

Before Shaleen Kabra, IAS, Financial Commissioner (Revenue) /
Commissioner
Agrarian Reforms, J&K, Jammu

File No.
685/FC-AP

Date of Institution
03.04.2018

Date of Decision
16.03.2022

1. Romesh Chander
2. Subash Chander
3. Kishore Kumar
4. Jagdeep Rai
5. Pardeep Kumar Sons of Rattan Lal
6. Kailasho Devi W/o Rattan Lal
7. Prem Lata
8. Sushma Devi Both D/o Rattan Lal

All R/o Village Chak Murar Tehsil Bishnah District Jammu.

..... Petitioners

V/s

1. Ravi Kant
2. Pawan Kumar sons
3. Neena Devi (Wife of Lekh Raj) Daughter
4. Shelo Devi Widow of Sudershan Kumar
R/o Village Karyal Tehsil and District Samba
5. Sushil Kumar Son
6. Janak Kumar Daughter of Dwarkanath
R/O H. No. 23, Mohalla Partapgarh, Jammu
7. Tehsildar, Bishnah

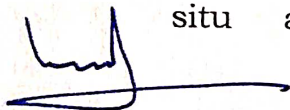
...Respondents

Present:- 1. Adv. G.C. Sharma for Petitioners.

2. Adv. M.L. Gupta for Respondents.

In the matter of:-

Revision against the order passed dated 15.01.2018 by Tehsildar Bishnah by virtue of which he had partitioned the land falling under survey No. 27 (15 Kanals 7 marlas) 102 (2 kanals), 627/108 (10 kanals 15 marlas), 181 (12 kanals 8 marlas), 133 (15 kanals), 214 (2 kanals 8 marlas), 215 (25 Kanals 18 marlas), 317 (17 kanals 4 marlas), 386 (3 kanals 12 marlas) situated in village Chak Murar Tehsil Bishnah



District Jammu against the dead persons and against the mandate of law.

ORDER

An application seeking partition of ancestral agricultural land covered under Khasra Nos. 27,102,627/108,181,133,214,215,371 and 386 situated in village Chak Murar, Tehsil Bishnah came to be filed by the predecessors-in-interest of the Respondents herein before Tehsildar Bishnah, who vide order dated 15.01.2018 partitioned the land among the co-sharers after determining the share of each. Aggrieved, the petitioners, who were non-applicants before Tehsildar have put a challenge to this order of Tehsildar by pleading that land stood already privately partitioned in 1966, which plea was not taken into consideration by the Tehsildar while passing the impugned order and that the Respondents have already taken their share in other villages. It is also pleaded that the Tehsildar was not competent to affect partition as the land of the parties falls in three different Tehsils and Tehsildar ought to have referred the matter to the authority having jurisdiction over all the Tehsils. Ld. Counsel further pleaded that the order of Tehsildar is against dead persons and as such a nullity in the eyes of law.

2. The other side was summoned who caused presence through their counsel Ld. Counsel for the Respondents on the other hand justifies the impugned order by pleading that it is only the agricultural land of estate Chak Murar that is the subject of partition and not the other immoveable properties owned by the ancestor of the parties. It is also said that ample opportunity was provided by the Tehsildar to the petitioners to adduce any evidence of private partition having taken place earlier but having failed to do so, the plea was not taken into consideration. A reference of partition suit said to have been filed in 1979 before Munsiff Court is also given, where the petitioners did not make any mention of the private partition. It was further argued that since the parties are joint owners, so possession of one co-sharer is possession of all co-sharers and petitioners can't lay claim to the entire land being in possession.
3. Heard.
4. The contention of the Ld. Counsel for petitioners that land falls in three different Tehsils and as such Tehsildar lacked jurisdiction is not a reasoned argument as the Tehsildar has only affected the partition of agricultural land falling in village Chak Murar, which area falls within his jurisdiction. With regard to suit for partition of property at Jammu, it has been categorically held by the Tehsildar that it is not within the jurisdiction of his court.

5. Section 105 of the Land Revenue Act read with Partition Rules 1970 provides the procedure to be adopted by a Revenue officer while dealing with an application seeking partition . It is provided therein that any joint holder of land or any joint tenant of a tenancy in which (a right of occupancy or protected tenancy subsists) or any mortgagee with possession of the share of such holder or tenant, may apply to a Revenue officer for partition of his share in the land or tenancy, as the case may. The applicants before the Tehsildar as is seen from the impugned order are recorded as co-sharers in the ROR 2010-2011 and thus well within their rights to seek partition of their share. The petitioners as rightly pointed out by Ld. Counsel for the respondents can't lay claim to the entire landed property merely being in possession, because it has been held in a cantesa of judgments as referred in the impugned order that "*Possession by one Co-sharer is considered , in law, as possession of all the co-sharer*"
6. The main argument of the Ld. Counsel for the petitioners that his plea of private partition having taken place in 1966 was brushed aside by the Tehsildar, which under law he was required to take note of, is also not based on facts. In this regard, it will be relevant to place on record, Rule 13 of Partition Rules, 1970.

Rule 13. "Objection that land is already divided"

" If objection is raised that the land has already been privately divided, the Revenue officer shall give the parties an opportunity of producing evidence on the point. Differences between the land actually held by the parties, and the share due to them, should be enquired into and explained as far as possible. But the Revenue Officer is not bound to reject the objection merely because of such difference, if he is satisfied that a Permanent Private Partition has really been made. If he finds that the land has actually been privately divided, the Revenue Officer should pass orders confirming it under section 118, otherwise he may reject the objection and proceed with the application for partition."

Tehsildar in compliance with above quoted legal provision has given ample opportunities to the petitioners to prove their claim of private partition having taken place earlier, but having failed to prove it, has rightly rejected their plea and proceeded with the partition as required under Law.

7. The other argument of the Ld. Counsel for petitioners that the order of Tehsildar is against some dead person is not substantiated by any documentary evidence and otherwise also, Tehsildar has only determined

the shares of all co-heirs and if any of the heir is dead, his/her share will devolve on the respective successors.

8. Thus, for the, reasons mentioned herein above, the Revision Petition being devoid of any merit is dismissed and the order impugned is upheld.
9. Interim Orders, if any, issued by this Court are vacated. File to be consigned to records after due completion.

Announced

16.03.2022



Shaleen Kabra (IAS)
Financial Commissioner, Revenue
J&K, Jammu