

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) No.51/2020
CCP(S) No. 197/2020

Reserved on: 11.12.2024
Pronounced on: 31.12.2024

Bashir Ahmad Shah

...Appellant/Petitioner(s)

Through: Mr. Muzaffar Hamid Bhat, Advocate.

Vs.

Aiyaz Ahmad Shah & Ors.

...Respondent(s)

Through: Mr. M.Ayoub Bhat, Advocate.

CORAM:

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. The main petition, which has been filed under Article 227 of the Constitution of India, is taken up for its final disposal, in terms whereof the petitioner has challenged the two orders passed by the courts below, one is dated 23.01.2020 passed by the learned Munsiff, Chadoora and the other one is dated 02.07.2020 passed by the learned Principal District Judge, Budgam.
2. Petitioner claims that he and respondents 2 to 5 are the lawful joint owners, possessors and title holders of the land measuring 01 kanal 03 marlas comprising of Khewat No. 102, Khata No. 263 and Survey No. 188 (Old Survey No. 85)

situated at village Rangeen/Kultreh Tehsil Chadoora District Budgam, however, the respondent No. 1 is a stranger and has no right of interest or claim over the suit land in any manner; that the petitioner and respondents 2 to 5 are the descendants of common ancestor namely Subhan Shah, who was survived by his two sons namely Aziz Shah-paternal grandfather of petitioner and Qutab Shah- maternal grandfather of respondents 2 to 5; that the said Aziz Shah after his death was survived by two sons namely Mir Shah (father of petitioner) and Mohammad Shah, whose whereabouts are not known since 1947, as he had migrated to Pakistan in 1947 and didn't return back since then; that Qutib Shah also died leaving behind his two issues, one son namely Peer Shah, who too had migrated to Pakistan in the year 1947 and didn't return back since then and one daughter namely Hafeeza (mother of respondent 2 to 5); that as per the pedigree table, one Zain had been shown as the sister of the petitioner; that the paternal aunt of the petitioner died some forty years before and that too issueless.

3. Petitioner further claimed that he is the lawful owner and is in possession of one-half share of the suit land and the rest one-half vests and is owned by the respondents 2 to 5; that the petitioner is the exclusive owner, possessor and title holder of the suit land to the extent of its one-half share and likewise the respondents 2 to 5 are the joint owners of the rest one-half of the suit land, whileas the respondent No. 1 is neither the owner nor co-sharer or co-possessor of the suit land in

any manner and has no right to cause or make any kind of interference into the possession of suit land and cannot claim any kind of right or interest over the suit land; that without any right, claim or interest the respondent No. 1 at the behest of muscle power is trying to step into the possession of the suit land thereby trying to raise construction of residential house over a portion of the suit land illegally and unlawfully; that the rest of the respondents are also hand in glove with the respondent No. 1 and are trying to grab the petitioner's share out of the suit land and have made it public that they have sold the suit land to the extent of their due share i.e. one-half to some stranger without disclosing his name, as such, the rest of the respondents are also arrayed as party-respondents in the suit as well as in the instant petition.

4. Petitioner alleges that the respondent No.1 has unlawfully and illegally constructed a plinth over the portion of the suit land during the unrest of 2016 by taking undue advantage of the unstable situation prevalent in the Valley at that point of time; that the said construction being illegal warrants to be removed there-from and if the respondents succeed in doing so and are not directed to adhere and revert the rights of the petitioner over the suit land, it shall cause an irreparable loss and damage to the petitioner which cannot be compensated; that during the pendency of the suit, the respondent No.1 filed a petition before Deputy Commissioner Budgam-respondent No.8 and the official respondents, illegally and unlawfully trying to change the revenue entries and are trying to insert

the name of respondent No.1 in the revenue records and for the said reason the suit as well as the instant petition is also filed against them and have been arrayed as party respondents.

5. Petitioner states that he filed the suit for declaration and injunction before the court of learned Munsiff, Chadoora. Alongside side, an application for grant of ad-interim relief was also filed before the said court, which came to be disposed of vide order dated 23.01.2020, in terms whereof the order of the ex-parte status quo order granted was vacated initially and the parties were directed not to create third party interest or alienate the suit property in any manner, till final disposal of the suit filed by the petitioner; that an appeal against the order of learned Munsiff, Chadoora came to be filed before the court of learned Principal District Judge, Budgam, which was disposed of vide order dated 02.07.2020 with the observations that the appellant –petitioner herein was not able to assail the order dated 23.01.2020, impugned therein, being perverse or capricious, however, the trial court was requested to expedite the trial of the case.
 6. Aggrieved of the afore-stated orders of the courts below i.e. order dated 23.01.2020 and 02.07.2020, impugned herein, petitioner has filed the instant petition for setting aside the same.
 7. Earlier also the petitioner had filed the suit for declaration and permanent injunction as also the application for interim relief, seeking decree of declaration that the petitioner be declared
-

as sole, absolute and exclusive lawful owner, possessor and title holder of suit land to the extent of on-half share, and a decree of permanent injunction be declared, restraining the respondents from causing any sort of interference into peaceful possession and ownership of the petitioner over the suit land. The application for interim relief was dismissed by the court of learned Munsiff Chadoora vide order dated 16.06.2016, holding that on over all consideration of the matter, particularly taking into consideration the suppression of facts by the petitioner that he has moved an application before Tehsildar concerned for possession, this is sufficient to disentitle the petitioner to claim equitable relief of injunction.

