



IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present: (Dr. M.K. Bhandari) IAS

File No.

25/Revision
2016-17

Date of Institution

16.7.2017

Date of Decision

08.09.2017

Mst. Satya Devi Wd/o Late Sh. Rattan Chand, R/o Sialna, Tehsil Billawar, District Kathua.

(Petitioner)

VERSUS

1. Sub Divisional Magistrate (Collector) Badnora/ Billawar.
 2. Ramesh Sharma S/o Sh. Paras Ram, R/o Sialna, Tehsil Billawar, District Kathua.
 3. Om Parkash S/o Sh. Chand Lal alias Chanda R/o Sialna, Tehsil Billawar, District Kathua.
- Both through Attorney Holder
Shri Tej Ram Sharma S/o Sh. Ram Lal, R/o Kandhanoo, Tehsil Billawar, District Kathua.

(Respondents)

In the matter of: Revision petition against the order dated 20.04.2016 passed by respondent No. 1 in an application for decree of permanent prohibitory injunction filed by the private respondent titled "Ramesh Sharma & Anr. V/s Mst Satya Devi.

ORDER

The brief facts of the case are that

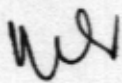
- i) Landed property of one Ballu Ram of Village Sialna was devolved upon his sons after his death.

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- ii) Hari Ram is the Father-in-Law of the petitioner and brother of Paras Ram and Chand Lal fathers of respondents No. 2 and 3 respectively. He (Hari Ram) was one of the 7 sons of Ballu Ram. The property was divided into seven shares amongst the seven sons, who all are now deceased. Two shares of Late Sh. Paras Ram and Chand Lal remained with Sh. Hari Ram.
- iii) The dispute arose when the private respondents No. 2&3 herein filed an application on 04.02.2013 before Sub-Divisional Magistrate, Badnota for decree of Permanent Prohibitory Injunction (PPI) over the land comprising Khasra No. 394, 391, 396, 399, 420, 421, 422, 425 and 418 of village Sialna, against Smt. Satya Devi restraining the petitioner herein from causing any type of interference, making any change or hostile claim, dispossessing the respondents No. 2 and 3 herein from their possession over landed estate of their share.
- iv) Sub-Divisional Magistrate Billawar vide his order dated 20-04-2016 held the applicants/ plaintiffs owners and co-sharers in the suit land and directed the Tehsildar Ramkot to hand over the possession of such land to plaintiff to the extent of their shares after proper verification on spot.
- v) Feeling aggrieved of the order of Sub-Divisional Magistrate Badnota/ Billawar dated 20-04-2016, the present petition has been preferred before the Court.

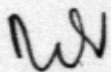
1. The Revision petition has been filed on the grounds:

- a. That the impugned order dated 20-04-2016 passed by respondent no. 1 is illegal, arbitrary and against the facts and provisions contained in Land Revenue Act.



- b. That the appellate court has committed an error of law as well as facts while passing the order in a hasty manner and without taking into consideration the report of Patwar Halqa dated 13-02-2014 and that of Tehsildar Billawar 03-08-2012.
- c. That the official respondent had decided an application for Permanent Prohibitory Injunction (PPI) which is not maintainable since the petitioner was in cultivating possession of the land under reference for last more than 7 decades as also revealed in the report.
- d. That the official respondent has passed the impugned order against the precedent and the judgment passed by the Hon'ble High Court and the Apex Court of the Country where the law has been laid down that the person who is in cultivating possession for the last many decades, cannot be dispossessed.
- e. That even the application filed by the respondents was only with respect to the restraining the petitioner from causing any interference into the suit land. But the official respondent has passed an order for dispossessing the petitioner, thereby implying clearly that the petitioner was in cultivating possession of the said land for the last many decades. Thus, the impugned order is liable to be set aside since the relief that has not been prayed for in the application cannot be granted, which the impugned order has actually done.

