

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

CFA No. 17/2013
c/w
CCP(S) No. 319/2022

Reserved on: 19.09.2023
Pronounced on: 29.09.2023

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| <p>1. Sh. Surjit Singh S/o. Late Rana
Gopal Singh alias Karnail Singh
R/o. Bolri Jagrote, Tehsil and
District, Doda</p> <p>2. Smt. Sushma Devi D/o Late Rana
Gopal Singh W/o. Sh. Anurodh
Singh R/o. Jagti, Nagrota, Jammu</p> | <p>.....Petitioners/Appellants</p> |
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Through: Mr. Rohit Kohli, Advocate

vs

1. Smt. Krishni Devi widow of Late Rana
Dewan Singh
2. Mr. Dalbir Singh S/o of Late Rana
Dewan Singh
3. Ms. Meena Kumari D/o Late Rana
Dewan Singh
4. Respondent Nos. 1 to 4 are legal
representatives of Plaintiff deceased Rana
Dewan Singh before Trial Court, residing
at Flat No. 305, Sector F, Sainik Colony,
Jammu
5. Mr. Kulbhushan Singh S/o. Late Rana
Janmeet Singh
6. Mr. Kulbir Singh S/o Late Rana Janmeet
Singh
7. Mr. Kuljeet Singh S/o. Late Rana
Janmeet Singh R/o. Dhamunda Jagrote,
Tehsil and District Doda
8. Mr. Surinder Singh S/o Late Kuldeep
Singh(S/o. Rana Janmeet Singh)
9. Mr. Narinder Singh S/o Late Kuldeep
Singh (S/o Rana Janmeet Singh)
10. Mr. Vikram Singh S/o Late Kuleep Singh
(S/o. Rana Janmeet Singh)
11. Mr. Kailash Singh S/o. Late Kuldeep
Singh (S/o. Rana Janmeet Singh)
12. Ms. Meenakshi Devi D/o Late Kuldeep
Singh (S/o Rana Janmeet Singh)
13. Mrs. Kamlesh widow of Late Kuldeep
Singh (S/o Rana Janmeet Singh)
14. Mrs. Dazy alias Suresha Devi D/o. Late

Kuldeep Singh (S/o. Rana Janmeet Singh) W/o Sh. Swarn Singh R/o. Thalsara, VPO Bhalla, Tehsil and District, Doda

15. Mrs. Manisha D/o Late Kuldeep Singh (S/o Rana Janmeet Singh) W/o. Sh. Sudarshan Singh Bandral R/o. Bandral Karyana Store, Lane Opposite Bittu Wine Shop, New Plot, Jammu

..... Respondents

Through: Mr. Ved Raj Wazir, Sr. Advocate with
Mr. Amit Raina, Advocate

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

JUDGMENT

CFA No. 17/2013

1. The appellants have challenged judgment and decree dated 31.12.2012 passed by the learned Additional District Judge, Doda(hereinafter to be referred as the trial court), whereby final decree in terms of Commissioner's report effecting the partition of the suit property has been passed.

2. It appears that the predecessor-in-interest of respondent Nos. 1 to 4 herein (hereinafter to be referred as the plaintiff) had filed a suit for partition before the court below seeking partition of movable and immovable property left behind by their ancestors claiming that the parties to the suit are the members of the joint Hindu family. The description of the property sought to be partitioned as given in the plaint is reproduced as under:

“HOUSES

Residential house (old construction) consisting of four rooms and a verandah on the southern side as shown in the enclosed plan:

Two cow-sheds later renovated by the plaintiff:

Grain-store and covered entrance gate.

To these was added new construction by the plaintiff consisting of two residential rooms, one kitchen and one verandah shown on the Western side in the enclosed plan.

Defendant No. 1 demolished the old grain store and covered entrance gate and by extending towards south and north raised a new construction consisting of three rooms and one kitchen as shown in

the enclosed plan. Janmeet Singh deceased constructed a cow-shed one store, 3 bed rooms, one big hall and one kitchen. All the constructions were raised upon ancestral land while the new constructions done by the plaintiff and defendant No. 1 are either at the site or in near vicinity of the ancestral house in Bolri Jagrota, the one raised by Janmeet Singh is at a little distance away in Dhamunda-Jagrota. The valuation is approximately Rs. 50,000/-.

