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In the Court of Additional Commissioner, Jammu

(With the powers of Divisional Commissioner)

(Rail Head Complex, Jammu)

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<u>File</u>	<u>Date of Institution</u>	<u>Date of Decision</u>
11/Appeal 2020-21	05.10.2020	20.04.2022

1. Altaf Hussain, Age 40 years, S/o Jaan Mohd, R/o Village Batla/ Bhadrot, Tehsil Bhaderwah, District Doda.

...Appellant

Versus

1. Additional Deputy Commissioner Bhaderwah (Collector Under Land Revenue Act)
2. Tehsildar, Bhaderwah.
3. Mohd Yaseen, S/o Late Aziz R/o Village Mounda, Tehsil Bhaderwah.
4. Mohd Younis, S/o Late Aziz R/o Village Mounda, Tehsil Bhaderwah.

...Respondents

5. Shiv Krishan Sharma, S/o Hemraj Sharma, R/o Thathri, A/p Bhadrot, Tehsil Bhaderwah.

....Performa Respondent

IN THE MATTER OF:

Appeal against the order dated 04.07.2020 passed in File No. 12/RA in case titled "Altaf Hussain vs State through Tehsildar Bhaderwah and Ors." by the respondent No. 1 (Additional Deputy Commissioner Bhaderwah) and order dated 11.10.2019 passed by the respondent No. 2 (Tehsildar Bhaderwah). in File No. 95/OQ, as both the orders are not sustainable under law. The same may please be set aside and quashed in the interest of justice.

ORDER

The present appeal has been filed against the order dated 04.07.2020 passed in File No. 12/RA in case titled "Altaf Hussain vs State through Tehsildar Bhaderwah and Ors." by the respondent No. 1 (Additional Deputy Commissioner Bhaderwah) and order dated 11.10.2019 passed by the respondent No. 2 (Tehsildar Bhaderwah). in File No. 95/OQ.

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Reader to

Additional Commissioner
Jammu

The main submissions made in the appeal are as under:

That the appellant is aggrieved of the order dated 04.07.2020 passed by the respondent No. 1 in his capacity as Collector Land Revenue Act (Additional Deputy Commissioner Bhaderwah) as well as the order passed by the Tehsildar Bhaderwah in File No. 95/OQ dated 11.10.2019. The respondent No.1 (Additional Deputy Commissioner Bhaderwah) without appreciating the correct facts of the case and the record as well as the reports of the Revenue field staff i.e Patwari Halqa Battla dated 23.07.2019, Naib Tehsildar, Athkhar dated 21.08.2019 and contrary to the record. The Tehsildar Bhaderwah passed the order dated 11.10.2019 and against that order appeal was preferred before the Additional Deputy Commissioner Bhaderwah. The Appellate Court acted arbitrarily and by exceeding his authority and jurisdiction has dismissed the appeal vide order dated 04.07.2020, merely upon presumptions and assumptions without holding any enquiry and without calling any record from the revenue field staff with regard to the entitlement of the appellant share in the Shamlat-Deh land and has arrived at a wrong conclusion about the entitlement of the appellant to $1 \frac{1}{4}$ marlas in Village Mounda and $3/4$ marlas in Village Butla which is factually incorrect as the appellant is entitled for retaining the Shamlat-Deh Land more than that of 1 Kanals 16 Marlas which is under possession and occupation of the appellant more than decade as per the settlement between the appellant and his brothers. The grandfather and the father of the appellant having the ownership land in Village Mounda and Village Butla and the share of the land is more than 2 kanals in both the villages and out of which only 1 Kanal and 16 Marlas are in possession and occupation of the appellant. As such the finding and the conclusion arrived by the respondent No. 1 in his decision dated 04.07.2020 is bad in law and the same is required to be set aside.

That the 4 marlas land purchased by the appellant out of Khasra No. 255 min of Village Mounda from the father of the respondent No. 3 through proper sale deed executed on 05.02.2007 and duly entered and mutated in the revenue record in the name of the appellant.

That under the wrong premises the above said land was to be exchanged between the appellant and the respondent No. 3 & 4 as well as their father. Later on, when it came to the knowledge of the appellant that the respondents and their father are not the owners of the land which is to be exchanged, they have taken the money from the appellant and given the possession to the appellant of the land under the garb of Shamlat-Deh of their share

That though the appellant is entitled for the land in question being in possession and occupation of the same as per the admitted position in the report submitted by the Revenue Field Staff on the directions of the Learned Court below, but the same reports were not considered while passing the order impugned by the Respondent No. 1 & 2. The Appellant is entitled for the land as Shamlat-Deh land of the share of the land held by his forefathers as per the family settlement of the appellant.

