

IN THE COURT OF DIVISIONAL COMMISSIONER JAMMU

Present: Dr. Pawan Kotwal, IAS

File No.	Date of Institution	Date of Decision
32/appeal 2013-14	05-03-2014	15-04-2017

Lehar Singh

Vs.

Goli Ram & V Ors

Lehar Singh S/o Deya Chand R/o Village Koti Tehsil & District Doda

V/s

1. Goli Ram S/o Krishan Singh R/o Village Koti Tehsil & District Doda.
2. Jaswant Singh S/o Krishan Singh R/o Village Koti Tehsil & District Doda.
3. Balwant Singh S/o Krishan Singh R/o Village Koti Tehsil & District Doda
4. Pawan Singh S/o Krishan Singh R/o Village Koti Tehsil & District Doda

Contesting Respondents

5. Tehsildar Doda
6. Sh. Naresh Kumar the then Tehsildar Doda
7. Sh. Naimatullah Balwan retired Girdawar Doda
8. Mohammad Usman the then Patwari halqa Dhar presently Girdawar Doda
9. Patwari Halqa Dhar Tehsil Doda

In the matter of:-

Performa respondents

Appeal against the judgment and order of Collector (Deputy Commissioner) Doda dated 08-01-2014 whereby he has decreed the suit filed u/s 32 of land Revenue Act filed by the respondents No. 1 to 4 and set aside the entries of Jamabandi made by the then Tehsildar Doda through the "Fard Baddar".

ORDER

1. This appeal is directed against the judgment and order of Deputy Commissioner, Doda dated 08.01.2014, whereby he has set aside the order of Tehsildar Doda allowing the correction of Jamabandi entries made under paragraph 3(b) of Standing order No 23A and directed for restoration of the wrong entries in the year 1989-90 at the time of writing of the Jamabandi.
2. The brief facts of the case as per the memorandum of appeal are that One Nago was common ancestor of the parties in dispute. He was owner of the land falling in Khewat No.2 measuring 533 Kanals and 5 Marlas and Khewat No. 3 measuring 334 Kanals and 6 marlas situated at village Koti Tehsil Doda. Sh. Nago had four sons namely Balak, Kamla, Gobind, and Shiba.
3. Sh. Balak was survived Mohra and who had four sons namely Hira lal, Amar Chand, Tota Ram and Chhaju. Kamla was survived by Roopa who died issueless. Gobind was survived by Hardyial who was survived by Bhag Chand and Shiba was survived by Gokal who had four sons and widow namely Kapur Chand, Daya Chand, Jai Ram and Anant Ram and widow Rano Devi. Out of four sons his two sons namely Jai Ram and Anant Ram died issueless. Rano Devi also died leaving behind Kapur Chand and Daya Chand.

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Kapur Chand died leaving behind Krishan and Sundri Devi (daughter) Krishan also died and he is survived by Goli Ram, Jaswant Singh, Balwan Singh and Pawan Singh (respondents herein). Daya Chand also died leaving behind Lehar Singh (appellant) and Smt. Kamla Devi (daughter).

As per Jamabandi, of 1956-57 of village Koti, Nago is recorded as the owner in respect of Khewat No. 2 measuring 533 kanals and 5 marlas.

- (i) Share of Hira and other sons of Mohra has $1/3^{\text{rd}}$ share i.e. 177 kanals and 15 marlas.
- (ii) Share of Bhag Chand S/o Hardyial is 177 kanals and 15 marlas.
- (iii) Share of Kapur Chand and Daya Chand sons of Gikal (predecessors-in-interest of the parties) is 177 kanals and 15 marlas. i.e. 88 kanals and $17 \frac{1}{2}$ marlas each.

Out of Khewat NO. 3 land measuring 334 Kanals and 06 marlas. Share of the parties passed under:-

- (i) Share of Hira and others sons of Mohra has $1/3^{\text{rd}}$ share i.e. 111 kanals and 9 marlas.
- (ii) Share of Bhag Chand S/o Hardyial is 111 kanals and 9 marlas.
- (iii) Share of Kapur Chand and Daya Chand sons of Gokal (predecessors-in-interest of the parties) is 111 kanals and 9 marlas. i.e. 55 kanals $9 \frac{1}{2}$ marlas each

Therefore each one of them were entitled to 144 kanals and 7 marlas. All the share holders including the appellant as well as respondents are in exclusive possession of their respective share. It is alleged that during the preparation of quadrennial Jamabandi of 1969-70 and 1989-90, the then Patwari wrongly copied the share of the appellant while copying the Jamabandi and inadvertently wrongly copied the share of the appellant as 19 kanals instead of 144 kanals and $9 \frac{1}{2}$ marlas.

