

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present: Dr. Pawan Kotwal, IAS

File No.

10/Appeal
2014-15

Date of Institution

08-08-2015

Date of Decision.

03-02-2017

Bodh Raj S/o Amar Nath R/o Muksiyas Tehsil Bhalessa Gandoh

(Applicant)

V/S

1. Shamas Din S/o Lal Kumhar
2. Mamta Begum W/o Shamas Din
3. Fida Hussain S/o Shamas Din

- i) That the so called Changes in the entries in the Revenue Records are a matter of facts and deeded evidence. In absence of any opportunity of hearing the same has been done away.
2. The counsel for respondents filed objections to the appeal wherein it is submitted that:-
 - a. This Hon'ble Court admittedly is not the appellate authority under the Agrarian Reforms Act. The appeal, therefore, deserves to be dismissed.
 - b. It is submitted that no appeal against the judgment and order passed by the learned Sub Divisinal Magistrate, Bhallesa Gandoh is maintainable directly before this Hon'ble Court. In such a case the appeal would lie before the deputy Commissioner.
 - c. That the appellant, his brothers Sh. Tek Chand and Sh. Mahesh Kumar sold the land measuring 9 Kanals to the answering respondents on payment of consideration of Rs. 1,80,000/- the possession of the land measuring 9 Kanals under lying Khasra No. 1-min, 23 24 and 92 was also given.
 - d. It is submitted that the aforesaid transfer was made on the basis of mutual trust and confidence without executing any document.
 - e. It is settled principle of law that once a person transferred the property and received the consideration, he cannot file the suit for possession in as much as the possession has been given voluntarily against the consideration.
 - f. The appellant has not challenged the correctness of the enquiry and the report —
— submitted by Naib Tehsildar. In other words, the appellant has admitted the correctness of the said enquiry and the report.
3. The case came up for hearing. Both the parties along with counsel present. Counsel for appellant pleaded the grounds taken in the memo of appeal & further contented that the court below passed order at this back and confirmed the rights of owners on the basis of some reports of field staff. He further contended that there is no sale deed executed for the land in question and as such the order passed is against law.
4. Counsel for respondent pleaded the grounds taken in the objections argued that the court below has passed order after obtaining report from field staff & prayed to upheld the order.
5. I have heard the arguments of the parties & record examined. The orders impugned perused which shows that the order dated 07-04-2015 is passed when the applicant Bodh Raj was not present. It has been mentioned in the order that applicant often remains absent whereas copy of order sheet placed on file reveals that applicant has not appeared on one or two occasions & respondents also found absent on some dates.
6. It may be noted that the court below discussed the merits of the case in absence of applicant but at the same time did not adhere to the provisions of Sec-13 of Agr. Reforms Act. The proper remedy was to dismiss the case in default for non appearance of applicant which he could not and as such the order dated 07-04-2015 is not tenable.
7. Further it has also been observed that court below vide order dated 23-04-2015 summoned the respondents herein to appear on 27-04-2015 and on the same date without any proceedings vacated stay order & allowed the respondents to raise construction over the land in question.
8. It is pertinent to mention that respondents have admitted in their objections that the land was transferred to them on making payment but without executing any document. In this regard it may be noted that transfer of property without any

instrument of transfer recognized by the transfer of property Act do not create any interest as such the right of respondents as held by court below is not sustainable & in absence of any legal document, the respondents should have been treated as trespassers.

9. Further respondents are relying on the reports of field staff and one order passed by Lok Adalat Headed by Distt Judge Dated 31-07-2014 wherein appellant herein Bodhraj has been restrained from interfering in the possession of respondents except by adopting the due course of law. They have also contended that appellant & his brothers have migrated to Kathua which has no legal force and in no way can be considered.
10. It may be noted that alienation of agricultural land can be done lawfully between two strange parties (though both belonging to the Agricultural class) by execution & registration of a sale deed only and not by creating tenancy through some other mean and then strengthening such an illegal deed by conferring ownership right to the one to whom the land has been allegedly alienated. Rather in the event of such an act the land cede to the state as per the provisions of the Agr. Reforms Act.
11. In view of the above, this court has come to the conclusion that the orders passed by the court below are against law and not sustainable and deserves to be set aside.
12. Hence the appeal in hand having merit is allowed & the orders under challenge are set aside.

Stay issued by this court shall stand vacated. The case file be consigned to records after due completion.



(Dr. Pawan Kotwal) IAS,
Divisional Commissioner,
Jammu.

Announced