

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present: Dr. Pawan Kotwal, IAS.

File No
24/Appeal
2013-14

Date of Institution
30-1-2014

Date of Decision
07-01-2017

Inhabitants of Village Ladyala Tehsil & District Udhampur through

1. Paras Ram S/o Ganga Ram
2. Bashir Ahmed S/o Hashim Din and other *inhabitants of vill. Ladyala* (Appellants)

V/S

1. Gopal Singh
2. Krishan Singh
3. Vakil Singh
4. Gandharab Singh all sons of Beli Ram R/o Village Malhar Tehsil & District Udhampur .
5. Deputy Commissioner, Udhampur

(Respondents)

In the matter of:-

Appeal against the order dated 04-10-2013 passed by the respondent No.6 in favour of the respondents No.1 to 5 against the principles of law and natural justice that too against the Judgment of Hon'ble Supreme Court dated 28-01-2011 passed in case titled Jagpal Singh & Ors. V/S State of Punjab and Ors. Copy of the Judgment is enclosed herewith. Prayer for setting aside the order of respondent No.6 and correction of entries in Khasra Girdawri of the Village as possession of the villagers for the common use.

Appearing Counsel: - Appellant in person.

Advocate Faqir Mohd for respondents

ORDER

1. The present appeal has been filed against the order dated 04-10-2013 passed by Deputy Commissioner Udhampur. Appeal has been filed on the following grounds.
 - a. That the appellants are residents of Village Ladyala Tehsil & District Udhampur and land underlying Khasra No. 541, 661 at Village Ladyala, Tehsil and District Udhampur has been entered as common land i.e. "Shamlat Deh for the common use of the villagers which is being used commonly by the villagers to graze their cattle and also for watering them in a pound in the above said land.
 - b. That the respondent No.1 to 5 without adopting any procedure of law appear to have filed a simple application before the respondent No.6. On such an application the respondent No.6 set aside the order of the Tehsildar Udhampur and appears to have directed the making fresh entries in the Khasra Girdawari of the respondents No.1 to 5.
 - c. That land under the above Khasra No.541 is measuring 9 Kanals 10 Marlas and under Khasra No. 661 measuring 8 Kanals & 18 Marlas total land 18

Kanals 8 Marlas is being used by the appellants villagers for grazing and watering their cattle. But the respondent No. 5 want to usurp the same for their self aggrandizement.


2. That as submitted above the respondent No.1 to 5 filed a simple application without adopting any procedure or due course of law before the respondent No.6 & the respondent No.6 without affording any opportunity of being heard to the general public of the village including the appellants has set aside the order of Tehsildar and directed to make entries in the names of respondent No.1 to 5 in Khasra Girdawari which is against the principles of law.
3. That the Hon'ble Supreme Court in Judgment supra has held that the land or any other pound or land being used commonly cannot be allotted or mutated in the name of any person. The above Judgment is further comprehensive taking in its ambit other subjects as well. But the court below i.e. Respondent No.6 has ignored the Judgment of the Hon'ble Supreme Court which under Article 144 every Govt. authority is under obligation to uphold and facilitate the law laid down by the Hon'ble Supreme court.
4. That under the garb of order impugned the respondent No.1 to 5 have been trying to forcibly occupy the above common land and raise some construction against the wishes of general public and even the spirit of law and existing position and possession on the spot.
5. The counsel for respondents to the appeal as well as written arguments wherein it is submitted that the instant appeal.
 - a. The individuals namely Paras Ram as well as Bashir Ahmed, as such have no locus to prefer the instant appeal for and on behalf of inhabitants of the village. The appeal is as such incompetent and liable to be dismissed.
 - b. That otherwise also, the respondents are owners in possession of the land falling under Khasra No.661 & 541 (New) corresponding to the Khasra No. 2844 (old) which is Shamlat Deh, and the respondents being residents of the village have their share in Shamlat Land to the extent of 32 Kanal 18 Marlas out of which they are in possession of Land measuring 18 K * M, which is certified by the Settlement Thesildar in his report submitted to the Learned Deputy Commissioner.
 - c. That the instant appeal is otherwise liable to be dismissed as the appellants have made thoroughly bald and baseless averments in the instant appeal in respect of the subject matter being used for common purposes and that too without any record evidencing the same. In this regard it is respectfully submitted that the nature of land falling under Khasra No. 661 & 541 (new) is shown as Gair Mumkin Jarh and the same by no stretch of imagination be termed as Non-Partible. Therefore, the respondents who are admittedly residents of the village are entitled to a share in Shamlat land and as such their possession as well as ownership cannot be called in question in the instant appeal.
6. The case came up for hearing appellant present in person. Respondent along with counsel present.
7. Appellant reiterated the grounds taken in the memo of appeal & prayed to set aside the order under challenge.

8. Whereas counsel for respondents contended that they are the old land owners (Jadi Malak) of the village and have share in Shamlat Deh land in proportion to the size of their proprietary land. The land in question is not common land as agitated by appellants but it is partible Shamlat Deh Land.
9. It is to be mentioned that Counsel for respondents in his written arguments have submitted that appellant No.1 no doubt is also an old land holder (Jadi Malak) of the village and is in possession of Shamlat Land. He has thus no right to file appeal. If the respondents have occupied more land than their share, then the same can be got partitioned by adopting the procedure laid down in Sec 118 B & 118 E of LR Act.
10. Further counsel for respondents has taken plea that appellant No.2 is not the old land holder of the village as such has no share in shamlat Deh land and has no right to file a case as well.
11. With regard to plea of appellant of Hon'ble Supreme court Judgments passed in the case titled "Jagpal Singh & Ors. VS State of Punjab & Ors" the counsel for respondents has contended that since the land in question is partible shamlat land the above cited Judgment is not applicable to the land involved in the present case.
12. It has been found from the order impugned that court below has obtained a report from Tehsildar Settlement Udhampur with regard to Share of respondent herein in the Shamlat Deh land which comes to 32 K 18 M & they are found in possession of 18 K 8Ml of land.
13. I have heard the arguments advanced by both the parties. Written arguments & objections of respondents are gone through. Record placed on file & produced by the parties is examined from which it has been found that the land involved in the case in hand is Shamlat Deh land over which the old land holders (Jadi Malak) of the village are entitled for a share in the Shamlat Deh Land in proportion of the size of their holdings in the village. Appellant No.1 as submitted by counsel for respondents & respondents as well are in possession of Shamlat Deh land. As per the order of the court below the possession of the respondents herein over Shamlat Deh land is within their share.
14. From the above stated facts this court has come to the conclusion that the appellants have not been able to prove their contention that the land in question is Shamlat Deh non partible for the common purpose of the villagers whereas on the other hand, the counsel for respondents on the basis of revenue record of the village and rules and orders pertaining to Shamlat Lands has convinced this court that the land in question is Shamlat Deh partible and old land holders (Jadi Malak) of the Villager have share in it to the size of their proprietary land.

In view of the above it is held that the appeal in hand has no merit & is thus dismissed.

However the appellants if feel aggrieved that respondent have possession over the land in excess to their share may approach the comptent authority for partition of the Shamlat Deh Land under the relevant provisions of the LR Act.

Stay issued, if any, shall stand vacated. The case file be consigned to records after due completion.


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