



IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
Present: (Dr. M.K. Bhandari)IAS

File No. 39/Appeal
2014-15

Date of Institution
24-6-2014

Date of Decision,
10-01-2018

Balwant Singh S/o Sh. Goru Singh R/o Village Garhi Rehmbal Tehsil & Distt Udhampur
(Applicant)

VERSUS

1. Sate through the Settlement Officer (S.O) Udhampur.
2. Govind Ram S/o Sh. Bal Krishan R/o Village Phalta Tehsil & Distt Udhampur
(Respondents)

In the matter of: Appeal against the order of Mutation under No-1866 passed by the learned settlement officer (S.O) Udhampur dated 21-08-2008 with a prayer for setting aside the same and for issuance of any other order or direction whatsoever the Hon'ble Court may deem fit and proper under the facts and merits of the case.

ORDER

1. Brief facts of the case are that:

- i. Land measuring 3 Marla comprising Kh. No. 1413 min situated at village Gari Rehmbal, Udhampur as stated in appeal was already gifted to Balwant Singh S/o Sh. Goru Singh (applicant herein) in 1971. Applicant (Balwant Singh) raised construction on that land comprising shops at ground floor and house on the 1st floor.
- ii. Shops constructed on ground floor are stated to be given on rent to respondent herein and one Ashok Kumar.

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- iii. During the settlement operation, a mutation under Section 121 of Land Revenue Act came to be attested for 2 marla of land out of 3 marla of land in favour of appellant and for 1 marla of land in favour of the respondent.
2. Applicant feeling aggrieved of this mutation filed the present appeal. The grounds taken are as follows.
 - i. That the one Sh. Parmanand gifted land measuring 3 Marlas land comprising Khasra No.1413 Min situated at village Garhi Rehmbal Tehsil & Distt Udhampur in favour of the appellant (Balwant Singh) in the year 1971, about 43 years ago. The appellant constructed a two storey house and three shops in the said land.
 - ii. The appellant is the absolute owner in possession of the said house constructed by him in the land measuring 3 Marlas comprising under Khasra No-1413 Min situated at village Garhi Rehmbal Tehsil & Distt Udhampur. The respondent No.2 has no concern whatsoever with the said house / Shop and land of the appellant.
 - iii. That during the "Bandobast" and attestation of the mutation No-1866, the Patwari concerned has made a report dated 03-06-2008 that the name of the appellant stands recorded in Column No. 8 as owner of the suit land and description of land is given in column No.10. Whereas at the time of attestation of the impugned Mutation No. 1866 dated 21-08-2008 under section 121 of Land Revenue Act, it stands changed to the extent of one Marla of land in favour of the respondent No.2. Whereas the appellant is in continuous possession and occupation of 3 marlas of land and the house constructed therein by the appellant for the last about 43 years.
 - iv. The report of the Patwari further reveals that the actual owner Sh. Parmanad has no objection and there is no case pending in any court with regard to the said land /House. The persons present one spot have verified and attested the fact of the appellant has ownership over the whole land measuring 3 Marlas and the house constructed by the appellant therein.

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- v. That it is a sorry state of affair and very strange as is apparent on the face of record that while recording the mutation impugned, the name of the respondent have been inserted with deliberate attempt and without specific explanation or report. The name of the respondents has been incorporated with calculated malafide intentions and ulterior motives. There is a clear addition in writing while adding the name of the respondent No.2 and showing him against the land measuring one Marla only comprising under Khasra No-1413.
- vi. That the concerned revenue officer has not followed the process of attestation of the mutations as required under Section 22/23 of the statutory rules. The original owner of the land subject matter has not been asked or enquired about the fact of actual possession of the appellant only over the land subject matter in dispute which is in fact measuring 3 Marlas of land by the appellant. The impugned order of mutation passed under section 121 in the absence of the appellant in respect of one Marla out of the suit land is nothing more than a mischief committed and the same is unjust, improper and illegal hence the same does not stand in the eyes of law.
- vii. That the court below has not followed the procedure in the settlement of proceedings as herein this case the question of title of the parties over the suit land is involved. The settlement proceedings in this case are of special nature when question of title is involved and the jurisdiction lies with the collector of the first class. The record of rights have not been properly dealt with and as such the impugned order is arbitrary in nature and passed in violation of section 121 of the land revenue act and the rules made there under.
- viii. That the court below has passed the order impugned in violation of the standing order No.23-A which prescribes the procedure for mutations. There is no scope for change or alteration in Jamabandi entries without mutation order after

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ascertaining the rights of land holders, tenants, mortgages, lease holders and assignees of land revenue as such the order impugned is bad in the eyes of law.

