



In the Court of Additional Commissioner, Jammu
(With the powers of Divisional Commissioner)
(Rail Head Complex, Jammu)
(0191-2478991, 2478999, Fax-2478997, e-mail: divcomjammu@gmail.com)

File No **Date of Institution** **Date of Decision**
LRA/0000000376/2022 19.07.2022 05.04.2023

Barita Ram S/o Sh. Anant Ram R/o Maralia Tehsil R S Pura, District Jammu
.....Petitioner

Versus

1. Sudesh Kumar
2. Ramesh Kumar
3. Radhey Sham
All sons of Late Thoru Ram
4. Tehsildar R S Pura
5. In the Court of Regional Director Survey and Land Records, Ex Officio Settlement Officer, Jammu

.... Respondents

In the matter of :- Revision against the order of respondent No. 5 dated 27.07.2022 who has upheld the order of respondent No. 4 dated 30.07.2021/31.07.2021 for setting aside the same.


ORDER

The present petition has been filed against the order of respondent No. 5 dated 27.07.2022 who has upheld the order of respondent No. 4 dated 31.07.2021 and for setting aside the same. The grounds taken by the petitioner are as under:-

- ❖ That the respondent No. 5 passed the order relying on the order of Settlement Commissioner, J&K, Jammu dated 23.01.2017 and Financial Commissioner (Rev) J&K, Jammu dated 03.01.2018 and thus respondent No. 5 committed illegality for the reason that no reasoning was given for upholding the order of respondent No. 4.
- ❖ That respondent No. 5 committed glaring illegality in not looking to the appeal filed by the petitioners before him.
- ❖ That petitioner had categorically stated in para 2 of the appeal that petitioner and father of respondent No. 1 to 3 had already partitioned the land about 50 years back.
- ❖ That it was obligatory for respondent No. 5 to give a finding negating the averments taken in appeal by the petitioner.
- ❖ That respondent No. 1 to 3 have already sold the land falling in their share which too has not been considered by the respondent No. 5.

The written arguments have also been submitted on behalf of petitioner which are summarised as under:

1. That the land under Khasra No. 11 measuring 12 kanals, Khasra No. 20 measuring 03 kanals 13 marlas out of the total land 20 kanals 17 marlas under Khasra No. 20 is under the occupation/cultivation/ownership of Barita Ram S/o Anant Ram situated at village Maralia Tehsil R.S. Pura and rest of the land under Khasra No. 20 is in the


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possession of respondent No. 1 to 3 measuring 17 kanals 05 marlas and other land under khasra No. 457 measuring 3 kanals 16 marlas is in the occupation of respondent No. 1 to 3.

2. That the land was divided by the Khangji band in two equal shares between the petitioner and the father of the respondent No. 1 to 3 and land under khasra No. 457 was excluded from that partition. The land was partitioned way back from 40 to 50 years between the parties.
3. That the petitioner is running business in land under Khasra No. 11 measuring 12 kanals, saw mill (Ara) from the date of 09.09.1978 and respondent No. 1 to 3 are trying to disturb the petitioner by filing false and frivolous application against the petitioner.
4. That the petitioner filed the civil suit against the respondents before the Munsiff, R. S. Pura, Jammu in which judgement decree was passed in favour of petitioner dated 06.11.2013 of Khasra No. 11 village Maralia, Tehsil R. S. Pura, Jammu.
5. That the respondent No. 1 to 3 filed the suit against the petitioner against the order of Munsiff, R. S. Pura before the Special Mobile Magistrate, R. S. Pura, Jammu.
6. That the suit was also dismissed by the Learned Special Mobile Magistrate vide order dated 28.08.2019.
7. That the appeal was filed by the respondent before the District Judge, Jammu and the appeal was also dismissed by the Learned District Judge, Jammu vide order dated 31.01.2020.
8. That the mutation No. 281-Jeem was attested in favour of the petitioners by the revenue authority on the basis of judgement decree.
9. That the land under khasra No. 20 measuring 3 kanal 13 marlas is in the occupation of the petitioner but the front portion which leads to the way of the road was sold out by the respondent No. 1 to 3 measuring 01 kanal 06 marlas and 13 marlas to different parties.
10. That now respondent No. 1 to 3 want to disturb the petitioner in khasra No. 11, in which the land was already partitioned in favour of the petitioner where saw mill (Ara), house and shops have been constructed by the petitioner.
11. That the land which was owned by the petitioner is land of Agrarian Reforms Act in which mutation of Section 4 & 8 was attested in favour of the petitioner and levy of the land was deposited by the petitioner.
12. That the land which was sold by the respondent No. 1 to 3 under khasra No. 20 was sold to the parties is the front portion in which the other party can make colony.

Learned Counsel for the respondent No. 1 to 3 has filed the written arguments which are summarized as under:-

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1. That the Ld. Regional Director, Survey and Land Record (Ex-Officio Settlement Officer), Jammu had passed the order wherein he has mentioned the detailed story of litigation, which occurred between the contesting parties and he has upheld the order of respondent No. 5. He has contended that the then Tehsildar R.S. Pura has decided the matter on 16.01.2014 by virtue of which he has ordered that both the khasra Nos. 11 and 20 of village Maralia be equally partitioned between Barita Ram son of Anant Ram and Sudesh Kumar and others sons of Thoru Ram through metes and bounds.
2. That vide order dated 30.07.2021, Tehsildar R. S. Pura again upheld the order and directed Naib Tehsildar Maralia to go ahead with partition proceedings in respect of khasra No. 11 and 20 of village Maralia between Barita Ram son of Anant Ram half share and Sudesh Kumar, Romesh Kumar and Radhey Sham half share through metes and bounds.

