

**HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT
SRINAGAR**

Reserved on: 07.04.2025
Pronounced on: 24.04.2025

LPA No.177/2019

MOHAMMAD SULIAMAN **...APPELLANT(S)**

Through: Mr. Rizwan-ul-Zaman, Advocate.

Vs.

STATE OF J&K & OTHERS **...RESPONDENT(S)**

Through: None for R1 to R3.
Mr. S. A. Qadiri, Advocate-for R4 to R7.

CORAM:-

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

Per OSWAL 'J'

1. The appellant claims to have purchased the land measuring 04 kanals 11 marlas comprising Survey No.533 along with two big walnut trees situated at Village Saraibandi Tehsil Uri from the predecessor-in-interest of proforma respondents namely Kala Khan vide agreement to sell dated 01.11.1983 duly registered by Sub-Registrar, Uri. It is further alleged by the appellant that the possession of the land mentioned above was already lying with him prior to 1971 but unfortunately respondent No.3 attested mutation no. 140 in favour of the contesting respondents under Section 4 of the Agrarian Reforms Act (for short "the Act") on 24.12.1981 despite the fact, that they had never been in cultivating possession of the land mentioned above.

2. The appellant also filed a civil suit before the Court of Sub-Judge, Uri, against the contesting and predecessor-in-interest of the proforma

respondents on 26.12.1996, which was decreed on 26.12.1996 resulting into transfer of land mentioned above in favour of the appellant and pursuant thereto, mutation No.217 dated 14.06.1999 came to be attested in favour of the appellant. Later, respondent No.4 filed a civil suit but subsequently accepted the title and possession of the appellant over the suit land on payment of Rs.9,000/ and the said suit was decreed accordingly.

3. It is also stated that before 1971, the appellant and the respondents No.4 to 7 had exchanged the land in question with the land comprising Survey numbers mentioned in Mutation No.353 attested on 22.02.1989 and mutation No.157 attested on 22.10.1983. After the exchange of land comprising Survey No.533 and taking over possession of the exchanged land, the parties constructed their respective houses.

4. The contesting respondents preferred an appeal against mutation No.217 dated 14.06.1999 before the Financial Commissioner, Revenue, J&K, Srinagar. The appeal was allowed resulting into setting aside of mutation No.217 vide order dated 18.05.2005. The appellant preferred a revision petition against order dated 18.05.2005 but that too was dismissed by the learned J&K Special Tribunal vide order dated 24.08.2006. The appellant thereafter filed a writ petition bearing OWP No.661/2006 challenging the orders passed by the Financial Commissioner and the learned J&K Special Tribunal but the same was dismissed vide judgment dated 09.05.2018, which is impugned in this appeal.

5. The appellant has impugned the judgment passed by the learned Writ Court on the ground that the learned Writ Court has not dealt with the issues raised by the appellant in the writ petition.

6. Mr. Rizwan, learned counsel for the appellant, has submitted that the appellant had purchased the land from the predecessor-in-interest of the proforma respondents by virtue of an agreement to sell duly registered by the learned Sub Judge, Uri, and even the decree was also passed by the Civil Court in favour of appellant, pursuant to which mutation No.217 was attested in favour of the appellant. He has relied upon the judgment of the Full Bench of this Court in the case of “**Gh. Qadir & anr. Vs. Gh. Hassan**” 2010 (8) JKJ 136[HC], to demonstrate that the appellant has become owner in possession of the land in question on the basis of agreement to sell.

7. *Per contra*, Mr. S. A. Qadiri, learned counsel for the contesting respondents has argued that mutation No.217 dated 14.06.1999 could not have been attested, particularly on the basis of the decree passed by the Civil Court by placing reliance upon the agreement to sell, when mutation under Section 4 of the Act bearing No.140 stood already attested on 24.12.1981. He has further argued that the Civil Court had no jurisdiction to pass the decree transferring the land in favour of the appellant.

8. Heard and perused the record.

9. Perusal of the record reveals that mutation bearing No.140 was attested in favour of the contesting respondents under Section 4 of the Act declaring them as prospective owners of the land measuring 04 kanals 11 marlas comprising Survey No.533 situated at Village Saraibandi Tehsil Uri on 24.12.1981, meaning thereby that all the rights, title and interest in the land mentioned above existing in the name of the predecessor-in-interest of the proforma respondents stood extinguished by operation of law. Once all

the rights, title and interest of the predecessor-in-interest of the proforma respondents stood extinguished, he had no right whatsoever to execute agreement to sell dated 01.11.1983 in favour of the appellant. The land in question was, admittedly, governed by the Agrarian Reforms Act and the Civil Court had no jurisdiction in terms of Section 25 of the Act. Further Section 31 of the Act, as was applicable at the relevant point of time, barred the alienation of the land.

10. The appellant is solely raising the claim on the basis of agreement to sell which, in the opinion of this Court, is not sustainable in the eyes of law, particularly when the predecessor-in-interest of the proforma respondents had no right, title or interest left in the land, after the attestation of mutation under section 4 of the Agrarian Reforms Act, which he could have transferred to the appellant even by virtue of sale deed what to say of an agreement to sell. It is settled law that a vendor cannot transfer a title to the vendee better than he himself possesses, the principle arising from the maxim 'nemo dat quod non habet', i.e., "no one can confer a better title than what he himself has".

11. It is also evident that the appellant never impugned the mutation No.140 dated 24th December, 1981 through the medium of any proceeding except in the writ petition preferred by the appellant which was dismissed by the learned Writ Court.

12. We have examined the judgment passed by the learned Writ Court. The learned Writ Court has rightly arrived at the conclusion that the right of the owner had extinguished and vested in the state free from all

encumbrances as per the import of Section 4 of the Agrarian Reforms Act and further that the Civil Court had no power or authority to determine the status of the appellant in the suit when the land had already vested in the State. The learned writ court has meticulously examined the orders passed by the appellate as well as the revisional authority. The appellant has not been able to establish before this court any of his right in the property in dispute to persuade this court to take view other than that of the learned writ court.

13. In view of the above, we do not find any illegality or infirmity in the impugned judgment passed by the learned Writ Court. The learned Writ Court has passed a well-reasoned and lucid judgment. Therefore, we do not find any reason to show indulgence. The judgment relied upon by the learned counsel for the appellant is not applicable to the facts and circumstances of the present case. The appeal is found to be without any merit and is dismissed accordingly.

(MOHD. YOUSUF WANI)
JUDGE

(RAJNESH OSWAL)
JUDGE

Srinagar

24.04.2025

"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No