2. Counsel for respondent filed the following objections to the revision petition:



- a. That the present petition filed by petitioner is false, frivolous and baseless and that the petitioner has not come with clean hands.
- b. That this land is situated at village Sialna Kathua, Jammu as it belongs to grandfather of respondents No. 2 and 3 who had seven sons, all of whom are now deceased. That this property was divided into seven shares by Late Shri Hari Ram the then head of family. Two shares of Late Shri Chand Lal and Late Shri Paras Ram remained with Late Shri Hari Ram and the other shares i.e. of Shri Bhagat Ram, Diwan Chand, Mani Ram and Sansaro are separately living and having their shares and cultivating their own land. That Late Shri Chand Lal, Late Shri Paras Ram and Late Shri Hari Ram were jointly living together and remained united.
- c. That the petitioner is not the owner in possession of the land falling under Khasra no. 391,396,420,421,425 and 418 of village Sialna, Tehsil Billawar bearing Khewat no. 101/99 Khasra no. 230 to 232. However, petitioner has been cultivating her share and not the share of respondent nos. 2 & 3.
- d. That the father of respondents No. 2 & 3 had not abandoned the land and petitioner's father-in-law had transferred his own share on to the petitioner. Further, the respondents No. 2 & 3 are the sons of Late Shri Paras Ram and Late Shri Chand Lal and have been working at Mumbai and Delhi respectively.
- e. That the report furnished by the Tehsildar Bllawar on 03/08/2012 has not categorically revealed that neither the private respondents nor their father were found residents of village Sialna, Tehsil Billawar for the last many decades. It is further denied that report furnished

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by the Patwari and Girdawar has been authenticated and signed by the respective persons living in the vicinity of the above said land. It is relevant to mention here that respondent Nos. 2 & 3 are always visiting village Sialna.

- f. That the mother of respondent no. 2 had taken loan of Rs 1,95,000/- from the petitioner and the same was returned on 09.08.2012 after a meeting presided over by Sarpanch Mr. Deepak Singh S/o Shri Jodha Singh caste Rajput, Village Sialna and respondent no. 3 has not taken anything from petitioner herein and the petitioner has handed over cash of Rs. 750/- to respondent no. 3 under drought in the year 2011 which was mentioned in the Panchyat Memorandum. The petitioner has received a Cheque of Rs. 750/- from the Patwari against the respondent no. 3. It is strange how she got it encashed from the bank as the cheque bears the name of the respondent no. 3 and respondent No. 3 has no bank account in Jammu till date.
- g. It is correct that the petitioner the objections and raised the preliminary objection but it is specifically denied that the application filed by the respondent nos. 2 & 3 is not maintainable as the respondent had themselves pleaded that they are in not in possession then how the suit for permanent prohibitory injunction is maintainable. It is relevant to mention here as per the revenue record of the Patwari of the area and the land has already been divided by late by the late Shri Hari Ram Sharma the then head of the family.
- h. That it is specifically denied that respondent are claiming to be the co shares than they should have filed an application for partition before the concerned Tehsildar, but they preferred to file PPI which

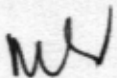
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can only be filed in the person is in possession of the same. It is correct to the extent that the petitioner is in cultivatory possession of her share and not of respondent nos. 2 & 3 and illegally occupied the share of the land of the respondent nos. 2 & 3.

- i. That it is specifically denied that the even the objection, the petitioner had pleaded that there is no panchayat memorandum take place at village and further no settlement has ever been taken place between the parties. It is relevant to mention here that on 09.08.2012. Memorandum of Panchayat was prepared in the premises of the petitioner in the presence of Sarpanch Sh. Deepak Singh and other respectable persons of the society in which matter was amicably settled and the land in question was handed over to respondent nos. 2 & 3 respectively by the petitioner and further son of the petitioner has also given an undertaking in the meeting that all applications would be withdrawn against respondent no. 2 and 3 before Tehsildar or any officer of revenue concerned. It is further relevant to mention here that the petitioner illegally constructed toilet, safety tank and planted mulberry trees on the share of respondent no. 3 without the consent of the respondent no. 3.

Reply to Grounds:

- a) That the contents of para No. I of the grounds are wrong and denied. That the order passed by respondent no. 1 is legal and valid and based on the appreciation of correct facts as such the order is correct and just in eye of law.
- b) That the contents of para No. ii of the grounds are wrong and denied. That the appellate court has not committed an error of law



as well as fact while passing the order. It is relevant to mention here that the court after carefully perusing the facts in correct perspective passed the reasoned order.

