

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present Dr. Pawan Kotwal, IAS.

File No.

31/Appeal
2016-17

Date of Institution

19-08-2016

Date of Decision.

01-04-2017

1. RAM KRISHAN S/O SOBHA RAM
 2. DEV RAJ S/O SOBHA RAM
 3. HEM RAJ, SUDERSHAN KUMAR AND CHANDER PARKASH, SONS OF LATE LABHA RAM
 4. RAKESH KUMAR
 5. RAVINDER KUMAR
 6. RANJEET KUMAR, SONS OF ROOP CHAND
 7. FEROS CHAND S/O ROOP CHAND,
ALL RESIDENT OF LACHKHAZANA, KULEED, TEHSIL AND DISTRICT KISHTWAR
-(APPELLANTS)

VERSUS

1. DEPUTY COMMISSIONER, KISHTWAR
2. TEHSILDAR (ASSISTANT COLLECTOR IST CLASS), KISHTWAR
3. BAL KRISHAN S/O SHANTI DEVI R/O SUKHPURA, DOOL, TEHSIL & DISTT. KISHTWAR
4. KEWEL KRISHAN
5. SRI KRISHAN, ALL SONS OF MST. SHANTI DEVI,
RESIDENT OF LACHKHAZANA, KULEED, TEHSIL AND DISTRICT KISHTWAR

.....(RESPONDENTS)

IN THE MATTER OF:-

APPEAL AGAINST ORDER DATED 17 - 06 - 2016, PASSED BY RESPONDENT NO.1, DEPUTY COMMISSIONER, KISHTWAR IN APPEAL TITLED RAM KRISHAN AND OTHERS VERSUS TEHSILDAR, KISHTWAR AND ANOTHERS, FILED BY THE APPELLANTS AGAINST THE ORDER NO. 718/STS DATED 14 - 09 - 2015 PASSED BY RESPONDENT NO.2, TEHSILDAR KISHTWAR, WHEREBY LEARNED DEPUTY COMMISSIONER, KISHTWAR HAS DISMISSED THE APPEAL OF THE APPELLANTS BEING NOT MAINTAINABLE, WITH A PRAYER TO SET A SIDE THE SAID ORDER AND ALSO OF THE TEHSILDAR, KISHTWAR.

ORDER

The present appeal has been filed by the appellants on the following grounds:

1. That the order impugned passed by learned Deputy Commissioner, Kishtwar is against both law and facts and has been passed by sheer non-application of mind, the same does require to be set-aside.
2. That in passing the order impugned, the Deputy Commissioner Kishtwar has not taken into consideration the factual conspectus dealing with the matter nor has taken into consideration the documentary proof submitted by the appellants and even has not made mention of the facts dealing with the matter in the order impugned and in a slipshod manner has passed the order impugned, erroneously holding the said appeal not maintainable, without showing any justifiable basis there for which order of Deputy Commissioner, Kishtwar is not sustainable and deserves to be set-aside.