LANDS:

Land both abi and khushki and orchards known as Chak Trone measuring 10 kanals 3 marlas, Chak Massri measuring 22 kanal 3½ Marlas, and Chak Jagret measuring 70 kanals 11 marlas as described in the three copies of Jamabandi enclosed herewith. The valuation is approximately Rs. 60,000/-.

MOVEABLE PROPERTY:

20 sheep and goats, 8 cows and bulls valued at Rs. 6,000/-

Ornaments consisting of golden budkies weighing 3 tolas, silver gokhrus and bangles, one pair of silver chattars, one silver glass weighing 40 tolas valued at Rs. 8,000/-.

HOUSE HOLD UTENSILES AND IMPLEMENTS OF Agriculture valued at Rs. 2,000/-.”

3. In the plaint, it was claimed that Kartar Singh, the youngest brother of the parties had died and mutation of his shares was effected in the name of remaining three brothers i.e. predecessors in interest of the parties. It was claimed by the plaintiff that entire landed property is in joint possession of the parties and the parties have taken up residence in their respective new constructions raised by them. It was claimed that entire property is joint and undivided and all the parties except appellants herein are interested in partitioning of the property.

4. The predecessor in interest of the appellants, who happened to be the defendant No. 1 in the suit contested the suit by filing his written statement wherein he claimed that predecessor in interest of the parties, Rana Randhir Singh had partitioned the ancestral property amongst his four sons during his life time and there is no question of partitioning of the property afresh. According to defendant No. 1, the residential house, cow shed and grain storage had fallen to his share and these constitute his exclusive property. It was claimed that the

plaintiff was permitted to build a few rooms on a portion of the land that was in possession of defendant No. 1 and a big chunk of land that had fallen to the share of the plaintiff was taken over by Baldev Singh and Thakur Singh. It was claimed that the plaintiff having allowed his share of the land to be occupied by Baldev Singh and Thakur Singh cannot seek partition of the ancestral property.

5. Learned trial court, on the basis of the pleadings of the parties, framed the following issues:

- “1. Whether the suit is not maintainable for non-joinder of all the co-sharers, who are the necessary parties? O. P. D.
2. Whether the suit property was partitioned by Rana Randhir Singh the father of the plaintiff and defendant No. 1 amongst his four sons and consequently they were put in possession of their respective shares? O. P.D.
3. Whether the share of Kartar Singh was exclusively taken possession of by the plaintiff and Rana Janmeet Singh, after his death? O.P.D.
4. Whether the plaintiff has sold any land out of his share? O.P.D.
5. Whether defendant No. 1 has made investments and improvements by planting more trees on the land in his share? O.P.D.
6. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? O.P.D.
7. Whether defendant No. 1 is in possession of any joint moveable property mentioned in the plaint? If so, to what extent plaintiff is entitled? O.P.P.
8. Whether the addition by way of construction by the parties are joint family property and liable to partition? O.P.P.
9. Relief and costs.”

6. On the basis of the evidence led by the parties, the learned trial court passed the preliminary decree of partition in terms of its judgment dated 26.05.2009. While deciding issue No. 1, the learned trial court came to the conclusion that there is non non-joinder of the necessary parties, as such, the suit is maintainable. Regarding issue No. 2, it was concluded by the learned trial court that no partition of the ancestral land of the parties had taken place. In respect of issue No. 3, it was found by the learned trial court on the basis of the evidence on record that the claim of the defendant that the plaintiff had sold a

part of the land out of his share, is not proved. In respect of issue No. 5, the learned trial court came to the conclusion that appellant/defendant No. 1 had planted some fruit bearing trees after the plants existing at the time of death of his father had perished and accordingly this issue was decided in favour of defendant No. 1. Issue No. 6 was decided against defendant No. 1 and in favour of the plaintiff whereas regarding issue No. 7, it was concluded by the learned trial court that it is defendant No. 1 who has managed the property all along and for this purpose, he has incurred expenses for which he is required to be compensated. It was further held by the learned trial court that it is not established as to what movable property was left behind by the father of the parties at the time of his death and even if he had left any such property that needs to be allotted to defendant No. 1. Regarding issue No. 8, it was observed by the learned trial court that additions and constructions or improvements made over the suit property by any of the parties is held to be joint family property of the parties and is subject to partition. On the basis of the findings on the issues, the learned trial court concluded as under:

“Cumulative effect of discussion made hereinabove and finding recorded on the issues is, that the suit of the plaintiff with regard to the movable property as mentioned in sub Para 3 of schedule of property described in Para No. 1 of plaint, is dismissed. However, the immovable property i.e. houses and land as described in the plaint are liable to be partitioned in three shares. The plaintiffs are entitled to 1/3rd share and defendant No. 1 also 1/3rd share and similarly, the defendants 2 to 5 are entitled to 1/3rd share of the whole property, as such preliminary decree is passed accordingly. Tehsildar (Assistant Collector) Doda, is appointed Commissioner to affect partition on spot by metes and bounds. The Tehsildar shall in all probability allot the property, especially the houses to the parties who are in possession of the same when the partition of same is not possible without damage to the property. In such eventuality, the Commissioner may value the property and suggest the payment of cost of share to the party not in possession. The suit in hand is pending disposal since 1983, as such, it is directed that Commissioner shall make every

endeavour to affect the partition as early as possible and submit the report in this court for further proceedings. The Tehsildar is at liberty to requisition this file if required, for the proceedings to be taken up by him. Remuneration of this Commissioner is fixed at Rs. 6,000/- payable by the plaintiffs. Plaintiffs are directed to deposit the fee within a weeks time in this court. Parties through their counsel are directed to cause their appearance before Tehsildar Doda on 12-06-2009. Learned counsel for the parties shall ensure the presence of parties before Tehsildar as and when required and in case of any default on the part of either of the parties, the Tehsildar shall proceed further with the case under law without any delay. Copy of this judgment is to be forwarded to the Tehsildar for compliance....”

7. Pursuant to the aforesaid judgment of the trial court, Tehsildar Doda filed his report before the Additional District Judge, Doda and after considering the said report, the learned trial court vide his impugned final judgment dated 31.12.2012 passed the final decree of partition in terms of the report of the Commissioner. It is pertinent to mention here that during the proceedings before the Commissioner, an agreement was arrived at between the parties on the basis of which, the learned trial court has passed the final decree.

8. The predecessor in interest of the appellants i.e. defendant No. 1 has challenged the impugned final judgment and decree passed by the learned trial court on several grounds but the main grounds that have been urged by the learned counsel for the appellants during the course of arguments are that though the learned trial court has, while passing preliminary decree dated 26.05.2009, held that the predecessor in interest of the appellants i.e. defendant No. 1 had planted fruit growing trees on the ancestral land, but while effecting the partition, the said land has not fallen to the share of predecessor in interest of the appellants i.e. defendant No. 1, which is contrary to what has been directed by the learned trial court while passing the preliminary decree dated 26.05.2009, whereby it was laid down that the Tehsildar shall in all probability allot the

property especially the houses to the parties who are in possession of the same. It has been further contended that the agreement arrived at before the Commissioner, though signed by the predecessor in interest of the appellants i.e. defendant No. 1, yet he did not understand the contents of the same as he was not conversant with the Urdu language, as such, the said argument could not have been made the basis of the final decree. It has also been contended that during the pendency of the suit itself, one of the defendants to the main suit namely, Kuldeep Singh had died even before the preliminary decree had been passed by the trial court as such, the impugned judgment and decree passed by the learned trial court is a nullity.

9. I have heard learned counsel for the parties and perused the record of the case, the impugned judgment and the record of the trial court.

10. So far as the preliminary decree is concerned, the predecessor in interest of the appellants(defendant No. 1) has not called in question the same as such, the findings recorded by the learned trial court in its preliminary decree dated 26.05.2009 are binding on the appellants. The appellants, the successors in interest of defendant No. 1 are only aggrieved of the final judgment and decree passed by the learned trial court.