4. After coming to know about the mistake/error committed by the Patwari in copying the area of the appellant, the appellant approached the then Tehsildar, Doda for rectification/correction of the clerical error/mistake committed by the Patwari at the time of the copying the Jamabandi in the year 1969-70 and 1989-90 of Village Koti Tehsil and District Doda. Tehsildar, Doda after conducting inquiry as envisaged under Standing order No. 23-A and after ascertaining the truth and genuineness of the claim of the appellant over the land. The Tehsildar accordingly issued the directions under para (2) of Standing Order No. 23-A for rectification/correction of error at the time of the inscription of the new Jamabandi by way of Fard Badr. The Patwari in pursuance of the said direction while copying the new Jamabandi in the year 2009-10, took note of the said directions and recorded only 69 kanals in the share of appellant whereas the appellant was entitled to 144 kanals and 12 marlas (88 kanals and $17 \frac{1}{2}$ marlas in Khewat No. 2 and 55 kanals and $9 \frac{1}{2}$ in Khewat No. 3).
5. The respondents herein being aggrieved of the said entries filed a suit under Section 32 of the Land Revenue Act before the District Collector/Deputy Commissioner, Doda assailing the rectification/correction of Jamabandi made in the year 2009-10 on the basis of the order passed by the then Tehsildar. The Deputy Commissioner, Doda vide his order dated 08.01.2014, allowed the suit directed for restoration of the wrong entries made by the Patwari erroneously in the year 1989-90 at the time of copying of the Jamabandi. It is against this order of the Deputy Commissioner which is impugned in the present appeal. The appellant has assailed the order among others on the following grounds:-
 - (i) That the learned deputy commissioner Doda failed to appreciate the legal position on the subject. It is submitted that there are two modes of correction of Jamabandi. One under section 32 (2) of land Revenue Act and the other mode under para 3(2) of standing order no. 23-A.

- (ii) The scope of both the provisions are different. Under Section 32(2) any person considering himself aggrieved by an entry in an annual record (Jamabandi) and wants correction of the record and for possession of the right claimed, if he is not in possession thereof, or for declaration of his right if he is in possession thereof can file a declaratory suit by the before Deputy Commissioner concerned. Whereas para 3 (2) of standing order No 23-A envisaged to remove the clerical mistake, that is to say, of a mistake which has been resulted in copying the entries of Jamabandi or in incorporating a mutation in Jamabandi and the correction of only clerical mistake in recording the share of the land holders which does not involve the alteration of any mutation order. Order for such correction of such mistakes in subsequent records are made on the Far Badr, in the prescribed form.
- (iii) In the present case as well, Patwari has committed a clerical mistake while copying the current Jamabandi 1989-90 and previous Jamabandi. After coming to know the clerical error, the appellant moved an application for removal of the same, and this correction did not involve any modification of mutation order. After conducting inquiry and perusing the record, the Tehsildar issued the order for correction in the format prescribed in this behalf as per Standing Order No 23-A for correction of entries by way of Fard Badr. Therefore, there was no occasion for Deputy Commissioner to interfere with the order passed by Tehsildar. The Order therefore deserves to be quashed.
- (iv) That the learned deputy commissioner Doda failed to appreciate that direction of Tehsildar actually related to correction of clerical mistake, and he has recorded his order for correction of the mistake in question in column six as envisaged under said standing order and the Patwari has stitched the copy of such Far Badr with the Jamabandi in the next Jamabandi is prepared in the year 2009-10, a copy of the said Fard Badr was taken note of and necessary entry was resorted.
- (v) That the court below has failed to appreciate that the clerical mistake had occurred in copying the entries of one Jamabandi into another, the correction thereof was done by following the due process of law and does not amount to the alteration of any mutation order. Admittedly in the present case there was no order for change or any alteration of mutation order. The order was for the correction removal of clerical error i.e. the mistake which has occurred while copying the entries of previous Jamabandi i.e. removal of inaccuracy in calculation of share area / of the appellant. This was only mode applicable / recognized by the law i.e Standing Order No. 23-A. The court below, therefore, has not appreciated that Tehsildar was competent to make such order under Standing Order No. 23-A. There was therefore no occasion for the Deputy Commissioner Doda to interfere into the order passed by the Tehsildar. The order passed by Deputy Commissioner, Doda, therefore amounts to transgressing his jurisdiction not vested in him. The order passed by the Deputy Commissioner is erroneous and contrary to law, the same, therefore, deserves to set-aside.
- (vi) That the learned Deputy Commissioner Doda, has not perused the record correctly and to peruse the record, evaluated the share of the parties recorded in the previous Jamabandi. It appears that the Presiding Officer was not acquainted with the Urdu language and was handicapped to personally peruse the record and appreciate the fault committed by the Patwari at the time of copying of the preceding Jamabandi and the law on the subject. For this reason as well the court below has committed an illegality while passing the order impugned. The order as such deserves to be quashed.
- (vii) That the perusal of the order would show that no opportunity of being heard was provided to the appellant. The appellant has been condemned unheard. The order impugned has been

passed in violation of principles of natural justice. For this reason alone the order impugned deserves to be set-aside

(viii) That the perusal of the record would show that the respondents purportedly have filed a suit and in the suit the defendant was to be given an opportunity to file his written statement and lead evidence to prove his case. In the present case the order impugned would show that no opportunity has been given to file written statement and lead evidence as envisaged under law. The court below has unlawfully treated this suit as an appeal without having jurisdiction. This has not only resulted into denial of the appellant to file written statements, but also to lead evidence to prove his case. The Court below therefore has passed the order without having any jurisdiction. The appellant, therefore, has been condemned unheard and the order impugned is, therefore, bad in law and without jurisdiction same as such is liable to be set aside on this ground alone.