8. This order was appealed before the court of learned Principal District Judge, Budgam, which vide order dated 18.10.2016 disposed of the Appeal with the direction to the learned trial court to get a responsible local revenue officer of competence and integrity appointed as commissioner in the case for demarcation of the suit land and identification of actual old and new khasra numbers relating to the same and thereafter to consider the report of the commissioner, hear the learned counsel for the parties afresh and dispose of the matter within a period of one month and till then status quo order was also ordered to be maintained.
 9. Vide order dated 16.11.2016, the learned trial court of Munsiff Chadoora, in view of the directions of the learned District Judge, Budgam appointed Assistant Commissioner Revenue (ACR) Budgam as Commissioner in the case for demarcation
-

of the suit land and identification of actual old and new khasra numbers relating to the suit land. In compliance to the said court order, a report was submitted by the Assistant Commissioner (Rev) Budgam, that it was found on the spot inspection that the suit land falling under survey No.188 (new) measuring 01 kanals 03 marlas was located on the basis of Aks-e-shajra/masavi presently available with the Sarishta-e-Patwar (Rangeen Kultreh). The petitioner claims that the suit land is his proprietary land; a plinth stands constructed on the land measuring 11 marlas of the suit land which on the enquiry was found to be constructed by the respondent No.1- Aiyaz Ahmad Shah. It is further reported that prior to the said demarcation, a number of demarcations were conducted earlier by the revenue department, where-under it was established that the suit land comprising survey No.188(new) originally happens to fall under survey Nos. 89, 90 (old). The RoR available with the Sarishta-e-Patwar (Rangeen Kultreh), however, transpires that the suit land has come from survey No.85 (old).

- 10.** Heard learned counsel for the parties at length and perused the material available on file.
 - 11.** Learned counsel for the petitioner, while reiterating the pleadings made in the petition, submits that the petitioner being the exclusive absolute owner of the suit land to the extent of its one-half share, has every right to use, utilize and enjoy the possession and occupation of the suit land to the extent of his one-half share and the respondents have no right
-

to make or cause any kind of interference therein in any manner.

- 12.** Learned counsel for respondents, on the other hand submits that the father of the respondent No.1 was a Muslim Priest and a well known mystic personality of the area and the locals of the area gifted 01 kanal 08 marlas of land to him under khasra Nos.89 and 90 and that the petitioner has no concern whatsoever with this property which is in the actual physical possession of respondent No.1; that during the new settlement some wrong entries were recorded in the revenue records of the respondents and the survey Nos. 89 and 90 were given a new survey No.188 but mistakenly the new survey No. 188 was recorded as 85(old) instead of 89(old) and 90(only). He further argued that when the petitioner came to know about recording of wrong entry in the revenue records, greed prevailed upon him and he started demanding money from respondent No.1, as other respondents have already disposed of their share in the property. It is pleaded that when respondent No. 1 refused to pay money to the petitioner, the petitioner filed an application before the Tehsildar, Chadoora for recovery of possession of the property which is the subject matter of the suit. Furthermore, demarcation proceedings held twice, unambiguously certified the contentions of the respondent No. 1 and the application is still pending disposal before the Tehsildar, Chadoora and this fact goes to the roots of the case but the petitioner has
-

deliberately concealed and suppressed this material fact to get some favorable orders from the court.

13. Argument of learned counsel for the respondents is that it is the petitioner who contends that the old survey No. 85 corresponds to new survey No. 188, but fact of the matter is that survey No. 85 was already included in the Abad-i-Deh in the year 2008.

14. Respondent No.1 contends that the land in question was gifted by the locals to his father who was a mystic person but did not say who had transferred the land in favour of his father and under what mode. As per the demarcation conducted under the trial court orders by the Revenue officers/officials headed by a senior Revenue Officer- Assistant Commissioner (Revenue) Budgam, it was reported that the new survey No. 188, under which the land, subject matter of this petition is situated, comprises of old survey No. 85 and not that of old survey Nos. 89 and 90, as per the record, as against it, the respondent No.1 claims it to be old survey Nos. 89 and 90, with further contention that the survey No. 85 old has been included in Abad-i-Deh in the year 2008.

15. From the pleadings of the parties, the contentions raised therein and the submissions made by the learned counsel for the parties, it appears that the dispute, precisely, between the parties is with regard to demarcation of the land in question as to whether the survey No.188 (new) comprising old survey Nos. 89 and 90 or 85 of the village, and that would determine the rights of the parties being agitated before the Civil Court.

16. It will be travesty of justice to allow the respondent No.1 to raise construction on the land in question, if the same is found survey No. 85 (old) even after some undertaking as directed by the court below that the construction shall be removed at his own cost and risk. Unless and until the trial court determines what is the exact particulars of Survey Nos. 188 either 85 (old) or 89 and 90 (old), it would not be proper to allow the respondent No.1 to go ahead with the construction, particularly in the face of the facts that neither the court below nor the parties and even the Revenue officials are in doubt with regard to survey No.188 and the exact location of the suit land, which is being claimed by the petitioner to have fallen exclusively in his share as the other co-sharers have alienated/sold their shares to some other persons.

17. Viewed thus, the impugned orders passed by the courts below dated 23.01.2020 and 02.07.2020, being not sustainable, are set aside and the parties are directed to maintain status qua with regard to the suit land on spot until the matter is decided by the court below. It is expected that the trial court shall get the suit land demarcated, record evidence in this behalf and then proceed in the matter, expeditiously, having regard to the emergent nature of the matter so that the party, whosoever is entitled to retain the possession of the suit land, is not divested of his rights, for a longer time.

18. Petition is disposed of accordingly.

19. With the disposal of the main petition, the contempt petition requires no further proceedings, as such, are dropped and the contempt petition shall also stand disposed of.

(M. A. CHOWDHARY)
JUDGE

Srinagar
31.12.2024
Muzammil. Q

Whether the judgment/order is reportable: Yes / No

