

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

File No.

1 Appeal
2010-11

Date of Institution

25-9-2010

Date of Decision.

5-11-2010

1. Rakesh Kumar S/o Iqbal Nath,	V/S	Amar Nath S/o Niku Ram R/o Village Seela, Tehsil Reasi
2. Anil Kumar S/o Brij Mohan		
3. Sunil Kumar S/o Nek Ram		(Respondent)

All residents of Reasi, Tehsil Reasi
(Appellants)

In the matter of:-

Appeal against order No. DC/1175-76/SQ dated 19-08-2010 issued by DC Reasi for restoring Girdawari entry in respect of Khasra No. 834/384 of village Seela in favour of Amar Nath respondent. Prayer for setting aside the same.

Appearing Counsel: Appellant No 1 in person.
Respondent in person.

ORDER

The present appeal has been filed on the grounds :-

1. That the appellants had been running Brickkiln business in Reasi in the past years. As the respondent had been working with them, they purchased 12 Kanals and 5 Marlas of vacant land with his free will falling under Khasra No.834/384 of village seela held by him in ownership rights against an oral agreement in consideration of rs. 50000/- (paid in cash to him) in the year 1991 for lifting clay there from and managing the land further. He also managed proper Girdawari entry of occupation in favour of the appellants in Rabi 2002.
2. That entry of possession of the appellants over that Banjar land continued to be made in their favour each crop by drawing Khat Chalipa.
3. That as the respondent had been living in the village itself and the appellants had reposed confidence in him, they in good faith, asked him to keep awatch over their land also. But, as he had secured ownership rights over this land as tiller under the Agrarian Reforms Act, he probably got knowledge from outside that sale of such land was for bidden by Agrarian Law. He, therefore, started manipulating fraudulent designs to grab this land back by one way or the other. That with a view to giving coverage to the fraud and his illegal act he first of all brought to light a copy of the Khasra Girdawari of rabi 1991 obtained by

him on 25-06-1991, in which he was rightly shown in self cultivating possession of the land.

He thereafter brought another copy of the Girdawari for Rabi 2001 obtained by him on 08-02-2007 in which the land being Banjar in nature had been rightly shown in his self occupation. From here, new shape is manipulated by him to take the fraud to fresh height. Here he forged the copy of Kharif 2001 obtained by him on 13-02-2007 in which he was rightly shown in occupation of the land and made progeny to make it appear as if he was in possession of Kharif 2006 itself.

6. That these copies of the Girdawaris, particularly that tampered by him so as to make it appear Kharif 2006 instead of Kharif 2001 have misled the lower revenue authorities to perceive in wrongful manner that the subject land has all along remained in the self-occupation of the respondent and that entries made in the name of the appellants were fictitious. On the other hand, clarifications given by the appellants could yield no fruitful result.
7. That the appellants, to make the basic matter clear and effective are soliciting perusal of the copy of the Khasra Girdawari from Rabi 2002 to Kharif 2007 and copy of Rabi 2006 and Kharif 2009 which would clearly prove that whole of this Banjar land has remained in their regular self-occupation of the appellants for all these years.
8. That on the other hand, on the basis of forged entry of Kharif 2006, the respondent made a complaint against the appellant in the vigilance organization. Enquiry was subsequently conducted by Assistant commissioner, Reasi and he arbitrarily linked the self-cultivating status of the respondent of Rabi 1991 and Rabi 2001 to the forged copy of Kharif 2006 and made an observation that entry appearing in Rabi 2002 in the name of the appellants was wrong being against the instruction of the FC and required to be removed. He further held that evidence to the sale of this land to the appellants was also not coming forth and accordingly sent a report to the learned Dy. Commissioner on 04-06-2010.
9. Firstly enquiry was simply based on mis-representation and misplacement of facts.
10. Secondly, dispute if any in relation to Girdawari entry has to be dealt with by a competent officer on a mutation and not on the file as provided in rule 4 of the Agrarian Reforms Rules and the provision made in standing order No. 22 (Girdawari).
11. Thirdly, spot enquiry in presence of parties and some responsible persons of the village was required to be done before reaching any conclusion.
12. Fourthly, the enquiry conducted by the AC was incomplete and result was based on assumption only.
13. That still the Learned Dy. Commissioner, vide impugned order dated 19-08-2010 has taken up the matter very lightly and issued directions for restoring the entry of Kasht in favour of the respondent quite arbitrarily and that, too, without affording any opportunity of being heard to the appellants. In any case, procedure prescribed for settling the dispute, if any, in relation to the Girdawari entries has been thrown to winds.
14. The respondent filed written arguments wherein it is submitted:-
 - a) That the respondent is the true owner of the land bearing Khasra No. 833/384 situated at Seela Reasi and the said land is continuously in the

