

**IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU**

**Present:- Dr. Pawan Kotwal, IAS.**

File No.  
NB/L

Date of Institution  
26-04-2013

Date of Decision.  
25-02-2017

1. Hans Raj
2. Yog Raj
3. Bishan Dass Ss/o of Kaka Ram R/o Village Chak Haria, Tehsil Hiranagar District Kathua (J&K)

*(Appellants)*

*V/S*

1. Raj Kumar S/o Mehnga Ram
2. Suresh
3. V. K. Sharam Ss/o Raj Kumar  
R/o Village Chak Haria, Tehsil Hiranagar District Kathua (J&K)

*(Respondents)*

In the Matter of : Revision petition U/S 15 of the Land Revenue Act against the impugned order dated 06-02-2013 passed by Assistant Commissioner (R) Kathua with the powers of collector Agrarian Reforms Act. with the prayer to set aside the aforesaid order maintaining the status quo remanding the court below till denovo trial on merits holding proper opportunity of being heard.

**ORDER**

The present revision petition against the order of AC(R) Kathua dated 06-02-2013 by virtue of which the interim granted vide order dated 24-08-2011 is withdrawn has been initially filed before Ld. Financial Commissioner(R) J&K Jammu which was transferred to this court for disposal under law.


The petition has been filed on the following grounds:-

1. That the petitioners filed a suit for permanent injunction restraining the defendants from causing any interference by whatever mode / manner in the peaceful ownership and possession of the plaintiffs over land comprising Khasra No.205 min measuring 11 Kanal 17 Marlas situated at Village Chak Haria, Tehsil Hiranagar District Kathua. Whereas the assistant commissioner below acted in the hasty manner without appreciating the material on record i.e. copy of Khasra Girdawari and Intkhal passed the impugned order thereby vacating the interim direction dated 24-08-2001.
2. That there is no any agreement to sell being executed by one of the co-sharer Bhishan Dass to the extent of the land 2 Kanal 5 Marlas on 28-04-2009 neither the possession been transferred the copy of the Khasra Girdawari is the most authentic prima facie proof of possession which can't be brush aside even by Supreme court unless challenge and rectify the officer below has not appreciated the same and has passed the impugned order in flagrant violation of law.
3. That assuming though not correct agreement holds no sanctity under law for the reasons the agreement manipulated appears to have been executed on 28-04-2009 either of the party who is aggrieved can enforce the same

within a period of 3 years from the date of the execution but the respondent has not enforced the same by filing suit for any vest right to the respondent unless the evidence upon the same is to be taken.

4. That report of the Naib Tehsildar is deemed to be motivated with the consideration and can't be relied upon unless he is cross examined. Hence, from the perusal of the pleading it gives rise to disputed questions of fact in respect of the factum of possession. However the entries in the possession in favour of the plaintiffs. Moreover, the report is made at the back of petitioners and cannot be treated as evidence as per section 35 of Evidence Act.
5. ~~The case came up for hearing. Petitioner present in person. Respondent along with counsel present. They are heard. Record placed on file examined & order under challenge perused which reveals that petitioners herein had filed a suit for permanent injunction before Assistant Commissioner(R) for restraining the respondents herein from causing any interference in the peaceful ownership & possession of the plaintiffs / petitioners in the land comprising Kh. No. 205min measuring 11 K 17 M of Vill-Chak Haria Hiranagar.~~
6. Subsequently, an interim order had been passed on the application of petitioners herein on 24-08-2011 and was vacated after hearing arguments from both sides. The said order dated 06-02-2013 is under Challenge before this court. After hearing the parties, this Court has observed that the court below has vacated the interim order after hearing both the parties.
7. It may be noted that counsel for respondents has also pleaded that petitioners before filing the present petition before this court had also challenged the order before Additional Deputy Commissioner, Kathua and so they have not approached this court with clean hands. He further prayed to dismiss the petition on this ground as well.
8. It is important to mention that issue before this court is limited and it would not be proper to go into the merits of the case.
9. Further it is to be mentioned that it is the prerogative of a court to grant an interim order & to vacate it after satisfying itself. In the present case also, the court below has vacated its interim order after providing opportunity of being heard to both the parties.
10. This court is of the opinion that there is no illegality in the order impugned & more over no final order has been passed in the matter and the case has been fixed for further hearing by the court below.
11. In view of the above facts and circumstances, this court has come to the conclusion that the petition in hand is premature & not maintainable. Thus the present petition is dismissed. The other applications filed during the pendency of revision petition are also disposed of accordingly.

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

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

**Announced**

25-2-2017  
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