(ix) That the court below, it appears, failed to distinguish between the scope of the suit and the appeal before coming to the conclusion, In a suit it was obligatory for the court to provide reasonable opportunity to file written statement, adduce evidence to prove his case and in appeal it is mandatory for the appellate Court for to summon the original record, peruse the same, appreciate the previous Jamabandi and evaluate the entitlement of the parties to the extent of their share in the land belonging to them and thereafter, after hearing the parties pass the order. The order impugned would clearly show that the court below is so confused it could not distinguish between suit and appeal. Record show the respondents have purportedly filed a suit whereas court below has passed the order as a court of appeal which course is not permissible under law. The order passed by the court below is based on conjectures and surmises, the same, therefore, deserves to be set-aside.

(x) That the court below has failed to appreciate that admittedly the appellant was owner in possession of his share in the land and the respondents have no right, title or interest whatsoever over the said land. Because of the error committed by the Patwari at the time of the copying of the Jamabandi does not give the respondents any right whatsoever in respect of the share of the land of the appellant. The finding of the learned court below, therefore, is totally erroneous and amounts to endorsing the misdemeanors and wrongdoings of the lower Revenue functionaries at the time of the inscription of the Jamabandi (revenue record) etc.

6. Notices were issued to the respondents who appeared both personally as well as through Counsel. The case of the respondent is that no revenue officer / official is authorized under any law to make correction, insertion, addition or alteration in the entries as the Jamabandi which have been prepared long 20 years back and have also been deposited in the Record Room concerned. It is further submitted that the correction of entry of formal record (Jamabandi) is made only after obtaining the order of the Collector of the District after filing suit under Section 32 of the J&K Land Revenue Act.

7. I have heard the learned parties and perused the record Under law. The plea of appellant is that there are two modes of correction of the Jamabandi. One to file a suit under section 32 of the Land Revenue Act. The second mode is prescribed under para 3 (2) of Standing Order NO. 23-A. Standing Order No. 23-A is complementary to Section 32 of Land Revenue Act. And it provides that if any clerical error mistake is detected to have occurred while copying the one Jamabandi and correction does not involve the alteration of any mutation order. Revenue officer is competent to order for the correction of such error/mistake in the subsequent record, by way of Fard Badr. In the present case the Tehsildar had adopted second mode.


8. The contention of the respondent is that the copy of the Jamabandi of 1989-90 of Village Koto obtained by them from Tehsildar Doda through RTI Act does not contain any Fard Badr which

indicates that fraudulent Fard Badr has only been attached with the Jamabandi Part Sarkar by present patwari of Patwar Halqa. It is further alleged that the period of posting of Mohd Usman the then Patwari was from 19-09-2006 to 30-05-2008 then how the said Fard Badr has been attached with the said Jamabandi of 1989-90 in 2013. It is alleged that the then Girdawar has written his report on the said Badr in 2013 after retirement. The other allegations against the Tehsildar who has issued the order of correction of Fard Badr for the correction of Jamabandi of 1989-90 that his period of posting as Tehsildar Doda was from November, 2009 to January 2010. In 2013 he is alleged to have been posed in Municipal Corporation, Jammu.

9. The other contention of the respondent is that according to said alleged fake, false and fraudulent Fard Badr the share of the respondent has been decreased and this has been done to grab the share of the landed property of the respondent in the Revenue record and allow the appellant to forcibly enter/trespass the land of the respondent and make sale thereto.
10. In response to these submissions the appellant submits that the contention of the respondents are totally untenable, devoid of the force.
11. It may be noted that court below before passing order has obtained report from Tehsildar Doda in the matter who has submitted that the said Fard entry has not been mentioned in Farad Partal/Roznamcha Waqiyati which shows that the proper procedure has not been followed and as such the order passed by Tehsildar Concerned was not tenable. Moreover the court below has dealt the issue in its right perspective
12. For the reasons stated herein above the appeal being devoid of merit is dismissed. A copy of this order alongwith record file be sent to court below for information.

Stay order granted by this court, if any, shall stand vacated. The present file be consigned to records after due completion.

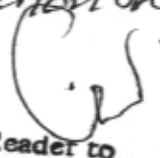
Announced
15-04-2017


Dr. Pawan Kotwal, IAS
Divisional Commissioner
Jammu

No:- 801/120

Dated:- 27-04-2017

Copy of order dated 15-04-2017 alongwith record file containing 92 leaves in the case titled Lekar Singh vs Goli Ram & ors is forwarded to Deputy Commissioner Doda for favour of information & further necessary action.


Reader to
Divisional Commissioner
JAMMU