- possession of the respondent till date and as it is also the ancestral land of the respondent.
- b) That in the year 2006, the revenue authority illegally changed the Khasra Girdawari of the said land on the back date i.e. from 2002 without the knowledge of the respondent but the land remained in continuous possession of the respondent and the respondent also collected the Khasra Girdawari in the year 2007.
 - c) That the respondent then approached before the Deputy Commissioner, Reasi and he directed the Assistant Commissioner, Revenue Reasi to conduct the enquiry in the matter.
 - d) It is apt to mention here that the ACR Reasi conducted the spot inspection and recorded the statements of the parties i.e. appellants and respondent alongwith three patwaries those who were posted as Patwari in Patwar Halqa Reasi from the year 2002 to 2008 but all denied about the changed Girdawaries and submit the report to the Deputy Commissioner, Reasi.
 - e) That the respondent never sold any land or leased out any land in favour of appellants under Khasra No. 834/384 even no sale deed / Agreement has been produced by the appellants and no brick kiln has ever been established over the land in question and the respondent submits that the above said land is not Banjar and the respondent has sown wheat and Kale Chollay (Black Grams) from time to time.
 - f) That all the above facts are proved from the record which the Patwari of Patwar Halqa Reasi submitted before your honour.
 - g) That the order Deputy Commissioner dated 19-08-2010 is not illegal which is proved from the record and the report of the Tehsildar.
16. The case came up for hearing. Both the parties present in person. Appellant submitted the grounds taken in the memo of appeal & further pleaded that he has purchased the land in question, Whereas respondent submitted that he is the owner of the land and has never sold his land. He further submitted that Assistant Commissioner, Revenue, Reasi conducted an enquiry and submitted the report to Deputy Commissioner, Reasi who passed order for restoration of Girdawari in favour of Amarnath (Respondent herein).
18. I have heard the parties. The written arguments filed by respondent are gone through & record Placed on file is examined carefully which shows that the respondent is the owner of the land in dispute and as per report of Assistant Commissioner, (Revenue) dated 04-06-2010, the respondent has been found in possession of the respondent.
19. The contention of the appellants is that they have purchased the land from the respondent (Amar Nath) & Girdawaries have been recorded in their names accordingly.
20. In the enquiry report conducted by Assistant Commissioner, Revenue Reasi it is held that the entries have been made in the names of (Rakesh Kumar & Ors.) appellants herein but the possession is with Amarnath (Respondent) herein and that there is no evidence of sale & purchase of land in question. Amar Nath has stated that he has not sold the land but only the top soil to Rakesh Kumar for making bricks.

It is pertinent to mention that changes in * Khasra Girdawri can only be made by way of attestation of mutation and that too to be attested by a Revenue Officer not below the rank of Tehsildar but in the present case no such procedure has been followed. Hence changes made in Khasra Girdawri in favour of appellants is against law and also in violation of circular of Financial Commissioner (Revenue) J&K dated 22-12-1997 are not sustainable and deserves to be set aside.

In view of the above facts & circumstances this court has come to the conclusion that the appellants have failed to make out a case. The order passed by court below is as per law & do not suffer from any infirmity and thus needs no interference by this court.

Hence the present appeal being devoid of merit is dismissed.

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.

5-11-2016

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