
(1998) 03 J&K CK 0054
In the Jammu And Kashmir High Court
Case No : CIMA No. 87/96

Kanta Devi

APPELLANT

Vs

Prabh Dayal

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Jammu and Kashmir Land Revenue Act, 1996 — Section 118, 23, 31

Citation : (1998) KashLJ 663 : (1999) SriLJ 45 : (1999) 1 SriLJ 45

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : V.R.Wazir, D.S.Manhas, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, Judge

1. This appeal under the provision of Jammu and Kashmir Requisition and Acquisition of Immovable Property Act, hereinafter referred to as the Act. has been preferred by the appellants, hereinafter referred to as the petitioners against order passed by the Additional District Judge, Jammu.

By means of impugned order in File No. Nil/LA on 17.04.1996, it was held that the petitioners have no concern with the land, which was the subject matter of the case and thus they cannot claim any share in the rental compensation that was being received by the respondents to the exclusion of the former. This shows that the claim urged by the petitioners for claiming their share has been negated by the collector below.

2. Brief facts giving rise to this case are that a big chunk of land measuring 265 Kanals and 2 marlas situate in villages Ranian , Jandial and Agora

Tehsil Jammu, was acquired by the State Government under the provisions of the Act for use by Army. For the purpose of present appeal,

controversy relates to the entitlement of compensation in respect of land measuring 13 Kanais and 34 marlas situated in village Jandial, out of the

aforesaid area comprised in Khasra No.2052, compensation in the shape of rent as assessed by the Government was paid to Gori Shanker and

Krishna Devi Wd/o Chochan. Gori Shanker died during the pendency of the proceedings, so his LRs are respondents, 1 to 4; whereas Hari Rain

as well as Ram Saran original petitioners also died, petitioner 1 Kanta Devi is the widow of Ram Saran and petitioners, 2 to 9 are the LRs of Hari

Ram.

3. In the first instance, petitioners were for 1/2 share in the rental compensation by moving application before the Tehsildar as far back as in 1982,

which application was rejected and it was held that the petitioners had no claim over Khasra no. 2052, since it had been allotted to the respondents in a

private partition and the petitioners had been allotted land comprised in Khasra no. 2248 from which Khasra No. the respondents were

completely excluded. This order of Tehsildar, Jammu dated 14.03.83 was confirmed by the Deputy Commissioner, Jammu on 23.03.85 in the

appeal filed by the petitioners. But when both these orders were questioned before the Divisional Commissioner (Appeals), Jammu while allowing

the appeal, it was held that it was not within the power of the Revenue officer to hold as to which of the parties is entitled for the apportionment of

the compensation in question, which was awarded in favour of the respondents. It was further held that it was within the domain of District Judge

as Arbitrator to decide the question of apportionment, such order was passed on 14.01.1986 by the Director Land Records, who was having

powers of Divisional Commissioner (Appeals),

4. Thus, an application came to be filed Under Section 8(f) read with Section 23 of the Act for making reference to the Arbitrator for settlement of

dispute between the parties regarding the apportionment of rental compensation in respect of Khasra No.2052. After summoning the respondents,

matter was recommended to the Home Department for appointment of an Arbitrator. Vide his order dated 22.07.87 passed by the Deputy

Commissioner. Pursuant to this, SRO No.259 dated 15.04.87 was issued when Arbitrator was appointed and Deputy Commissioner forwarded

the matter between the parties to the court below on 5.10.87. The matter was

hotly contested by the respondents. During the course of proceedings, parties filed their respective pleadings in the shape of claim/counter claim. Petitioners alongwith Dev Dutt and Krishan Duti two other brothers of late Hari Ram and Ram Saran original petitioner claimed 1/2 share out of rental compensation of Khasra No. 2052. Krishen Dutt and Dev Dutt appear to have joined hands with the respondents and gave up their claim in addition to appearing as witnesses on behalf of the respondents. Thus controversy in the present case relates to only 1/4 share out of the total rental compensation being received by the respondents in respect of aforesaid Khasra No. 2052 from the authorities.