11. The first ground for assailing the said judgment and decree is that the Commissioner had decided to allot land under khasra No. 13 in favour of the legal heirs of deceased plaintiff i.e respondent Nos. 1 to 4 herein on which an orchard with fruit bearing trees is existing. This has been done despite the finding of the trial court on issue No. 5 that these fruit bearing trees have been grown on the said land by the predecessor in interest of the appellants(defendant No. 1).

12. If we have a look at the trial court record, the predecessor in interest of the appellants(defendant No. 1) had raised this issue by filing objections to the report of the Commissioner i.e. Tehsildar, Doda. The learned trial court, has, while passing the impugned final judgment and decree, dealt with this aspect of the matter by observing that during the proceedings before the Commissioner, the parties had executed a written document styled as “Tehrirnama” dated 03.05.2010 and 11.03.2010 which reflects the process of partition by metes and bounds effected on spot with the consent of the parties. On this ground, the learned trial court has concluded that once the predecessor-in-interest of the appellants(defendant No. 1) had agreed to the mode and manner of the partition before the Commissioner, he cannot resile from the said agreement.

13. The observation of the learned trial court in the above context is absolutely in accordance with law. Once the predecessor in interest of the appellants(defendant No. 1) executed an agreement with other share holders of the ancestral property before the Commissioner agreeing to a particular mode and manner of the partition of the ancestral property, he cannot resile from the same.

14. It has been contented by learned counsel for the appellant that the predecessor in interest of the appellants was not well versed with Urdu as such, he could not understand the consequences of the agreement. If we have a look at the “Tehrirnama” executed by the parties before the Commissioner, it bears the signatures of the predecessor in interest of the appellants(defendant No. 1) that too in Urdu, meaning thereby that he was well versed with the Urdu language. It is a fact of common knowledge that a person usually signs in a language with which he is comfortable. Therefore, unless there is any material on record to suggest to the contrary, the contention of the appellants that Late Karnail Singh

did not understand Urdu, cannot be accepted. Even otherwise in the objections filed by the predecessor in interest of the appellants(defendant No. 1) to the report of the Commissioner, he has not even urged the plea that he did not understand the contents of the “Tehrirnama”. The said contention is being raised the appellants for the first time in this appeal, which obviously appears to be an afterthought to wriggle out of the compromise which their predecessors in interest have arrived at before the Commissioner.

15. So far as the contention of learned counsel for the appellant that the impugned judgment and decree is nullity because during the pendency of the suit, defendant Kuldeep Singh has died is concerned, the same is also without any merit for the reason that defendant-Kuldeep Singh has not defended the suit before the trial court even when he was alive and even otherwise the legal heirs of defendant-Kuldeep Singh have not projected any objection to the decree of partition passed by the learned trial court. They have in fact participated in the proceedings before the Commissioner and have signed the “Tehrirnama”. The contention of the learned counsel for the appellant in this regard is, therefore, without any merit and deserves to be rejected.

16. Lastly it has been argued by learned counsel for the appellants that the agreement “Tehrirnama” does not indicate the actual specifications of partitioned land and there is no map attached to it so as to indicate as to which portion of the land has fallen to the share of which shareholder. In this regard, it is to be noted that in the document “Tehrirnama” which is signed by all the parties it is recorded that the parties are satisfied with the mode and manner of partition and they have been put in possession of their respective shares. Thus there was no confusion in the minds of the parties as regards the identity of their respective shares. Even otherwise, defendant No. 1 while filing his objections to

the report of the Commissioner did not raise this issue. He cannot be allowed to raise this issue for the first time in this appeal. The argument of the learned counsel is, therefore, bound to fail.

17. For the foregoing reasons, I do not find any ground to interfere with the impugned judgment and decree passed by the learned trial court. The appeal lacks merit and is dismissed accordingly.

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18. Through the medium of the present petition, respondent No. 1 is seeking implementation of interim order dated 04.04.2013 passed in the main appeal. Since the main appeal stands finally decided in terms of aforesaid judgment, as such, the in terim order dated 04.04.2013, stands merged with the final judgment. The contempt proceedings, therefore, do not survive. The same are accordingly, closed. The petition stands disposed of.

(SANJAY DHAR)
JUDGE

Jammu
29.09.2023
Rakesh PS

Whether the order is speaking:	Yes
Whether the order is reportable:	No