Sub Registrar) Jammu.

Â For the afore-stated reasons and the position as adumbrated, petition shall stand accordingly disposed of, along with connected MP.Â??Â Â

8. The controversy appears to be of demarcation of land. Appellants are claiming to be the owners in possession of land measuring 7 m and 6 sarsai

of land situated under Kh. No 17 min Khewat no.108 and Khata no. 519 min at Channi Himmat on the basis of sale deed dated 22.8.2009 registered

on same day. Whereas respondent Nos.1 and 2 are claiming to be the owners in possession of land measuring I kanal under survey no. 18 min

situated at Channi Himmat, Jammu on the basis of civil decree passed by Munsiff (Sub Registrar),Jammu in favour of their father (late Sh. Tej Ram)

on 27.9.1995. Law is clear that Civil Court decree is always binding on Revenue Court regarding same subject.Â

9. Further, Writ Court has already held that if there is an issue regarding demarcation of the land that is open to be looked into by the Revenue

authorities at the instance of either of the party. Appellants have, thus, liberty to approach the Revenue Court in this regard.

10. In view of above, we do not find any scope of interfering into the judgment of learned Writ Court. This appeal is dismissed accordingly.