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That in both the villages, Jaan Mohd (father of the appellant), is entitled for the share of the Shamlat-Deh land out of total land measuring 19 kanals 03 marlas approximately though subject to verification by the Revenue Field Staff. It is not understandable that on what basis the respondent No. 1 calculated the entitlement of the appellant to the extent of 1 ¼ marlas in Village Mounda and ¾ marlas in Village Butla.

The written arguments/written objections filed on behalf of respondents no. 3 to 5 are summarized as under:

That the present appeal is liable to be dismissed as the matter is sub-judice before learned Munsiff Bhaderwah as the appellant has filed a suit for declaration with respect to suit property against the respondents 3 and 4 which is pending adjudication before learned Munsiff Bhaderwah. The appellant has not approached the Hon'ble Court with clean hands and has suppressed the material facts on spot. Thus, the appellant is not entitled to any relief as he has concealed the material facts. It is submitted that the appellant has projected different versions in every pleading. In the suit filed by the appellant, he had alleged that he has exchanged 04 marlas of land under Khasra no. 255 min situated at Mounda, Bhaderwah with 01 Kanal 16 marlas of land of respondent No. 3 & 4 under Khasra no's 27 min of Village Butla and Khasra no. 261 min. situated at Mounda, Bhaderwah about 12 years back after the death of father of respondent No. 3 & 4. Whereas, the father of respondent No 3 & 4 namely Abdul Aziz has died in the year 2015. It is worthwhile to submit here that the statement of appellant was recorded before learned Munsiff Bhaderwah wherein he has projected a novel story and stated that the 04 marlas of land of appellant was exchanged with 08 marlas of land of respondents. Further, the appellant has stated that he purchased rest of land measuring 1 kanal 8 marlas and 06 marlas comprising khasra no. 27 of Village Batla and khasra no. 261 min. of Village Mounda from respondents against consideration amount of Rs one lac for the said land and the document with respect to said consideration amount was also executed with the respondent No. 3 & 4. However, in the appeal the appellant has stated about exchange of land only. The appellant is not clear about his case. The appellant can't be allowed to raise his claim on two different versions.

That the Tehsildar, Bhaderwah and Additional Deputy Commissioner, Bhaderwah have passed well reasoned orders and dismissed the appeal after providing opportunity of being heard to both parties and after thorough enquiry. The appellant by filing the present appeal wants to grab the suit land thereby depriving the right of respondent No. 3 & 4. It is submitted that although four marlas of land under Khasra no. 255 situated at Mounda was sold out to appellant by the father of respondent no. 3 & 4 but the appellant did not take possession of said land and the said piece of land was orally exchanged by the appellant with the four marlas of land of respondent No. 3 & 4 comprising Khasra no. 27 of Village Batla adjoining to the said land. In the said four marlas of land the appellant has raised construction of his house. The appellant has projected a concocted story about the rest of land which is


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false, vague and devoid of any merits. It is further submitted that the rest of the land is in peaceful possession of respondent No. 3 & 4 and their ancestors since more than 100 years where the father of defendants namely Abdul Aziz had planted trees. The said land measuring 06 marlas under Khasra no. 261 min situated at Mounda Bhaderwah and 02 marlas under Khasra no. 27 min situated at Batla, Bhaderwah have been willed out by Late Abdul Aziz in favour of Sunita Sharma W/o Shiv Krishan Sharma (respondent no. 5).

I have examined the record placed on the file, record file of the court below and heard the arguments put forth by both the Counsels. It has been observed that the appellant has purchased land, measuring 04 marlas comprising khasra no. 255 min. situated at village Mounda, Tehsil Bhaderwah on 23rd of Feb. 2007 from Sh. Aziz (father of the respondents No. 3 and 4), which is still recorded in the name of appellant. Further the appellant has kept illegal possession of Shamlat land comprising Khasra No. 27 min. at village Butla and 261 at village Mounda.

In view of what has been discussed above, it has been observed that the appeal is devoid of merits and is as such dismissed. Tehsildar concerned shall take necessary steps needed for Shamlat Deh land strictly in terms of law governing the subject. The stay granted by this court, if any, shall stand vacated. The record file of the court below be sent back and the case file be consigned to records after due completion.

Announced
20.04.2022


Pawan Kumar Sharma, JKAS
Additional Commissioner, Jammu
[with the powers of Divisional Commissioner]