

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

File No.
101/Revision
2013-14

Date of Institution
25-02-2014

Date of Decision.
24-12-2016.

1. Om Prakash
2. Krishan Kumar both sons of Late Shiv Ram Village Salore, Tehsil Billawar, District Kathua.

(Petitioners)

V/S

1. Sunil Dutt
2. Lekh Raj
3. Mohan Singh

All sons of Sh. Prem Nath R/o Village Salore, Tehsil Billawar, District Kathua.
& Ors.

(Respondents)

In the matter of:- Revision petition against the order dated 13-02-2014 passed by the Collector, Sub-Divisional Magistrate, Badnota/ Billawar whereby the learned Sub-Divisional Magistrate has passed the order dismissing the appeal of the appellant and vacating the status-quo passed by the Collector, Sub -Divisional Magistrate, Badnota, Billawar and also setting aside the order of the Tehsildar Settlement, Billawar dated 27-12-2013 whereby the Tehsildar Settlement, Billawar has permitted the respondent No.1 Sunil Dutt for raising construction over the suit land falling under Khasra No.501 situated at Village Salore, Tehsil Billawar.

Prayer for setting aside the same.

Appearing counsel : Petitioner in person
Advocate Ravinder Sharma for respondents

ORDER

I) Brief facts of the case are that :-

- a. parties in the petition are co-sharers
- b. Petitioner filed partition application before Tehsildar settlement Billawar who passed an interim order on 07-05-2013 which was vacated after filing of objections by respondent on 27-12-2013.
- c. Feeling aggrieved, petitioner herein filed appeal before Deputy Commissioner Kathua which was transferred to Sub Divisional Magistrate Billawar for disposal & subsequently Sub Divisional Magistrate passed order on 13-02-2014 which is under challenge in this court.

II) The petitioner submit as under:-

1. That from the perusal of the order passed by the learned Sub-Divisional Magistrate, Badnota/ Billawar dated 13-02-2014 has passed in a mechanical manner and if the said order is minutely and carefully read, it is clear that the appeal of the appellant has been dismissed illegally and against the provisions of law.

2. That the petitioners submit that even the Tehsildar Settlement, Billawar has passed the Order dated 27-12-2013 which is also against the provision of law and the Tehsildar has given a blank permission to respondent No.1 Sunil Dutt to raise the construction over the land in dispute which is the subject matter of partition between the parties.
3. That the petitioners submit that the petitioner filed a petition for partition by meets and bounds with regard to the agriculture land bearing Khasra No. 508, 528, 505, 506, 521 of Village Salore, Tehsil Billawar Khewat No. 37 and Khata No. 102 and 103 as shown in Jamabandi of Kharief 1999 and Rabbi 2000 between the parties.
4. That the petitioners are the co-sharers in the land aforementioned with the respondents and their share stands recorded in the revenue record. The petitioners are in cultivation of the aforesaid land.
5. That the land which is partitioned is an agricultural land having Khasra No. 501 measuring 26 Kanals and 09 Marlas which is also an agriculture land and the construction cannot be allowed to be raised in the agriculture land. Moreover, as the property is the joint property and till partition no co-sharer has right to raise construction.
Moreover, it is also mentioned that Sunil Dutt, respondent No.1 wants to raise the construction after demolishing the old house in Khasra No. 501 therefore, the Tehsildar settlement, Billawar and the learned Sub-Divisional Magistrate Badnota/ Billawar have to consider all these facts. This aspect has not been considered by both the courts below, therefore, the orders impugned are liable to be set impugned in the present revision.
6. The case came up for hearing. Petitioner present in person. Counsel for respondents present. Petitioner submitted the grounds taken in the memo of petition & pleaded to set aside the order of SDM Billawar dated 13-02-2014 whereas counsel for respondents pleaded that the respondent is a co sharer in the property & is entitled to a share of 266 marlas of land. Respondent Started construction on a piece of land measuring 10 Marla which was challenged before SDM who vacated the stay order & the present petition is against the said order.
7. Petitioner pleaded that the partition has not been made but the respondent argued that said land has been partitioned orally since long which has been duly reflected in the revenue record.
8. Counsel for respondent pleaded to allow the respondent to construct his house on the 10 marla of land which is in his possession and placed an authority of Hon'ble High Court of Pb & Haryana in the case titled "Mukhtair Singh V/S Tara Singh & Ors." decided on 25-07-2000.
9. It is an admitted fact that the parties are co-sharers in the land in question and are in possession of their shares. The contention between the parties is with regard to partition and raising of construction by respondent No.1 in Kh. No. 501. The main plea of the petitioner is that the partition suit is at the initial stage before Tehsildar Billawar. Respondent be not allowed to raise construction.
10. It may be noted that against the order of Tehsildar dated 27-12-2013 whereby he vacated the interim order was challenged by petitioner before Deputy Commissioner, Kathua by way of appeal & the same was transferred to SDM Billawar for disposal.
11. It is also pertinent to mention that SDM passed order of status-quo on 03-01-2014 which was challenged by respondent before Hon'ble High court & the same was disposed of on 27-01-2014 observing that the matter is pending before the appellant forum and is at its initial state and order in question is interim in character. It is also mentioned that Sunil Dutt has right to approach the Appellate

Forum, file his objections to the application for ad-interim order and voice grievances as set out in the petition including one that the appeal is incompetent and appellate authority has no power to entertain much less proceed with the appeal. The Appellate Authority is expected to dispose of the matter expeditiously and as far as possible within a period of one month from the date the matter is surfaced before the Appellate Authority.

12. I have heard the parties at length. Record examined which reveals that the parties are co-sharers comprising Kh. No. 508, 528, 505, 506, 521, 501, 502, 503, 504, 497 min & 499 of village Salore and the respondents are co-sharer and in possession of land comprising Khasra No.501 on which he is raising construction.
13. The main contention of petitioner is that since partition has not been affected so respondent may not be allowed to raise construction. In this context it is submitted that petitioners in their petition have admitted that the land which is partitioned is an agriculture land having Khasra No. 501 min 26K - 9 M & construction cannot be allowed to be raised in the agriculture land.
14. It is pertinent to mention that the authority produced by the counsel for respondents of Hon'ble High Court of PB & Haryana in the case titled "Mukhtair Singh V/S Tara Singh & Ors." in support of his claim reads as under:-


Co-Sharer-Rights of a co-sharer in possession of his share in the property can use that portion, raise construction, without getting the joint property partitioned and the construction raised by him will be subject to adjustment of the rights of the co-sharers at the time of partition.

15. So it is clear that the authority cited above is very much applicable in the present case and a Co-Sharer even without getting the joint property partitioned can raise construction.

Hence, In view of the above, this court has come to the conclusion that the present case has no merit & thus dismissed.

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

Announced
24-12-2016.


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

appeal of the appellant has been dismissed legally and against the law.