

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present: Dr. Pawan Kotwal, IAS

File No.

Appeal-64  
2014

Date of Institution

10-12-2014

Date of Decision.

07-01-2017

1. Vijay Kumar Sharma,  
S/o Tara Raman Sharma  
R/o Old Janipur, Jammu.

2. Nirma Sharma,  
D/o Tara Raman Sharma  
W/o Chander Mohan  
R/o Panjthirathi, Jammu.

3. Neelam Dogra,  
D/o Tara Raman Sharma  
W/o Rajneesh Dogra  
R/o A/P Old Janipur, Jammu  
Through Vijay Kumar,  
attorney holder  
(Appellants)

1. Kewal Krishan, now deceased

Through LRs

a) Rakesh Kumar R/o H. No.18  
Opp. JRC House Udheywala Jammu,

*Versus*

b) Rajinder Sharma R/o H.No.1, Sarwal  
Near Citizens Cooperative Bank, New Plots  
Jammu,

c) Rajeev Sharma R/o House No. 1 Sarwal  
Near Citizens Cooperative Bank, New Plots  
Jammu,

(all sons of Late Kewal Krishan)

d) Kanchan Sharma

e) D/o Late Kewal Krishan  
W/o Late Sh. Ashwani Sharma  
R/o Late Morh Sarwal, Jammu

(Contesting Respondents)

2. Nisha

W/o Pardeep Kumar  
Daughter-in-law of Om Parkash

3. Veena W/o Mukesh Kumar

Daughter-in-law of Om Parkash

4. Kulbushan Kumar

S/o Om Parkash  
R/o Poni Chak, Jammu

5. Rani Wd/o Kuldeep Kumar

R/o Domana, Jammu

(Non-contesting Respondents)

*In the matter of:*

Appeal against the order dated 08-11-2014 passed by the Deputy Commissioner, collector Jammu, where he did not pass the order for correction of Missal Haqiat for setting aside the same.

Appearing Counsel : Advocate Dara Singh for appellants

: Advocate Keshav Gupta for respondents

Order

1. This appeal arises out of an order dated 08-11-2014 passed by Deputy Commissioner (Collector) Jammu under which Suit filed by the appellants before him under section 32 of the land Revenue Act for the correction of wrong entries made in the new record of rights of village Chak Pouni vand Waziraan prepared in 1999-2000 for 23Kls and 7 Ml of land earlier falling under Kh. No. 3,4, 5, 6, 7, 8, & 9 (old) & now brought under Kh. No. 35(new) during the current settlement was dismissed on the ground that it was not falling in the provisions of Section 32 of the Land Revenue Act.

2. During pendency of appeal the respondent No.1 died and on the application of appellants filed through counsel legal heirs of respondent No.1 have been brought on record.
3. It is to be mentioned, that appellants during pendency of appeal,, filed application in the court of Ld. Financial Commissioner (Revenue) J&K, Jammu on 16-11-2015 which was rejected vide order dated 09-04-2016 being without any merit & parties were directed to any appear before this court for further proceedings.
4. The contention of the appellants is that late Tara Raman (father of the appellants) and Kewal Krishan(now deceased) and late Om Parkash were three real brothers & as per entries made in the Jamabandi of 1963-64 land measuring 369 Kl 2 MI was shown to be jointly held by them in ownership rights and were in possession of area indicated against each in the ownership column of the Jamabandi as under:-

Tara Raman (Son)	=	96 Kl - 15 MI
Om Parkash & Kewal Krishan (Sons)	=	256 Kl - 8 MI
Padma Devi (Daughter)	=	8 Kl - 00MI
Sheela Devi (Daughter)	=	8Kl - 00MI
(of late Chhaju Ram)	Total =	369 Kl - 3 MI


5. That entry of the Jamabandi was based on their Hissedari Kasht referable as oral partition of land between the share holders. But Sheela Devi and Padaam Devi had already sold the land so held by them similarly ownership rights over major part of the land held by Kewal Krishan and Om Parkash got extinguished under the Agrarian Reforms Act and the rest had been Sold by them. Thus they were having no land in their Share and as such their name should not have been reflected in the new record of rights of the village. On the other hand, the subject land was forming part of the land falling in the share of late Tara Raman and ought to have been entered in his name or in the name of his legal heirs only.
6. Fresh written submissions were also filed by the appellants on 27-08-2016 which form part of the record on the file. They have father submitted that the impugned entries made in the record of rights were not in conformity with facts and ground reality which clearly maintained that the subject land measuring 23 Kls & 7 Mls had remained in exclusive possession of Late Tara Raman during his life time prior to settlement and after settlement this land went in possession of his son Vijay Sharma who has been enjoying his continuous possession there on till this time as co-sharer. It is further argued on Their behalf that when this part of the land was falling in the share and possession of Vijay Sharma or other legal heirs of late Tara Raman entry in respect of this land made in the RoR in the name of Kuldeep Kumar and others was unjustified and wrong. It is further submitted that it was late Tara Raman who had actually resumed land form his tenants under section 7 of the Agr. Reforms Act and had been enjoying possession of that part of this land also and this land should have

therefore been entered in his name in the ROR separately but this had not been done Hence the suit for correction of these entries.

7. On the other hand, the submissions made in the suit have been opposed by the other side. Their plea is that the subject land was forming part of the joint holding and mere cultivation of land by one share holder cannot deprive other share holders from the right and interest which they enjoy in such joint property. Even the Tehsildar, in his letter dated 15-10-2010 sent to the Deputy Commissioner, Jammu in the suit proceedings also clarified that share of Vijay Kumar and other legal heirs of late Tara Raman was available to them only to the tune of 12 Kl & 7 Ml in new Kh. No. 35. It is argued that all and other relevant points have been thoroughly considered by the learned Deputy Commissioner before rejecting the suit of the appellants and the present appeal therefore has also no legal weight in view of these clear facts. I have paid due consideration to the whole matter. The suit filed by the appellants before the learned Deputy Commissioner was raising specific issues which deserved close examination.
8. After hearing the parties and examining the revenue records with reference to the entries made in the ROR and real position obtaining on spot, there is no denying the fact that entry of Kasht as Hissedari Kasht in the name of one Co-sharer shall not mean that other share holders otherwise having share in the land would in any manner, lose their respective shares in the land. They are recorded Share holders in the land and can seek partition of the land, if they so like, under due process.
9. Further it is to be mentioned that the court below has thoroughly discussed & dealt with each issue of the parties & has even clarified that mere entries of cultivation do not mean that the other co-owners shall lose their rights in Kh. No. 35 and has also mentioned the share of plaintiffs in the land in question.
10. Moreover It has been observed that the court below has passed a detail order and do not suffer from any infirmity.
11. Hence in view of the above, the appeal being devoid of merit is dismissed.

A copy of this order be sent to Deputy Commissioner (Collector) Jammu for information & further necessary action.

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



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

Announced  
7-1-17.