

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

File No.
33/Revision
2016-17

Date of Institution
20-08-2016.

Date of Decision.
11-02-2017

1. Parsino Devi (deceased) W/o Late Tej Ram through legal heirs
(I) Surjit. Kumar S/o Late Tej Ram
(II) Rajinder Kumár S/o Late Tej Ram all residents of Sector No.3
Extn. Trikuta Nagar.

V/S

(Petitioners)

1. Assistant Commissioner (Revenue). Jammu.
2. Gurcharan Singh S/o Isher Singh R/o Akali Kour Nagar. Digiana. Jammu.
3. Prithipal Singh S/o S. Sardool Singh R/o Sector No. 3 Extn. Trikuta Naga,
Jammu.

(Respondents)

In the matter of:-

Revision petition against the order dated 21-07-2013 (2016) passed by the Assistant Commissioner (Revenue) Jammu in an appeal against the order of Naib Tehsildar Bando Basat Bahu in respect of mutation No. 4323 (JEEM) dated 19-09-2009 in respect of land measuring 7 Marlas and 6 Sarsai comprised of Khasra No. 17 situated at Channi Himmat, Jammu. Prayer for setting aside both the orders passed by the Assistant Commissioner (Revenue). Jammu date 21-07-2013 as well as order dated 19-09-2009 of Naib Tehsildar Bando Bast Bahu.

Appearing Counsels: Advocate Roop Lal for Petitioners.
Advocate Akash Gupta for respondent No.2.
Advocate MP Kapoor for respondent No.3.

ORDER

The present petition has been filed against the order dated 21-07-2013 (2016) passed by the Assistant Commissioner (Revenue) Jammu.

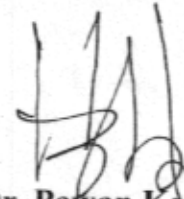
Petitioners have submitted that:-

1. They are owners of 1 K of land in Kh. No.18 min of village Channi Himmat & in addition to this they are also owners of 16 Kanals of land in Kh. No. 18.
2. They challenged one mutation No. 4323(Jeem) attested by Naib Tehsildar Bandoast Bhau on 19-09-2009 in respect of land meaning 1 M & 6 Sarsai of Kh. No. 17 before Deputy Commissioner, Jammu who transferred the same to Assistant Deputy Commissioner (R) Jammu for disposal.

3. That AC(R) Jammu or 03-06-2014 passed an interim order & directed the parties to Maintain status quo on spot but vacated the same on 09-07-2015 when presiding officer did not hold the court & petitioners came to know about it on 14-06-2016 when the matter came for arguments.
4. That the order dated 09-07-2015 was challenged before the court of Divisional Commissioner, Jammu & the appeal was disposed of with the observation that the status-quo order dated 03-06-2014 shall remain in force. The case was disposed of on 21-07-2016 by AC(R) Jammu.
5. The present petition has been filed on the grounds that the total land of Kh. No.17 was 8K – 19Marlas whereas out of this Kh. No.10K 6 ½ M land (i.e. excess land measuring 1K 7 ½ M) has been sold by Ishri Devi to Surjit Kour & subsequently by Surjit Kour to Prithipal Singh.
6. During pendency of petition, the petitioner No.1 died and application came to be filed on 17-12-2016 by petitioners through counsel for bringing LRs of petitioner No.1 on record submitting that petitioner No.2 & 3 are the LRs of deceased Parsino Devi and are already on record and there is no need to bring them on record.
7. Whereas counsel for respondent No.2 filed objections to the above cited application & pleaded that apart from petitioners 2 & 3, there are other legal heirs of deceased Parsino Devi & also gave the details of other LRs. He contended to dismiss the application as well as revision petition for suppressing material facts from the court. However Counsel for petitioners did not admit and concede the legal heirs as alleged by the respondent in the their objections to the application. Therefore the application of petitioners with regard to legal heirs of petitioner No1 is allowed.
8. The case came up of hearing. Both the parties along with counsel present. Counsel for petitioner reiterated the grounds taken in the memo of petition & further pleaded that
- Tehsildar, Bahu did not submit the enquiry report sought by the Court below but Naib Tehsildar Bahu without visiting spot submitted the report at the behest of respondents:-
 - That in the garb of mutation No.4323 G / Respondents are trying to encroach their land in Kh. No. 18.
 - Respondent do not allow demarcation to be conducted & prayed to set aside the order of Assistant Commissioner (R) Jammu and order of Naib Tehsildar.
9. Whereas counsel for respondent 2 & 3 contended that with regard to issue of ownership of Ghasitu Hon'ble High Court of J&K has got conducted a detailed enquiry in the matter & found that ownership rights over 2K-14 M of land were conferred upon Ghasitu & after his death his three sons got 18 Marla of land each. Tej Ram father of petitioners 2 & 3 sold his share & petitioners have no other land. He further pleaded that they have not challenged the sale deeds.

10. I have heard the arguments advanced by the counsel of both the parties from which it has come to fore that the petitioners are claiming to be in possession of land in Kh. No.18 of Vill. Channi Himmat whereas the mutation impugned No. 4323 G pertains to Kh. No. 17. The contention of petitioners is that excess land measuring 1K & 7 ½M has been sold out of this Khasra No.
11. But it has not been understood that in what way the petitioners are aggrieved of the excess sold land & the mutation 4323 G attested for 7 M & 6 Sarsai when they have no land & right in Kh. No.17.
12. It may be noted that the land involved measuring 7 M 6 Sarsai has been mutated on the basis of sale deed duly executed & the mutation so attested cannot be cancelled / set aside till sale deeds are intact.
13. With regard to demarcation a copy of order dated 15-04-2013 passed by Director Land Records, Jammu in case titled "Prithipal Singh V/S Rajinder Kumar & Ors". Shows the matter decided in right way.
14. From the above facts, this court has come to the conclusion that the petitioners did not succeed in making out a case in their favour.
15. Moreover, the court below has also held that there is no ground to set aside the mutation when sale deeds exists as such the order of the court below do not suffer from any infirmity & needs no interference.
16. Thus the present petition having no legal ground is dismissed and the order of the court below is upheld.

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
11-02-2017