

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
Present Dr. Pawan Kotwal, IAS.

File No.

17/Revision
2014-15

Date of Institution

21-07-2015

Date of Decision.

25-3-2017

Jaswant Singh,
S/o Sh. Dhandev Singh,
R/o Village chak Kahna,
Tehsil Marh & District Jammu

V/S Kuldeep Singh
S/o Sh. Krishandev Singh,
R/o Village Chak Kahna,
Tehsil Marh & District Jammu

(Petitioner)

(Respondent)

In The Matter of :-

Revision against the order of Regional Dir. Survey & Land Records dated 21-02-2015 of Regional Director, Survey and Land Records, Jammu where under Mutation No.686 of Village Chak Kahna, directing Sehat Indraj Girdawari for Rabi 2003 in respect of 2 Kanal 2 ½ Marla of land bearing Khasra No.17 in the name of the present petitioner has been wrongly quashed.

Appearing Counsel:

**KC Gupta for petitioner.
C M Gupta for respondent.**

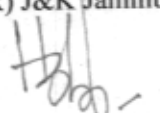
ORDER

1. The present petitioner has been filed on the following grounds that:-
 - a) That petitioner's father Dhandev Singh was a co sharer in Khewat No.10 of the Jamabandi of the Village Kahna Chak and Kh. No.17 (2 Kanls 2 ½ marlas) was also included in that Khewat.
 - b) That even on the basis of private partition of land made by the co-sharer, Kh.No.17 (2 Kanls 2 ½ Marlas) fell in the share of Dhandev Singh and this part of the land remained in continuous possession of the share holder in all crops.
 - c) That even an affidavit was also drawn by Kuldeep Singh, the respondent herein on 15-06-1998 solemnly confirming that land falling under Kh. No.17 (2 Kanals 2 ½ Marlas of Village Chak Kahna and 229(13 Kanals 4 Marlas) of village Lalyal has come in the share of Jaswant Singh who had in possession thereof. And if entries of Kasht in respect of this land are made in this name, he shall have no objection.
 - d) That Mutation No.686 was placed before the Tehsildar in the Camp in village Kahna Chak itself on 30-06-2003 in presence of number of responsible persons of this village. Kuldeep Singh was also required to appear but he did not come. However, an affidavit was produced on his behalf before the Mutation Officer.
 - e) That the mutating Officer on the basis of thorough enquiry made on spot, come to the conclusion that Girdawari entry made in the name of Kuldeep Singh was wrong. He accordingly, corrected the Girdawari entry in the name of the present petitioner.
 - f) That it may restfully be submitted that the Appellate court has not applied their mind to the real facts of the case nor did they appreciate the documentary evidence otherwise available on the file. They simply said that Kuldeep Singh was not heard and accordingly set aside a well reasoned order on 21-02-2015 and directed that Tehsildar to pass fresh orders after hearing both the parties.
2. Counsel for respondent filed objections to the maintainability of petitioner which are as under

- a. That present revision petition is not maintainable, as no illegality has been committed in passing the impugned order passed by the subordinate court. The decision of the subordinate court is not perverse and against any provision of law.
 - b. The revision petition can be filed on three main grounds.
 - i. When order made by the subordinate court is without Jurisdiction.
 - ii. When the case is one in which the court have not exercised the Jurisdiction.
 - iii. When in exercising the jurisdiction, the court acted illegally is in breach of some provision of law or with material irregularity by committing some error of procedure in the course of trail; which is material in that it may have affected the ultimate decision. In the presence circumstance, no such condition have been violated by subordinate court, and no case is made out for invoking the Revisional Jurisdiction of the Hon'ble Court, as such the present Revision petition is not maintainable and is liable to be dismissed.
 - c. That the present Revision is not maintainable because the area falls under settlement operation, as such only the settlement authorities have the jurisdiction to adjudicate the case. The revision being incompetent liable to be dismissed.
 - d. That the present appeal is not maintainable, against the remand order because remand order is interlocutory order, no final rights of the parties have been decided and any order which does not decide any final rights of the parties is not revisable, as such the present Revision petition against the interlocutory order is not maintainable, liable to be dismissed.
3. Cited Judgment passed in case titled "Rashid Shakh VS State 2010 (3) J&K HC 752- peition against remand order not maintainable.
4. Counsel for petitioner filed written submissions to the above cited objections filed by respondent which are as under
- a. That the impugned order is patently illegal and wrong abinitio. It is rather one line orders and ignores all basic facts of the case. The Revision is, therefore, well founded and deserves to be heard on merits, in the interest of justice.
 - b. That in view of the clear submissions made in the Revision Petition, Para-3, it may respectfully be submitted that settlement work in the village stands long completed and presently it is not under Settlement. The Revision Petition has, therefore, been before the competent forum. Moreover the order dated 21-02-2015 passed by the court below is without jurisdiction.
 - c. That in regard to para-5, it may respectfully be submitted that the officer below has not taken note of solid grounds and documents referred to in the course of hearing. It has simply ignored the real facts and legal omissions. Thus, one line order passed by them carry no legal weight. The revision, therefore, deserves to be decided on merits after hearing the parties.
5. The case came up for hearing. Both the parties along with Counsel present.
6. Counsel for petitioner reiterated the grounds taken in the memo of petition & further pleaded that :-
- a. Private family partition took place on 27-01-1969 and land in dispute comprising Kh. No. 17 share of his father but was recorded in the name of respondent herein.
 - b. Correction in the revenue record with regard to this entry in Kh. Girdawari was made by way of attestation of mutation by Tehsildar concerned after conducting enquiry & in the presence of respectable persons of Vill. Chowkidar and Co. Sharers as well & was legally correct.
 - c. That during settlement of the said village in 2007-2008, the entry was corporated in ROR & the record was deposited in Record Room on 31-08-2009.
 - d. The respondent if aggrieved did not file suit U/S 32 of LR Act. before Collector Concerned whereas settlement Officer was not having Jurisdiction to adjudicate upon the matter. So order passed is nonest in the eyes of law & be set-aside.