3. That in passing the order impugned the learned deputy commissioner has omitted to take into consideration the deliberate omissions and illegal acts of Tehsildar, Kishtwar while dealing with the matter as in passing the order, the Tehsildar had deliberately avoided the clear cut direction of learned Additional Commissioner, Jammu to take into consideration the quantum of land sold by the predecessors-in-interest of the respondents namely Sobi, Reshmu and Shanti who already had sold whole of the land fallen in their share and even in share of Datta and were not entitled to any further land muchless of the appellants and said Tehsildar, without taking into consideration the documentary proof submitted by the appellants in that behalf and violating the terms of the order of Higher authorities and the mandatory provision of law has passed the order that too in a slip shod manner without making any mention of the factual conspectus of the matter and without giving any finding in the same.
4. That in passing the order impugned, it was obligatory upon Deputy Commissioner, Kishtwar to deal with the facts of the case and to appreciate the pleadings and the documentary proof placed on record by the appellants and to give a finding on the facts of the matter in his order which he has omitted to do in his order. It is pertinent to mention here that the appellants had filed the said appeal against the order passed by Tehsildar Kishtwar on 14.09.2015 which order was passed by him in utter violation to the provisions of law and dehere the clear cut directions passed by the Higher authorities and in garb of said order, the appellants had been deprived of their property which deliberate act of the Tehsildar Kishtwar had provided a right to the appellants to assail the said order before Deputy Commissioner Kishtwar and which was maintainable under law. It is pertinent to mention here that learned Additional Commissioner, Jammu vide its order dated 30.05.2016 had hold the appellants within their right to challenge the order of the Tehsildar by filing appropriate appeal against the said order copy of which order was also provided to Deputy Commissioner Kishtwar, but Learned Deputy Commissioner Kishtwar, ignoring the said order and in non-application of mind has dismissed the said appeal which is against the law.
5. That even otherwise from the documentary evidence and pleadings submitted by the appellants before the Tehsildar, Deputy Commissioner, Kishtwar and this Hon'ble Court, it renders explicitly clear that the predecessor-in-interest of the respondents had already sold land falling in their share and the appellants are the exclusive owner of the land measuring 12 kanals and 14 marlas devolved upon them after death of Sobha as out of the above said land, land measuring 07 kanals 12 marlas was developed upon him by way of will executed by Mangta in his favour and land measuring 05 Kanals 02 marlas was purchased by him from his own funds and the respondents have no right or interest in the said land on any pretext whatsoever. The appellants being the owner of said land are entitled to whole of the above said land and therefore request this Hon'ble Court to allow their appeal and pass direction to the concerned authorities to put them into the possession of the land illegally given to the respondents No. 3 to 5 and to make entries of their mutation and possession in the revenue record. The learned Deputy Commissioner, Kishtwar has omitted to taking into consideration the above said facts and documentary proof presented in support of the said facts and instead of passing such directions has dismiss the appeal of the appellant which order of the deputy Commissioner Kishtwar is required to be set-aside.
6. That the Tehsildar and subsequently Deputy Commissioner Kishtwar has not appreciated the factual conspectus and the documentary evidence produce by the appellants in right perspective and rather have not taken the same into consideration while passing the orders. It is immanent to being the notice of this Hon'ble Court that the manner in which the partition proceedings have taken place in explicit terms shows some mischief as it was Naib Tehsildar Kishtwar who affected the partition proceedings that too in a hush-hush manner with an ulterior motive to some how facilitate the respondents who in law was not competent to affect the partition and despite knowing very well that respondents have no right are interest in the land of the appellants. The learned Deputy Commissioner Kishtwar has omitted to take into consideration the said fact.
7. The case came up for hearing. Both the parties alongwith counsel present. Counsel for appellant reiterated the grounds taken in the memo of appeal and prayed to set aside the order impugned and to issue direction to the concerned authorities to put the appellants into the possession of the land illegally given to the respondents No. 3 to 5.

Whereas the counsel for respondents pleaded that Tehsildar concerned after conducting enquiry has passed orders in presence of both the parties and prayed to dismiss the appeal.


8. I have heard the arguments of both the parties. Order impugned/record of the court below perused from which it has been found that the appellants herein filed appeal against the order of Tehsildar Kishtwar dated 17-09-2015 before Additional Deputy Commissioner Kishtwar on 12-10-2015 by virtue of which the partition of the land in dispute was effected between the parties herein & the appellants herein were directed to hand over the possession of land measuring 7 kanals 8 marlas to respondents No. 3 to 5.
9. Further, the appellants herein filed another appeal against the same order of Tehsildar Kishtwar dated 14-09-2015 before Deputy Commissioner Kishtwar on 02-06-2016 who vide his order dated 17-06-2016 dismissed the appeal as not maintainable.
10. It is pertinent to mention that appellants herein have not uttered a single word about the appeal filed before Additional Deputy Commissioner Kishtwar & its present status which shows that they have not approached this court with clean hands & have approached the different forums against the same order of Tehsildar.
11. It may be noted that Deputy Commissioner Kishtwar in his order has observed / held that a similar application/appeal filed by Ram Krishan & Ors. is pending before ADC Kishtwar & on this ground also has dismissed the appeal. Moreover, the court below has not decided the rights of the parties but has only observed that the appeal is not maintainable.
12. Hence in view of what has been discussed above, this court is of the opinion that there is no illegality in the order under challenge.

Therefore, the appeal being devoid of merit is dismissed.

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

Announced

01-4-2017


Dr. Pawan Kotwal (IAS)
Divisional Commissioner
Jammu