

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT JAMMU**

**LPA No. 39/2024**

Reserved on: 16.10.2024

Pronounced on: 22.10.2024

Chander Prabha D/o late Sansar Chand resident of village Dasgal  
House No. 30 Kashmiri Mohalla, Tehsil Akhnoor District Jammu

... APPELLANT(S)

Through: - Mr. Sachin Dogra Advocate

Vs.

- 1 UT of Jammu and Kashmir through Joint Financial Commissioner.
2. Joint Settlement Commissioner, Jammu
3. Settlement Officer, Jammu
4. Tehsildar Akhnoor,
5. Naib Tehsildar, Akhnoor
6. Som Dutt son of Ram Chand resident of Dasgal Tehsil Akhnoor  
District Jammu

...RESPONDENT(S)

Through: - Mr. Vijay Gupta Advocate

**CORAM: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE  
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

**Sanjay Dhar, J**

1           The appellant has called in question judgment dated 29.02.2004 passed by the learned Single Judge whereby the writ petition filed by respondent No.6 herein has been allowed and order dated 26.04.2018 passed by the Joint Financial Commissioner, Jammu (respondent No.2 herein) has been quashed.

2           The subject matter of dispute between the appellant and respondent No.6 is the land measuring 02 kanals falling in khasra No.

609 min situated at village Dasgal, Tehsil Akhnoor, District Jammu which has been classified as “Gain Mumkin Khud”. Respondent No.6 herein, invoked the writ jurisdiction of this Court under Article 226 of the Constitution by filing a writ petition bearing OWP No.1096/2018 challenging order dated 26.04.2018 passed by the Joint Financial Commissioner, Jammu in a revision petition, whereby the orders passed by the Settlement Officer, Jammu and the Joint Settlement Commissioner, J&K, Jammu setting aside the mutation attested in favour of the appellant herein was upheld. It is pertinent to mention here that the mutation in question pertains to the aforesaid land.

3 From the pleadings of the parties filed before the Writ Court, it appears that appellant had had projected a case that he along with respondent No.6 had purchased the land in question from its erstwhile owner Sh. Puran Chand by virtue of an Agreement to Sell dated 18.12.1993 in equal shares. It was claimed by the appellant that pursuant to the aforesaid Agreement to Sell, he had come into possession of (01) kanal of land in question and the remaining (01) kanal of land was under the occupation of respondent No.6 herein. It was admitted case of the parties that on 07.02.1994, a Sale Deed was executed in respect of the land in question by its erstwhile owner Puran Chand in favour of respondent No.6 herein which was duly registered and on the basis of this Sale Deed, mutation No. 856 dated 28.11.2001 came to be attested in respect of the land in question in favour of the said respondent.

4           It seems that an appeal was filed by the appellant herein against mutation dated 28.11.2001 before the Settlement Officer, Jammu, who vide order dated 27.05.2011 allowed the appeal and set aside the mutation, whereafter, the case was remanded to the Tehsildar concerned for *de novo* enquiry. The said order was challenged by respondent No.6 herein by way of an appeal before the Joint Settlement Commissioner, but without any success. A revision petition came to be filed by respondent No.6 herein against the order of Settlement Officer, Jammu as upheld by the Joint Settlement Commissioner before the Joint Financial Commissioner, who vide order dated 26.04.2018 dismissed the revision petition thereby upholding the order of the Joint Settlement Commissioner. Against the order of Joint Financial Commissioner, respondent No.6 herein filed a writ petition bearing OWP No.1096/2018 before the Writ Court which came to be allowed by the learned Single Judge in terms of the impugned judgment.

5           Learned counsel appearing for the appellant has challenged the impugned judgment passed by the learned Single Judge, primarily, on the ground that as per the position obtaining on spot, the appellant is in possession of (01) kanal of land in question and he has raised construction of plinth thereon which is clear from the entries in the khasra girdwari pertaining to Rabbi, 2010 as also the factual report submitted by the concerned Naib Tehsildar before the Settlement Officer, Jammu. It has been contended that, in terms of Rule 46 of Standing Order 23-A, possession is one of the two principal factors which is to be considered by the Officer attesting the

mutation and merely because a Sale Deed has been executed in favour of a person, the mutation cannot be attested in his favour unless it is shown that the possession has actually been transferred on the spot. According to the learned counsel for the appellant, the learned Single Judge, despite noticing this position of law, has ignored the documents on record which confirms the possession of the appellant over (01) kanal of the land in question and proceeded to set aside a well reasoned order passed by the Joint Financial Commissioner.

6            Learned counsel appearing for respondent No.6, on the other hand, has contended that once ownership of the land in question was transferred by its erstwhile owner in favour of respondent No.6 by a duly registered instrument of sale, it has to be presumed that the possession of land in question was delivered to the said respondent, particularly when factum of delivery of possession is clearly reflected in the covenants of the Dale Deed. It has been contended that as against this, the appellant has not placed on record any document to rebut this presumption.

