

(2018) 08 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No.470 Of 2015

Mst. Sara & Anr @APPELLANT@Hash State Of Jammu & Kashmir & Ors

Date of Decision : 08-08-2018

Acts Referred:

Jammu and Kashmir Land Revenue Act, Svt. 1996 — Section 15, 26

Citation : (2018) 08 J&K CK 0026

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. The petitioners claim to be owners in possession of a piece of land measuring 7 ½ Kanals situated at Village Heng, Tehsil Tangmarg, from the last more than 26 years. The said property, as stated, vested in the name of the petitioners by virtue of a will deed which came to be executed by the grandfather of the petitioner No.1 and grandfather-in-law of the petitioner No.2 in the year 1990 vide will deed dated 23rd of November, 1990, which was also attested by the Notary on 23rd of November, 1990. It is stated that after the death of the estate holder, namely, Mahad Lohar (Testator), grandfather of the petitioner No.1 and grandfather-in-law of the petitioner No.2, that too, in presence and after the consent of the respondent No.4, the aforesaid portion of the property of the testator, i.e. piece of land measuring 7 ½ Kanals situated at Village Heng, Tehsil, Tangmarg, was mutated in the name of the petitioners by the respondent revenue authorities after following the due process of law vide mutation No. 248 dated 11th of June, 1994. The petitioners claim that, unfortunately, due to instigation of some vested interested persons as well as on the basis of an afterthought, the respondent No.4, in the year 2007 and at the back of the petitioners, that is after a lapse of considerable period of time, filed a revision petition

before the respondent No.2 challenging the mutation (supra) which has been made in favour of the petitioners. The respondent No.2, as per the petitioners, in a slipshod manner, after narrating wrong facts in the order dated 3rd of May, 2008, recommended for setting aside of the mutation made in favour of the petitioners to respondent No.1 by way of reference under Section 15 of the Land Revenue Act. This reference of the respondent No.2 was accepted by the respondent No.1 vide order dated 16th of December, 2014, on an issue which, as contended, was neither referred to the respondent No.1 nor were the parties heard on the said issue by the respondent No.1. It is, in this factual background, that the petitioners have, by medium of the instant writ petition, thrown a challenge to both the orders aforesaid, being order dated 3rd of May, 2008, of the respondent No.2 and order dated 16th of December, 2014, issued by the respondent No.1.Â

2. The respondent No.4 has filed her objections in opposition to the writ petition, stating therein that the petitioners have no locus standi in the

property of Mehda Lohar, i.e. the father of the respondent No.4. It is stated that the respondent Nos. 1 and 2 had remanded the case to Tehsildar

Tangmarg for â??de novo enquiryâ?? and attestation of fresh mutation under the provisions of the J&K Muslim Personal Law (Shariat) Application

Act, 2007. The respondent No.4 has proceeded to state that the petitioners have deliberately concealed the material facts before this Court and have

not mentioned anything about the pendency of Civil Suits titled â??Khurshi v Saraâ?? and â??Sara v. Kurshiâ??, which suits are pending

adjudication before the Court of learned Munsiff, Tangmarg. The writ petition, as such, is legally misconceived, untenable, without any merit, and, in

sequel thereto, merits dismissal.

3. Heard the learned counsel for the parties, perused the records and considered the matter.

4. The bone of contention of the argument of Mr Tantray, the learned counsel appearing on behalf of the petitioners, is that the entire proceedings

initiated by the respondents alongwith the impugned orders are improper, without any reason or justification as the same has deprived the petitioners

from enjoying their property which stands gifted to them by their ancestor as per the Shariat law, of which they are not only the title holders, but also

owners in possession from the last 26 years, that too, with the consent of the

private respondent. It is stated that the entire proceedings initiated by the private respondent are time barred, not maintainable and, therefore, these, alongwith the impugned orders, being a produce of judicial error and non-application of law governing the subject, thereby causing grave injustice and gross failure of justice, deserve to be corrected.

5. Admittedly, the parties to the lis are litigating before the Civil Courts through the medium of suit filed by the respondent No.4 herein before the

Court of learned Munsiff, Tangmarg, wherein she has sought the following relief(s) in her favour:

â??A decree of permanent injunction may be passed whereby the defendants may be permanently restrained from interfering with the suit land

personally or through any other agency.

A decree of permanent injunction whereby the defendants may be restrained from creating any third party interest of the said land.

Any other relief which this Honâ??ble court may deem fit and proper may be passed in favour of plaintiff and against the defendants.â??Â

Thereafter, the petitioners herein also filed a suit before the Court of learned Judicial Magistrate, Tangmarg, wherein they have prayed for the

following relief(s):

â??i. A decree of declaration in favour of plaintiffs be passed and against the defendants directing the def. no. 1 wherein the plaintiff be declared as

owner in possession of the suit land referred hereinabove measuring 8 Kanal and 8 Marlas covered under Survey No. 507, 1 Kanal 4 Marlas and

survey No. 508 min, 7 Kanals under survey No. 511 situated at Village Heing Raopora, Tangmarg further by way of permanent injunction the

defendants be permanently restrained from causing any sort interference into the peaceful possession of the suit land. ii. Any other order, judgment,

Decree may be passed against the plaintiff and against the defendants which this Honâ??ble Court may deem fit and proper.â??Â

6. The issues which are subject matter of the Civil Courts with reference to the entitlement of the petitioners and private respondent No.4 can, by no

stretch of imagination, be decided by the revenue authorities. In the impugned orders, the revenue authorities, being conscious of the fact as regards

the pendency of the civil proceedings, have ignored the implications thereof and passed the impugned orders.Â

7. Needless to mention that Section 26 of the Jammu and Kashmir Land Revenue Act, Svt. 1996, makes it manifestly clear that the final order

passed by the Revenue Officer, declaring who is the party best entitled to the property, shall be subject to any decree or order which may be

subsequently passed by any Civil Court of competent jurisdiction. The respondent Nos. 1 and 2 have, while proceeding on the issue pending before

them, ignored the implication of Section 26 of the Land Revenue Act.Â

8. Since the matter is pending adjudication before the Civil Court for determination of the rights of the parties, therefore, without going into the merits

of the claim, as projected by the petitioners herein this petition, it shall be appropriate, at this stage, to dispose of this writ petition in the following

manner:

I. The impugned orders dated 3rd of May, 2008 passed by the Additional Commissioner, Kashmir/ respondent No.2 herein and dated 16th of

December, 2014, passed by the Joint Financial Commissioner (R), J&K at Srinagar/ respondent No.1 herein, are set aside;

II. The Tehsildar, Tangmarg, is directed to take further decision in the matter in accordance with the provisions of the J&K Muslim Personal (Shariat)

Application Act, 2007, after the adjudication of the issues pending decision in the Civil Court(s).

9. Writ petition, alongwith connected MP(s),disposed of as above.