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7. Whereas counsel for respondent argued that:
- The present petition is not maintainable, as no illegality has been committed in the order.
 - The area to which case belongs is under settlement.
 - No revision lies against a remand order because it is interlocutory order and no final rights of the parties have been decided & prayed to dismiss the petition.
8. I have heard the arguments of the parties written submissions gone through & record placed on file examined from which it has come to fore that:
- Name of respondent was existing in Kh. Girdawari with respect to land in dispute before attestation of Sehat Kasht mutation No.686 of Jun 2003.
 - A family partition as per document available on file, has taken place on 27-01-1969 & the land in dispute has fallen in the share of father of petitioner so attestation of mutation by Tehsildar after conducting enquiry in the presence of co-sharers & other residents of village including Chowkidar & in the light of affidavit executed by respondent is under law.
 - It is to be mentioned that the order passed on mutation No.686 had been incorporated in ROR/ Jamabandi of 2007-2008 and the name of petitioner shown in Kh. Girdawari thereafter confirms the status of petitioner. After depositing of record on 31-08-2009 the court below was not having Jurisdiction to adjudicate upon the matter or to pass order. It is a settled principle that any order passed without Jurisdiction is nonest in the eyes of law.
9. Sec- 32 of LR Act reads as under :-
- If any person considers himself aggrieved by an entry in a record of rights [he may institute a suit before the Collector (Deputy Commissioner)] for the correction of the record, and for possession of the right claimed if he is not in possession thereof, within one year (2years in the case of Frontier Districts of Gilgit and Ladakh) from the date of publication of the record of the distribution of the assessment under section 49, Sub-section (1).
 - If any person consider himself aggrieved by an entry in an annual record, [he may institute a suit before the Collector (Deputy Commissioner)] within the period prescribed by the Limitation Act No.IX of 1995 for correction of the record and for possession of the right if he is in possession thereof.
10. Hon'ble High Court J&K in its Judgment in the case titled "Ahle Manahs V/S FC(R) & Ors." dated 20-01-2002 has held that correction of entries in record of rights can be questioned only by a suit contemplated by Section-32 of the Act.
11. So in view of the above it is very much clear that a person aggrieved of entries in record of rights has to file a suit before collector (Deputy Commissioner).
12. But in the present case the respondent herein challenged the mutation No.686 of 2003 which already stood incorporated in ROR before Regional Dir Survey & Land Records (Ex-Officio Settlement Officer) with powers of collector under LR Act which was not the proper forum as envisaged in the LR Act.
13. As such the order passed is without jurisdiction & hence a nonest order which beyond any doubt deserves to be set aside.
14. In view of what has been discussed above this court is the opinion that the revision in hand having merit deserves to be allowed and order under Challenge set aside.
15. Accordingly the case in terms of Sec 15(3) of Land Revenue Act is submitted to Ld. Financial Commissioner (R) J&K Jammu for passing final orders.
16. Parties shall appear before Ld. Financial Commissioner (R) J&K Jammu on 12-04-2017


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

Announced
 25-3-2017.