

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 17.11.2023
Pronounced on: 28.12.2023

CM(M) 188/2023

Om Parkash

.... Petitioner/Appellant(s)

Through:- Mr. Gagan Oswal, Advocate

V/s

.....Respondent(s)

Om Parkash and another

Through:- Mr. Ajay Sharma, Advocate

Coram:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
JUDGMENT

1. Petitioner being aggrieved of the order dated 26.09.2023 passed by the trial Court in application under Order 21, Rule 11(2) CPC, has filed the instant petition seeking setting aside the impugned order on the ground that the impugned order is against the provisions of law; that the trial Court has wrongly interpreted the decree passed as in Para 10 of the impugned order it has been stated that "As per the decree, if after demarcation the suit land was found in possession of one party the other was directed not to interfere with the peaceful possession of that party;" that as per the decree finding was to be recorded that in case the said property in question after demarcation of land by the Tehsildar, R. S. Pura will fall in the

Khasra number of the plaintiff i.e., 1721/431 in that eventuality the defendants shall not interfere in their right and will peacefully handover the possession of the same to the plaintiff and in case after demarcation the said property; in question falls in Khasra number of the defendant i.e., 431 min, in that eventuality the plaintiff shall not interfere in the peaceful possession of the defendants over the suit property; that the order impugned is bad in law and requires to be set aside; that the trial Court has wrongly relied upon the report of the Tehsildar, R. S. Pura wherein it has been stated that as per Mark 'A' and Mark 'B' of the Aks Taatima Shajra, total land comes 15 Kanal and 15 marlas whereas petitioner-Om Parkash S/o Anant Ram was allotted land measuring 17 kanals and 03 marlas falling under Khasra No. 431 min, as such, petitioner is in possession of the land which is less than by 01 kanal and 08 marlas. As per Mark "B" the land which is shown by the red ink in the prepared Aks Tatima Shajra is the suit land/disputed land measuring 18 marlas which is stated to be in possession of the respondents- Om Parkash S/o Braham Dass and Radha Krishan, but no entry in the revenue record is found in their favour.

2. According to the petitioner, the trial Court could have recorded the finding about the khasra number in which disputed land was situated but on contrary the trial Court has recorded the finding that the disputed land is in peaceful possession of the non-

applicants/ respondents, therefore order impugned is bad and requires to be set aside.

3. The report submitted by the Tehsildar R. S. Pura clearly stated that there is no entry in revenue record in favour of the respondents- Om Parkash and Radha Krishan and since there was no revenue entry in their favour, the question of possession could not have been decided by the trial Court.
4. A suit titled *Om Parkash S/o Anant Ram vs. Om Parkash S/o Braham Dass and Radha Krishan* was pending before the Court of Additional Special Mobile Magistrate, R. S. Pura. The said suit was filed by the petitioner for possession of land measuring 18 Marlas falling in Khasra No. 1721/431, and the said suit was settled between the parties as they entered into a compromise and trial Court decreed the suit in the following terms:-

“ 24.12.2016”

This suit coming on this day i.e., 24.12.2016 for hearing before this Court in presence of the Ld. Counsel for parties and parties to the suit, it is ordered and decreed under Order XXIII Rule 3 CPC as a result of compromise between the parties to the suit that a demarcation of the suit land , i.e. land measuring 18 marlas falling under Khasra No. 1721/431 situated at Vill. Badyal Brahmana Tehsil R. S. Pura Distt. Jammu shall be carried out by the Tehsildar R. S. Pura within one month of the receipt of this order. In case, the said property in question, after demarcation of the land by the Tehsildar, R. S. Pura will fall in the Khasra no. of the plaintiff i.e., 1721/431, in that eventuality the defendants shall not interfere in their right and will peacefully handover the possession of the same to the plaintiff and in case, after demarcation the said property in question falls in the khasra no. of the defendant i.e., 431 min,

in that eventuality, the plaintiff shall not interfere in the peaceful possession of the defendants over the suit property.”

5. After passing of the decree, an application was filed by the petitioner- Om Parkash S/o Anant Ram seeking execution of the decree under Order 21 Rule 11 (2) CPC. Pursuant to the decree so passed, demarcation was conducted through the field staff under the supervision of Naib Tehsilar, Badyal Brahmna and the report was submitted on 17.11.2017 As per the said report, it was found that Khasra No. 1721/431 and Khasra No. 431 was in fact a single khasra number and khasra No.431 has been bifurcated into several parts which is reflected in Khasra Gjirdawari by 431 min etc. In the report it was further stated that when Jamabandi after four year is prepared the said khasra numbers are represented through the names of different persons in possession /wners/allottee from which it is ascertained that which part of khasra number/land has come in share of which owner/allottee. While preparing Jamabandi, different Tatimas of different numbers is prepared which is attached with the said Jamabandi. As the village Badyal Brahna is very big inhabited village because of which Jamabandi of village was prepared in the year 1947 or 1942 Bikrami. The Jamabandi is in possession of the Patwari Halqa as the same is old and some pages are also torn with which the Tatimas are also not attached, therefore, it is not possible to demarcate the whole land falling under Khasra N.o. 431 along with its subsequent parts. As per record of Khasra Girdawari total land falling in Khasra No. 431 is 150

kanals and 13 marlas and refugees of the year 1947 are also rehabilitated in portion of the said khasra number. In the report it is stated that demarcation of the land of Om Parkash S/o Anant Ram falling under Khasra No. 431 was got conducted through field staff and after demarcation the Aks Tatima Shajra of the same was prepared which has been attached with the report. As per the Mark "A" & Mark "B" of the Aks Tatima Shajra total land comes out to be 15 kanal and 15 marlas whereas, Om Parkash S/o Anant Ram was allotted land measuring 17 kanals and 03 marlas falling under Khasra No. 431 min and therefore, land in his possession is less by 01 kanal and 08 marlas. The land shown by the red ink in the prepared Aks Tatima Shajra is the suit land/disputed land measuring 18 marlas which is stated to be in possession of the respondents- Om Parkash and Radha Krishan, but no entry had been made in the revenue record. The trial Court on receipt of the report, passed the order impugned.

6. The Tehsildar, R. S. Pura in terms of the decree was to carry out the demarcation of the suit land i.e., land measuring 18 marlas falling under Khasra No.1721/431 and if the suit land was found in the possession of one party, the other was directed not to interfere with the peaceful possession of that party.
7. It would be clear from the report that the demarcation in terms of the decree has not been conducted and report in terms of the said decree has not been filed.

8. What was required to be done by the Tehsildar was to demarcate the land i.e., land measuring 18 marlas falling under Khasra No. 1721/431 and in case the suit land was found to be falling in Khasra number of the plaintiff i.e., 1721/431 in that eventuality the defendants were required not interfere into his right and had to handover the peaceful possession of the same to the plaintiff. The finding has not been given by the Tehsildar, R. S. Pura that after demarcation as to in whose possession the suit land was found.
9. Therefore, in view of the above, while setting aside the order dated 26.09.2023 passed by the trial Court, the matter is remanded back to the trial Court to pass fresh order after affording an opportunity of hearing to both the parties.
10. Writ petition is, accordingly, disposed of in the above said terms.

(VINOD CHATTERJI KOUL)
JUDGE

Jammu
28.12.2023
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