It is pertinent to mention here that Tehsildar R. S. Pura had already passed order of partition on 10.01.2012 after seeking report from Naib Tesildar Maralia, who vide his report No. 110/N.T 4 dated 18.06.2011 had submitted that he had visited land in question alongwith field staff and found that the land falling under Kh. No. 11 under the possession of Barita Ram son of Anant Ram is easily approachable and alongside the main road thereby reflecting that it has more value viz-a-viz the land falling under Kh. No. 20 which is having agricultural value but having approachability through canal patri and is less valuable comparatively.

It has been submitted that Tehsildar, R. S. Pura has passed a detailed order by reflecting the direction given by the worthy Financial Commissioner, J&K who had accepted the reference in revision petition of Settlement Commissioner, J&K at Jammu and directed Tehsildar R. S. Pura to conduct partition as per Partition Rules. That Tehsildar while deciding the case has upheld the previous order of Tehsildar and directed to conduct partition of khasra No. 11 & 20 in equal shares between the parties. Regional Director, Survey and Land Records, Jammu has decided the appeal and the operative part of order passed by Regional Director, Survey and Land Records, Jammu in the appeal is as under:-

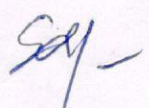
“.....That the perusal of copy of order dated 30.07.2021 reveals that Tehsildar, R. S. Pura has passed a detailed order in compliance to the directions passed by the Hon'ble Court of Ld. Financial Commissioner, Revenue, J&K, Jammu dated 03.01.2018 and Commissioner, Survey and Land Records, J&K dated 23.01.2017 passed in revision titled “Brita Ram Vs Sudesh Kumar & Ors.” There is no further scope for this court to intervene into the matter. The order passed by the Tehsildar, R.S. Pura dated 30.07.2021 is upheld. The appeal being devoid of merit fail, and is dismissed.....”

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I have gone through the record placed on the file, record file received from Tehsildar R.S. Pura and heard the arguments put forth by the Ld. Counsels for both the parties. After careful consideration of all the aspects, it has been observed that the partition proceedings which were initiated more than a decade ago have not culminated till date and the matter has been subject matter of appeals/revisions in various courts and the Learned Financial Commissioner, J&K vide order dated 03.01.2018 has directed Tehsildar concerned to carry out the partition after following the procedure laid down in Section 105 of the Land Revenue Act read with Jammu and Kashmir Partition Rules 1977 within 90 days. The said instructions of Learned Financial Commissioner, J&K have not been complied yet and the procedure as laid down in the partition rules has not been followed due to which the matter has again been brought before this court by way of present revision petition. The rule 15 of Partition Rules provides as **“after questions, if any, involving title to land and other matters are disposed of, the Revenue Officer shall ascertain from the parties the mode of making the partition. He shall obtain from the Patwari an extract from the field map, and a fard in form 2 of the land for partition, and record the statements of the parties and any evidence produced by them on the subject. If the parties are unable to propose a suitable method of partition agreed to by all of them, he shall himself proceed to pass orders sanctioning a method of partition, after considering all the circumstances”**.

From the perusal of the order passed by the Tehsildar R.S. Pura dated 30.07.2021, it has been found that Tehsildar has sent the file for partition to the Naib Tehsildar concerned without determining the share of the parties to which they are entitled. Moreover when one of the party is claiming that the partition has already been effected, it was imperative on the part of the Tehsildar concerned to conduct the enquiry and pass an order accepting/rejecting the claim of the parties. Further, petitioner herein have also submitted that the respondents have also sold some land from their share, which aspect has not been found recorded in the order of the Tehsildar, R.S. Pura and form 2 has also not been found prepared in the record file of the Tehsildar R.S. Pura.

In view of the above, the order passed by the Tehsildar, R.S. Pura dated 30.07.2021 is not in consonance with the directions of the Learned Financial Commissioner, J&K dated 03.01.2018 and the subsequent order passed by Regional Director, Survey and Land Records, Jammu dated 02.07.2022 has not considered the above aspects. As such the revision is accepted and the order passed by Regional Director, Survey and Land Records, Jammu is set aside. Further, Tehsildar R.S. Pura is directed to pass fresh order strictly in accordance with the procedure laid down in Partition Rules 1970 and after affording opportunity of being heard to both the parties and conducting enquiry in terms of the **Chapter X -Partition** of the Land Revenue Act.


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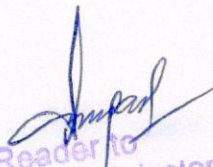
This is, however, subject to confirmation by the court of Ld. Financial Commissioner (Revenue), J&K.

With these recommendations, the case file as well as record file of Tehsildar, R.S. Pura (in original) is submitted to Ld. Financial Commissioner (Revenue), J&K in terms of Section 15(3) of the J&K Land Revenue Act, 1939 AD. Interim order issued by this court, if any, shall stand vacated. The parties are directed to appear before the court of Ld. Financial Commissioner (Revenue), J&K, Jammu on 03.05.2023.

Announced
05.04.2023

Sd/-
(Pawan Kumar Sharma) KAS
Additional Commissioner, Jammu
[with the powers of Divisional Commissioner]

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