7            We have heard learned counsel for the parties and perused record of the case.

8            The appellant is claiming possession of half of the land in question on the basis of an Agreement to Sell dated 18.12.1993, whereas respondent No.6 is claiming possession of the entire land in question on the basis of a duly registered Sale Deed executed on 07.02.1994. Both these documents are under challenge before the Civil Court. While the appellant has challenged Sale Deed dated

07.02.1994, respondent No.6 has challenged Agreement to Sell dated 18.12.1993. The two suits are stated to have been consolidated and the same are pending disposal before the Civil Court.

9           The question, that falls for determination, is as to whether the mutation in respect of the land in question, can be attested in favour of the appellant on the basis of Agreement to Sell dated 18.12.1993 which is a document relied upon by him for the said purpose. The answer to the said question is deducible from the provisions contained in Section 138 of Jammu & Kashmir Transfer of Property Act, 1977 (hereinafter referred to as the 'Act of 1977') which was applicable at the time of attestation of mutation in respect of the land in question. The same reads as under:

***“138. Transfer of immovable property after due registration:***

*(1) No transfer of immovable property, except in a case governed by any special law to the country, shall be valid unless and until it is in writing registered and [the registration thereof has been completed in accordance with sub-section (3) of section 61 of the Registration Act, 1977.]*

*(2) No Court shall entertain a suit for pre-emption in respect of transfer of any such immovable property unless the transfer complies with the provision of sub-section (1).*

*(3) No person shall take possession of, or commence to build or build on, any land in the Province of Kashmir which has been transferred or has been contracted to be transferred to him unless and until such transfer becomes valid under the provision of sub-section (1).*

*(4) No person who has obtained a transfer of immovable property referred to in sub-section (1) shall apply for and obtain from any Revenue or Settlement Officer or Court any alteration in any existing entry in any Settlement*

*Record or paper, unless such person produces before such officer or Court a duly executed registered instrument [the registration whereof has been completed in the manner specified in subsection ]*

*And no such officer or Court shall alter or cause to be altered any such entry except upon the production of an instrument registered [in the aforesaid manner]*

*Provided that nothing in this section applies to a lease of agricultural land for one year or to a lease of any other land for a period not exceeding seven years:*

*Provided also that nothing in sub-sections (3) and (4) shall be deemed to apply to transfers by will or by any rule of intestate succession or by the operation of the law of survivorship”.*

10 From a perusal of the aforesaid provision, it is clear that transfer of immovable property cannot be termed as “valid” unless and until, it is in writing and registered in accordance with the provisions of the Registration Act. Sub-section (4) quoted above further provides that unless a person who has obtained a transfer of immovable property by way of a registered instrument, produces such registered instrument before a Revenue or Settlement Officer or Court, the existing entry in any settlement record or paper, cannot be altered. This requirement is relaxed only in the cases relating to lease of agricultural land for one year or to a lease of any other land for a period not exceeding seven years. The said requirement is also not applicable to transfers by will or by any rule of intestate succession or by operation of law of survivorship. Thus, it is clear that unless a registered instrument relating to transfer of immovable property is produced before a Revenue Officer, the existing entry, in any revenue record, cannot be altered.

11 Coming to the facts of the instant case, as already indicated, the appellant is basing upon his right to possess a portion of the land in question on Agreement to Sell dated 18.12.1993, which is admittedly not a registered instrument. Therefore, in no case, mutation in respect of any portion of the land in question, can be attested in his favour as the same would be in violation of Sub-section(4) of Section 138 of the Act of 1977. It is not the case of the appellant that the instant case relates to lease of agricultural land for one year or lease of any other land for a period not exceeding seven years or that the same relates to transfers by will or by any rule of intestate succession. Thus, even if it is assumed that the appellant is in possession of some portion of the land in question, the same would amount to “unauthorised occupation” and, entry in the revenue record cannot be altered in his favour on that basis. Even the entry in the khasra girdwari in favour of the appellant, which is stated to have been made in Rabbi, 2010, is *non est* in the eyes of law, as the same is in violation of Section 138(4) of the Act of 1977.

12 In view of what has been discussed hereinbefore, the Joint Financial Commissioner and the subordinate Revenue Officers viz., the Settlement Officer and Joint Settlement Commissioner have grossly erred in setting aside mutation No. 856 dated 28.11.2001, that was attested in favour of respondent No.6 herein, on the basis of a duly registered Sale Deed. The learned Single Judge has rightly concluded that the Revenue Officers, right from the Settlement Officer to the Financial Commissioner were not correct in coming to the conclusion that the mutation attested on the basis of a Sale Deed

without ascertaining the factum of possession of the writ petition/respondent No.6 herein on the purchased land was not sustainable in law. We do not find any perversity or illegality in the aforesaid conclusion drawn by the learned Single Judge and, as such, there is no ground to interfere in the impugned judgment.

13 For the foregoing reasons, the appeal is dismissed being without any merit.

**(Sanjay Dhar)**  
**Judge**

**(Atul Sreedharan)**  
**Judge**

**Jammu**  
22 .10.2024  
"Sanjeev"

*Whether the order is speaking: Yes*  
*Whether the order is reportable: Yes*