- c) That the contents of are No. III of the grounds are wrong and denied. That the application filed by respondent nos. 2 & 3 is maintainable in the eyes of law and the petitioner illegally possesses the share of the respondent nos. 2 & 3 without having any authority to use the same.
- d) That the contents of para No. iv of the grounds are wrong and denied. It relevant to mention here that the petitioner is not in cultivator possession of the share of respondent nos. 2 & 3 and the petitioner is illegally occupying the share of the respondent nos. 2 & 3.
- e) It is submitted herein that present petition is nothing, but gross abuse of process of law and no indulgence of any nature is required by Hon'ble Court in view of the facts and circumstances as mentioned in the preceding paras.

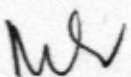
- 3. The case came up for hearing. Counsels for both the parties were present. Counsel for petitioner pleaded on the grounds taken in the memo of petition and further pleaded that respondents No. 2 and 3 in their application filed before Sub-Divisional Magistrate Billawar had prayed for permanent prohibitory injunction whereas the Court below along with injunction has ordered handing over the possession to plaintiff (respondents herein). He submitted that plaintiff (respondents herein), are out of possession of the land in question, which can also be made out from the order of the Sub-Divisional Magistrate, Billawar. Since, the

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respondents are out of possession, they have to file suit for possession and not permanent prohibitory injunction. Hon'ble Supreme Court's Order in the case titled Anathual Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors dated 25th March, 2008 has been quoted by the petitioner's counsel, which reads as below:

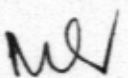
"11.2 ----- A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession".

4. He further submitted that only what is prayed can be granted. He has referred to Hon'ble Supreme Court's Order in the case titled Bachhaj Nahar vs Nilima Mandal & Ors dated 23rd September, 2008. He submitted that tile is not under dispute. They are co-sharers. He further pleaded the respondent in para 8 of their objections have admitted that Satya Devi is on possession. The option was to file particular suit and not PPI. He prayed for setting aside the order impugned.
5. Counsel for respondents pleaded that order passed is as per law. The application was to re-secure the possession. He cited panchayat-nama in support of his claim.
6. Assistant Revenue Attorney appearing on behalf of state pleaded that as per record parties are co-sharers so proper remedy was to file partition suit.
7. I have heard the arguments of the parties. Objections of the respondents have been considered and the record examined, which shows that the parties in the petition are co-sharers.
8. The dispute between the parties is with regard to land recorded in the revenue record in the name of respondents Nos. 2 and 3 but possession



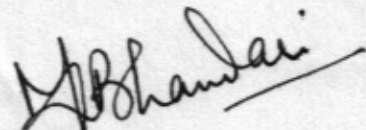
as alleged and contended by petitioner is with her, as the respondent has left the village.

9. The contention of the petitioner is that she is in possession of the land in dispute since the decades and without possession the respondents herein filed application of PPI and court below without appreciating the facts has decided the suit/ application in favour of respondents and ordered handing over of the possession to them which is against law, as PPI without possession cannot be granted. Moreover there was no prayer for possession.
10. The respondents are relying their claim on the panchayat-nama which the petitioner has denied in his petition and has pleaded that objection with regard to maintainability of application and panchayat-nama were filed before the court below which did not take cognizance of the same and passed order.
11. After considering the arguments of the parties and legal position in the matter this court is of the opinion that the court below has exceeded its jurisdiction while passing order and has granted the relief which has not been prayed for.
12. Hon'ble Supreme Court's authorities cited in the matter by petitioner are very relevant in the case. The respondents herein do not appear to be in possession of the land in question, and the court below has ordered handing over of the possession of the same, which clearly substantiates the claim of the petitioner that she is in possession. Therefore, applicability of Permanent Prohibitory Injunction (PPI) over the land which is not in possession of the plaintiff (before the Court below) is without basis. Moreover, the Court below, on the application of PPI, has directed



Tehsildar Ramkote to hand over the possession of the suit land to the plaintiffs/ respondents which is against the principle laid down by the Hon'ble Supreme Court in the case titled Bachhaj Nahar vs Nilima Mandal & Ors dated 23rd September, 2008.

13. In light of the above discussion, this court is of the opinion that the petition, having merit, deserves to be allowed and the order under challenge be set aside.
14. Accordingly, the case under Section 15 (3) of Land Revenue Act is submitted to Ld. Financial Commissioner (Revenue) J&K, Jammu for confirmation.
15. Both the parties shall appear before Ld. Financial Commissioner (Revenue), J&K, Jammu on 26-09-2017 for further proceedings.



(Dr. M.K. Bhandari) IAS
Divisional Commissioner,
Jammu.

Announced.

08.09.2017