

(2020) 09 J&K CK 0067

In the Jammu And Kashmir High Court

Case No : Civil Revision No. 64 Of 2020, Civil Miscellaneous No. 4889, 4890 Of 2020

Jamat Ali And Others

APPELLANT

Vs

Mohd Sadiq And Others

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2020) 09 J&K CK 0067

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Virender Bhat

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. Power of Superintendence vested in this Court by Article 227 of the Constitution is invoked by the petitioners (hereinafter referred to as the 'defendants') to impugn the order dated 06.08.2020 passed by the Court of learned Sub Judge (JMJC) Jammu (hereinafter referred to as the 'trial Court') whereby the Commissioner (SDM) South, Jammu has been directed to submit a detailed report after hearing respondent No.6 and specifically pointing out and demarcating the land out of the joint property purchased by him.

2. With a view to appreciate the challenge of the defendants to the impugned order, it is necessary to first trace out few facts leading to passing of the impugned order.

3. Respondent Nos. 1 to 5 (hereinafter referred to as the 'plaintiffs') filed a suit against the defendants seeking a decree of declaration that the plaintiffs and the defendants are co-sharers and joint owners of the land measuring 44 kanals and 06 marlas situated at Narwal Bala, Jammu ['suit land'], for partition by metes and bounds and for permanent prohibitory injunction.

4. During the pendency of the said suit, a civil revision bearing No. 41/2008 came to be filed before this Court against the interlocutory order passed by the trial Court and set aside by the appellate Court. The parties, however, resolved their dispute before this Court by arriving at a consensus that the suit land being the joint property of the parties shall be partitioned between them in equal shares.

5. This Court, while disposing of the said civil revision, vide its order dated 11.03.2008, inter alia, provided that the trial Court shall ask the concerned Settlement Officer to effect partition of the suit land under reference between the parties by metes and bounds in accordance with the procedure prescribed under the Land Revenue Act and while considering partition, the concerned authority shall ensure that both front as well as rear sides of the suit land are equally partitioned between the parties as far as practicable. It was also specifically provided that any portion of the land found by the trial court to have been sold by any of the sides would be deducted from his share of land under reference. The trial Court, accordingly, passed a preliminary decree on 06-05-2008 as per the agreed terms and appointed the Commissioner for partitioning the property in line with the judgment of this Court.

6. A report was submitted by the Commissioner on 28-02-2012 which was objected to by both the parties. Accepting the objections of the parties, the trial Court issued fresh direction for filing fresh report in conformity with the judgment of this Court. The Tehsildar Settlement Jammu submitted a fresh report to the trial Court and on the basis of which final decree was passed by the trial Court.

7. Respondent No.6, who is not amongst the co-sharers, filed an application that the land sold by the judgment debtors be excluded from the partition. However, the trial court did not entertain the said application. The defendants as well as respondent No.6 herein preferred an appeal against the final decree dated 20.08.2015. Respondent No.6, who was not party to the suit, filed the appeal by special leave of the Court. The appeal was allowed and the final decree passed was set aside. In this way, the matter once again landed back before the trial Court. Proceeding in tune with the observations of this Court, the trial Court asked the Tehsildar Settlement Jammu to submit a fresh report which the Tehsildar Settlement has submitted before the trial Court.

8. The defendants claim that the report of the Tehsildar Settlement, Jammu now submitted is also a fraught with illegalities and, therefore, needs to be objected.

9. The grievance of the defendants is that the trial Court, without providing them an opportunity of being heard, has, vide impugned order, on an application of respondent No.6, issued further direction to the Commissioner to identify and demarcate two kanals of land claimed to have been purchased by respondent No.6.

10. The impugned order is assailed by the defendants primarily on the ground

that as per the judgment of this Court, the question, as to whether any portion of the suit land has been sold by any co-sharer/co-sharers and, if yes, its impact on the share of such co-sharer is to be determined by the trial Court and this adjudicatory function cannot be abdicated by the trial Court to the Commissioner.

11. Mr. Bhat, learned counsel appearing for the defendants vehemently argues that the impugned order is quintessentially an abdication of duty by the Court to the Revenue Officer and runs contrary to the directions of this Court whereby the trial Court was directed to determine as to whether any portion of the land was sold by any of the parties to the suit, so that the same could be deducted from his share at the time of partition.

12. Having heard learned counsel for the defendants and perused the record, I am of the view that no case is made out for exercise of power of superintendence vested in this Court by Article 227 of the Constitution.

13. The jurisdiction vested in this Court in terms of Article 227 of the Constitution is required to be exercised sparingly and in exceptional cases of miscarriage of justice or where this Court finds that the Court has exercised the jurisdiction not vested in it or has grossly misused its powers.

14. The order impugned, as is apparent from its perusal, is only to facilitate the trial Court to return a finding in terms of the directions passed by this Court.

15. The suit land is admittedly a land as defined under the Land Revenue Act and the Commissioner, who is a revenue officer, possessed of all revenue records or at least having access to such record, is the best person to indicate to the trial court as to whether any portion of the suit land has been sold by any of the co-sharers and if so, to what an extent. This information, if provided, would enable the trial Court to return a specific finding and make an appropriate deduction from the share of such vendor (co-sharer) as is provided by this Court while disposing of the civil revision on 11.03.2008.

16. It needs no emphasis that the report/information as called for by the trial Court from the Commissioner would be open to challenge/objection by any of the parties including the petitioners herein and it is only after providing an adequate opportunity to the parties to object to the report, the trial Court is supposed to return a definite finding and work out the shares of each co-sharers in the suit land. That being the position, the order impugned, in my opinion, does not prejudice any of the parties, more particularly, the petitioner herein. The order passed falls within the jurisdiction of the trial Court and has not resulted in any failure of justice making out a case for intervention under Article 227 of the Constitution.

17. For the foregoing reasons, I find no merit in this petition. Same is accordingly, dismissed along with connected application.