5. Defence put forth by the respondents was twofold, according to them, in a private partition that had taken place long ago even before requisitioning of the property in question for use by Army Authorities, Khasra No.2052 fell to their share and in lieu there of Kh. No.2248 had been granted to the petitioners. In support of their this claim, respondents pressed into service the judgment and decree passed by Munsiff 1st Class, Jammu in File No. 379/ Civil, dated 29.11.88 titled as Krishan Dutt Vs. Hari Ram and others, whereby it was held that all the four brothers had 1/4 share in the land, which was the subject matter of the suit. According to respondents, since private partition had taken place between the land owners and Khasra No. 2052 had fallen to them, petitioners have nothing to do therewith and thus they were not entitled to rental compensation. In this decree, it was held that besides other lands in Khasra No.2248, all four brothers had equal share. Others plea urged was of exchange of Khasra No. 2052 with 2248 between the parties.

6. Mr. V.R. Wazir, learned counsel appearing in support of this appeal forcefully urged that the Arbitrator had fallen into error while accepting the plea of partition as also the other plea of exchange that was put up to defeat the claim of his clients. According to him, on the basis of oral and documentary evidence, it had been proved to the hilt that there was no private partition, as claimed by the respondents as also there is no evidence of exchange as was being urged by them. In addition to this, it was also pointed out that exchange has a special connotation in law.

Provisions of Transfer of Property Act as well as Jammu And Kashmir Land Revenue Act were also pressed into service besides referring to oral

evidence of the parties. On the otherhand, Mr. Manhas controverted all the pleas urged on behalf of the appellants and pointed out that the private partition stands duly proved in accordance with law/ and up to the hilt. Alternatively it was pleaded that exchange of Khasra No. 2052 with Khasra No.2248(Latter being with the petitioners) stands duly proved and thus he urged for dismissal of the appeal. In this case Krishna Devi Wd/o Hari Ram has appeared as witness in court and has supported the claim of the petitioners and pledged her oath that the land in question is joint. She denied the factum of exchange. Regarding Khasra No. 2248, it was specifically stated by her that though it belonged to Gouri, it was under cultivation as tenant with her husband. According to this witness since the time land comprised in Khasra No.2052 is with the military, petitioners are entitled to rental compensation. In crossexamination, while denying .the factum of exchange of Khasra No. 2052 with Kh. no.2248, she further stated that Gouri was receiving compensation from military in a clandestine manner and when they came to know about it, its payment was got stopped. Gouri while appearing as witness has stated that private partition took place in the year 1947 and Kh. No.2052 fell to his share whereas Kh, No. 2248 fell to the share of Anant Ram(father of Krishpn Dutt, Dev Dutt, Hari Ram and Ram Saren), he states in his crossexamination that though he did not get any revenue entry made with any department, it was got entered in record but at the same time he stated that when military took over then patwari and other officials were informed. Land might have been mutated in his name, it. is only then that army look over and pays him compensation though he did not obtain copy of mutation. Witness further stated that he does not collect the date of mutation. RW Dev Dutt had made attempt to support the case of the respondents but appears that he has an axe to grind because he admits that regarding Kh. No.2248, he had and petitioners have litigation. Witness further feigns ignorance as to when partition took place and in the next breath witness further stated that no partition took place. He states that there was partition regarding Kh. No,2052 with Gouri Shankar hut he does not know the date, as no partition took place in his presence may ho it had taken place before his birth. R.W. Balak Ram Namberdar of the village and the village Jandial where Kh.No. 2052 is Situate falls within his area. Amongst other things, he has stated that the land., regarding the

compensation whereof dispute is going on, was taken by the military from Gouri Shankar and he was in possession prior to 1947. It was in his

exclusive possession. In his cross-examination he has stated that Girdawari was being effected in the name of Gouri Shanker. He states that at the

time of taking possession, he is not aware whether the receipt was given to Gouri Shanker and its entry must exist in the revenue record which fact

can be ascertained by calling it. He further stated that regarding compensation, dispute is there between the parties for 8/9/10 years. Other material

