

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)**

Pronounced on : 26.12.2023

Case: RFA No. 29/2019

Mst. Khurshi (Age 71 years)
D/o Habib Bhat,
W/o Rehman Bhat,
R/o Chanapora, Batapora, Sgr.

.....Appellant(s)

Through: Mr. M. Sultan, Advocate.

Vs

1. Ghulam Mohammad Bhat,
S/o Ghulam Qadir Bhat,
R/o Chanapora, Batapora, Sgr.
2. Mst. Jawahira
D/o Ghulam Qadir Bhat
W/o Abdul Qayoom
R/o Pamposh Colony, Natipora, Sgr.
3. Mst. Hafiza,
D/o Ghulam Qadir Bhat,
R/o Chanapora Batapora, Sgr.
4. Mohammad Latief
5. Bashir Ahmad
6. Shakeel Ahmad
Sons of Mohammad Abdullah Bhat,
Residents of Chanapora, Batapora,
Sgr.
7. Mst. Waheeda
D/o Mohammad Abdullah Bhat,
W/o Abdul Hamid Lone,
R/o Chanapora Lone Mohalla, Sgr.
8. Mst. Sami Jan
W/o Mustafa Tantray
R/o Kenihama Budgam.
9. Mst. Tehseena,
D/o Moahmmad Abdullah Bhat
R/o Chanapora Batpora, Sgr.
10. Mohammad Hafiz Baba,
S/o Mst. Hajira.
11. Mohammad Yasin Baba
S/o Mst. Hajira
12. Mst. Fehmeeda
D/o Mst. Hajira
R's/o Haproo Batpora Tehsil
Chadoora.

13. Waseem Farooq Nadaf,
S/o Farooq Ahmad Nadaf,
R/o Chanapora Srinagar.

..... Respondent(s)

Through: Mr. Mir Manzoor, Advocate(R-1-9 & 12).
Mr. M.M.Dar, Advocate (R-13).

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The appellant is aggrieved of the judgment and decree passed by the court of learned Additional District Judge, Srinagar vide dated 02.07.2019. The appellant is plaintiff in the suit. The respondents except the respondent No.13 are stated to be co-sharers and basically are from the same family. The appellant is daughter of Habib Bhat who had succeeded to the estate of her deceased-father along with two brothers, Qadir Bhat and Mohd. Abdullah. The respondents are the sons and daughters of Ghulam Qadir Bhat and Mohd. Abdullah Bhat. The complete pedigree table is mentioned in the judgment of trial court.
2. The plaintiff through the medium of the suit sought partition of the property being the co-sharer in the land in question. The plaintiff submitted that she is entitled to one share out of six shares and succeeded to 7 kanals of land in revenue estate, Natipora and 4.6½ kanals in revenue estate Haploo Batapora Tehsil Chadoora. The property is joint and undivided. It is further submitted that the defendant-Bashir Ahmed has executed sale deed in favour of Waseem Farooq vide dated 14.08.2018 which he could not do so. The plaintiff prayed for decree for partition in favour of the plaintiff and against the defendants declaring the shares in both the properties and further a final decree of partition of 7 kanals and 4 marlas in Natipora and 6 marlas in revenue estate Haploo and further the sale deed be declared

as null and void and also cancellation of mutation numbers 1355 & 4369 in Tehsil Srinagar and Mutation No. 1244 of Tehsil Chadoora.

3. The defendants filed joint written statements objecting to the reliefs claimed in the suit as they otherwise contested the contents of the plaint also. The relationship between the parties is, however, not denied by the defendants. As the defendants had submitted that the court had no jurisdiction under Section 139 of the Land Revenue Act to try the suit, the trial court, therefore, addressed itself to the said issue in the first instance and held that the suit is not maintainable in terms of the aforesaid Section 139 of the Land Revenue Act.
4. Learned counsel appearing for the appellant has submitted that the trial court has committed error in deciding the issue against the appellant herein. The reliefs claimed in the plaint do not envisage that the case of the plaintiff is required to be tried by the revenue court. Section 139 of the Land Revenue Act does not debar the civil court from proceeding further in the matter.
5. Learned counsel appearing for the respondents-defendants has, however, submitted that the findings of the trial court on this aspect of the matter are correct and no interference is required in the appeal. The case of the plaintiff is squarely covered by Section 139 of the Land Revenue Act in case he intends to seek partition of the property in question.
6. Heard learned counsel for the parties and perused the record.
7. The argument of Mr. M. Sultan appearing for the appellant-plaintiff that the trial court has wholly erred in deciding the issue against the appellant cannot be accepted.
8. The frame of the suit necessarily speaks of partition of the property as mentioned in the plaint. Section 139 (XVII) of Land Revenue Act

covers the case of the plaintiff. The plaintiff has simply sought partition of the property and nothing more. It is not that any declaration, is sought by the plaintiff in respect of the property of which the cognizance could be taken by the civil court. It cannot be said that the declaration of partition is inherent in the reliefs claimed by the plaintiff.

9. The learned counsels for the parties have referred to (2009) 9 SCC 689, AIR 1964 J&K 34, , 2008 Legal Eagle (SC) 464, 2009 Legal Eagle 684 and 2023 Legal Eagle 477 in support of the contentions. The Hon'ble Supreme Court and the High Courts in the aforesaid judgments have decided the issues arising therein keeping in view the facts and circumstances of those cases.
10. Mr. M. Sultan, Advocate appearing for the appellant has also submitted that he has challenged the execution of sale deed also executed by the defendant No.5 in favour of defendant No.13 and the subject matter of the same could not be decided by the revenue court.
11. The trial court has taken into consideration this aspect of the matter also and has invoked O 20 Rule 18 (1) CPC. The Court is of the view that so far as challenge to the sale deed is concerned, the same cannot be decided by the revenue court. The trial court should not have invoked the aforesaid provision of CPC as the actual partition is yet to take place in the matter. The trial court has wrongly invoked O 20 R 18 (1) CPC by referring to the stand taken by the plaintiff in the suit qua the shares to which she may be entitled to. Who will be entitled to how much share by the revenue court though the plaintiff has mentioned of the share to which she is entitled to, is yet to be determined. The decision qua the sale deed and its effect upon the partition so far as the present case is concerned could be determined later on before the revenue court separately as the subject matter of the sale deed is only

10 marlas of land falling under Survey No. 592 min and that too if the same is held to be the part of land which is to be partitioned.

12. The plaintiff could not otherwise challenge the sale deed in question along with other reliefs sought in the suit. The plaintiff could file the separate suit challenging the sale deed as null and void.
13. In view of the discussion made above, the judgment and decree passed by the trial court is upheld though not agreeing with the finding of the trial court qua the challenge thrown to the sale deed by the plaintiff in the suit. The plaintiff can file separate suit qua the sale deed if the remedy for the same is still available to her under law.
14. The appeal is dismissed and the judgment and decree of the trial court is upheld.

(Puneet Gupta)
Judge

Jammu :
26.12.2023
Pawan Chopra

Whether the Judgment is speaking : Yes/No
Whether the Judgment is reportable: Yes/No