- ix. That the respondent No. 2 constitutes a family who is the tenant of the appellant in the said shop of the appellant. The respondents have no right whatsoever to claim to be the owners of one Marlas land i.e. a portion of the Suit land the impugned order passed by the court below is quite baseless unwarranted and unjustified.
 - x. That the court below did not bother to confirm and ascertain the correct name of the appellant. And whereas mentioned the wrong name as Balwan Singh while attesting the impugned mutation order in the year 2008. The same officer i.e. the Tehsildar (Settlement Officer) Udhampur corrected the real name of the appellant as Balwant Singh vide order dated 10-01-2013. This fact clearly shows the mischief committed while attesting the impugned mutation order partly to the extent of one Marla of land in favour of the respondent.
3. The case came up for hearing. Counsels for both the parties are present. Counsel for appellant pleaded that, mutation No. 1866 dated 21.08.2008 of village Garhi Rehmbal attested during settlement by Settlement Officer, Udhampur for 1 Marla of land in favour of respondent is under challenge before this court, and that it has been attested at the back of appellant. He further submits that the appellant has constructed two storeys, and on the ground floor, there are two shops given on rent. Further, the respondent No. 2 has got the mutation impugned attested without his knowledge. He further pleaded that Parmand, the owner of the land orally gifted 3 marlas of land to appellant and the possession was handed over in 1971. Mst. Godawori W/o Parmanand has also executed an affidavit in this regard.
4. He further contended that respondent 2 and Ashok are his tenants Ashok have executed an affidavit in this regard that respondent 2 Govind Ram is the tenant of appellant. In the mutation impugned, his name is deliberately recorded as

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Balwan Singh instead of Balwant Singh. It is an ex parte mutation and nature of land is recorded as Gair Mumkin Makan. That limitation starts from the date of knowledge and he got knowledge of the impugned mutation in 2014. The counsel prayed for setting aside the mutation.

5. The counsel for respondent pleaded that mutation has been attested u/s 121 of Land Revenue Act during settlement operation, and that the kind of soil is "Gairmumkin Kuppar". The transfer of property has to be made through registered deed only, and the appellant has taken crucial date of 1971 for gift deed. He pleads that the appellant submits that the shops were raised in 2004. Whereas, as per the other affidavit executed by one Ashok Kumar purported to be the tenant of the appellant in one of the shops, it transpires that he is running shop since 1997, which appears to be departure from the contention of the appellant that he constructed the shops 10 years back.
6. The counsel for respondent further submits that appellant was present at the time of attestation of mutation, and that he even got rectification in the mutation, with respect to his name, carried out on 14.01.2013. Further, he alleges that the appellant has obtained two affidavits: one from Godawari Wd/o Parmanand and the other from Ashok Kumar on 10.06.2014 and thereafter.
7. I have heard the counsel for both the parties. Dispute between the parties is w.r.t. one marla of land comprising Kh. No. 1413 which stands mutated in favour of respondent under section 121 of Land Revenue Act.
8. The main contentions of appellant are that:
 - a. The mutation is attested in violation of standing order 23 A.
 - b. The order passed on mutation is ex parte.
 - c. His name is deliberately mentioned as Balwan Singh instead of Balwant Singh.
 - d. Godawari Wd/o Parmanand and Ashok have executed affidavits in favour of his claim.

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9. The plea of appellant is that he is the owner of the land, and the said land was orally gifted to him in 1971 by the owner Parmanand. He has given the shop to respondent on rent basis but he got mutation attested during settlement at his back. He has relied his claim on the affidavits executed by Godavri W/o Parmanand and one Ashok Kumar mentioned as tenant of his shop.
10. The perusal of mutation impugned reveals that settlement officer, during settlement has attested this mutation on 21.08.2008 in favour of a number of persons including appellant and respondent No. 2 for the land measuring 2 marla and 1 marla respectively in Khasra No. 1413 min and has conferred upon them ownership rights.
11. From the order passed on mutation No. 2140 dated 10-01-2013, by Tehsildar Udhampur, it has been observed that Patwari has made report on 30.12.2012 on the application of appellant herein for making correction of his name in revenue record. GQ made "report" on 10.01.2013 and Tehsildar concerned passed order on 14.01.2013 and recorded the name of appellant as Balwant Singh instead of Balwan Singh. This correction of name shows that appellant, when filed application for correction, had the knowledge of mutation impugned on that date, whereas he filed appeal on 24.06.2014 i.e. after 18 months.
12. It appears that after obtaining affidavits, he has filed the appeal which shows that it was the afterthought of the appellant. The appellant has not refuted his signature and presence shown during attestation of mutation, but has alleged the violation of standing order 23 A, which is not justifiable.
13. In view of the above, this court is of the opinion that the order passed by the settlement officer (S.O) Udhampur dated 21-08-2008 with respect to 1 marla of land comprising Kh. No. 1413 does not suffer from any infirmity, and needs no interference by this court.

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14. Thus the appeal in hand being devoid of merit is dismissed. A copy of this order be sent to Regional Director Survey and Land Records, Udhampur for information.
15. Stay issued if any shall stand vacated. The case file be consigned to record after due completion.

*Announced
10-11-2018*


(Dr. M.K. Bhandari) IAS
Divisional Commissioner,
Jammu