witnesses in this case are RWs Dharam Pal, Land Hiring Clerk, Tehsil office, Jammu and Sansar Chand, Patwan. When a reference is made to the

statement of these witnesses, it is clear that the plea of either private partition wherein Khasra No. 2052 having fallen to the share of the

respondents or exchange of Khasra No. 2048 with Khasra No. 2052 is not at all proved. On the other hand, Girdawari in relation to land in suit

from Kharif 1971 till Rabi 1990 there are consistent entries of the owners in the column of ownership. Since Krishen Dutt and Dev Dutt have given

up their share in favour of the respondents, for the purpose of this appeal as already observed dispute relates to the share of the petitioners as per

entries made in the revenue record.

7. In case there was any private partition, is claimed by the respondent, that too even before the land was taken over by the military authorities, in

the ordinary course of things the same would have been got affirmed by the parties concerned in accordance with the provisions under Section 118

of the Land Revenue Act. Admittedly that had not been done nor there is any evidence in that behalf. Beside this annual record prepared under

Section 28 of this Act also hits at the case of the respondents. Such record is prepared by the Patwari in the discharge of his official duty and can

be taken as a piece of evidence. In this behalf when reference is made to the statement of the witnesses examined in support of their case by the

respondents, their evidence clearly stands reflected by the entries in Khasra Girdawari which are consistent. It is nobody's case that either these

entries are wrong or that Patwari does not make revenue entries after spot verification in accordance with section 23. It may be appropriate to refer

to section 31 of the Jammu and Kashmir Land Revenue Act, which is to the following effect: "31. Presumption in favour of entries in

recordsofrights and annual recordsAny entry made in recordsofrights in accordance with the law for the time being in force, or an annual record in

accordance, with provision of this chapter and the rules thereunder, shall be presumed to be true until the contrary is proved."" (Emphasis supplied)

8. Oral evidence as already observed does not prove anything to the contrary than what is contained in the annual record i,e. Khasra Girdawari

wherein the property is shown to be joint ownership of all the parties, including the petitioners having defined share.

9. Next remains the judgment/decreed passed between the four brother on which great emphasis was laid by Mr. Manhas. Firstly, this is an exparte

decree though its being exparte, makes no difference, but parties are not at variance that this judgment arid decree is the subject matter of litigation

betxwen the parties concerned and therefore, it would not be in the fitness of things to accept the: same on its face value. Two brother namely.

Krishen Dutt and Dev Dutt Have not contested the case of the respondents. On the otherhand, so far the petitioners are concerned, they are

seriously disputing the claim of the respondents to be exclusively entitled for rental compensation.

10. So far the plea of exchange of land comprised in Khasra No. 2052 with Khasra No. 2248, (former having fallen to the share of respondents

and latter Khasra No. fallen to the share of petitioners, is concerned suffice to say that when a reference is made to the provision of Section 118 of

the Transfer of property Act, it is clear that the plea urged by the respondents is not at all proved. Besides this, in case there was private partition

as was being pleaded and in that behalf evidence had also been led. it is not understood muchless known as to when the exchange took place and

who were the parties to such exchange. It is further not understood that where was occasion muchless necessity for effecting exchange when there

was already private partition between the parties, as was specific case of the respondents.

11. No other point has been urged in this appeal except that Mr.Manhas persisted with vehemence that on the basis of evidence oral as well as

documentary, order of the arbitrator calls for no interference, is which may be upheld.

12. For the reasons stated hereinabove and as a consequence of the aforesaid discussion, this appeal deserves to be allowed and it is ordered

accordingly. It is held that the petitioners are entitled to their 1/4 share in the amount of rental compensation in respect of Khasra No. 2052 situate in village Jandial, Tehsil Jammu since the day it was taken over by the military authorities. On production of certified copy of this order, authority concerned will ensure the payment of arrears upto 31.12.1997 is made within a period of three months from the receipt of such copy and to continue paying regularly to the petitioners their share in accordance with law on their proper identification against receipt. Respondents will also pay to the petitioners costs which are quantified at Rs. 2000/