2026:JKLHC-JMU:337

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on 09.10.2026
Pronounced on 29.10.2026
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LPA No. 15/2024

Sarishta Devi and others …..Appellant(s)/Petitioner(s)

Through: Mr. G. S. Thakur, Adv.

vs

U. T. of J&K and others ….. Respondent(s)

Through: Ms. Sagira Jaffer, Adv. vice
Ms. Monika Kohli, Sr. AAG
Mr. S. M. Choudhary, Sr. Adv. with
Mr. Mursaleen, Adv.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

Sanjay Dhar-J

1. The appellants have called in question judgment dated 15.12.2023 passed by the learned Single Judge in OWP No. 930/1991 whereby the writ petition filed by the predecessor in interest of the appellants challenging order dated 20.09.1991 passed by the J&K Special Tribunal, has been dismissed.

2. Briefly stated, the facts leading to filing of present *intra* court appeal are that the land measuring 100 kanals falling under khasra Nos. 1, 2, 3 and 68/17 situated at Village Rajiani, District Kathua was given to Kubjaan, mother of Amar Nath for the services, which Amar Nath had rendered in war. Since the father of Late Amar Nath had already died, therefore, the aforesaid land was allotted to his mother, Kubjaan, who had four children, namely, Late Amarnath, Vasu Dev, Rattno Devi and Shanti Devi. The aforesaid land was

mutated in the name of Kubjaan vide Mutation No. 9 dated 12.09.1947. After the death of Kubjaan, Mutation of Inheritance bearing No. 13 was attested in favour of Vasu Dev, Shanti Devi and Rattno Devi in equal shares. It is pertinent to mention here that 05 kanals, out of the aforesaid 100 kanals of land, was acquired by the Irrigation Department, leaving balance of 95 kanals of land, which was mutated in the name of Vasu Dev, Rattno Devi and Shanti Devi in equal shares. After the death of Kubjaan, three surviving children, namely, Vasu Dev (son), Rattno Devi and Shanti Devi (daughters) became co-owners of the land in question.

3. Vasu Dev was succeeded by his widow, Kaushalya Devi, two sons, namely, Ram Lal and Sada Nand and three daughters. The appellants happen to be the successors in interest of Sada Nand. Rattno Devi also died and she was succeeded by the private respondents.

4. Mst. Rattno Devi, the predecessor in interest of the private respondents, held one-third share of the land out of 95 kanals of land, which comes to 31 kanals 13 marlas of land, whereas Shanti Devi, the second daughter of Kubjaan became owner to the extent of 31 kanals 13 marlas of the aforesaid land. Vasu Dev held one-third share of the land, which comes to 31 kanals and 13 marlas.

5. Mutation No. 79 dated 18.10.1986 under section 4 of the J&K Agrarian Reforms Act, was attested in respect of 63 kanals 6 marlas of land owned by Rattno Devi and Shanti Devi in favour of the State on the basis of the entries made in the revenue record in Kharief 1971 in favour of Sada Nand, who was shown to be in cultivating possession of the said land. He was

accordingly, declared as the prospective owner. Mutation No. 85 dated 15.11.1987 was attested under section 8 of the J&K Agrarian Reforms Act in respect of 27 kanals 3 marlas of land belonging to Rattno Devi in favour of Sada Nand, the predecessor in interest of the appellants, thereby conferring ownership rights upon him. Respondent-Kailash Chander, who happens to be the son of Rattno Devi resumed land measuring 4 kanals 10 marlas on the basis of the application filed by him under section 7 of the J&K Agrarian Reforms Act, thereby accepting the attestation of mutation under section 8 of the Agrarian Reforms Act in favour of Sada Nand. On the basis of the private agreement under section 12 of the J&K Agrarian Reforms Act, Shanti Devi relinquished her share in favour of Sada Nand, the predecessor in interest of the appellants and in this regard, Mutation No. 84 came to be attested on 11.11.1987.

6. Mutation No. 79 dated 18.10.1986 in respect of the land measuring 63 kanals 6 marlas as also Mutation bearing No. 85 attested on 15.11.1987 under section 8 of the J&K Agrarian Reforms Act in favour of Sada Nand was challenged by the private respondents, except respondent No. 11, by filing an appeal before the Commissioner, Joint Agrarian Reforms, Jammu. Vide order dated 11.07.1990, the Commissioner allowed the appeal and set aside Mutation Nos. 79 and 85.

7. The aforesaid order came to be challenged by Sada Nand, the predecessor in interest of the appellants by way of a revision petition before the J&K Special Tribunal. The learned Tribunal, vide its order dated 20.09.1991, partly allowed the revision petition and it was directed that the private

respondents excepting respondent No. 11 will get 27 kanals and 3 marlas of land and while the remaining land would go to Sada Nand, the predecessor in interest of the appellants after deducting 4 kanals 10 marlas, which respondent No. 11 herein has already received on resumption. Accordingly, fresh Mutation was directed to be attested in light of the observations made in the said order.

8. Sada Nand, the predecessor in interest of the appellants challenged the aforesaid order passed by the learned Tribunal by way of a writ petition before this Court, which came to be registered as OWP No. 930/1991. The said writ petition was dismissed by this Court in terms of order dated 26.04.1999. The order of the writ court was challenged by Sada Nand by way of an LPA bearing No. 288/1999 and the said LPA was dismissed by the Division Bench of this Court on 26.10.2004. Thereafter, Sada Nand approached the Supreme Court by filing an SLP and the Supreme Court remanded the matter to the writ court. While doing so, the Supreme Court observed that the High Court has not discussed the application of any provisions of the Agrarian Reforms Act.

9. In the aforesaid circumstances, the matter came to be considered by the learned writ court again and vide impugned judgment dated 15.12.2023, the learned writ court has again dismissed the writ petition, primarily on the ground that a co-sharer cannot claim to be a tenant of another co-sharer and seek attestation of mutation under sections 4 and 8 of the J&K Agrarian Reforms Act on the ground of tenancy.

10. The appellants, who happen to be the successors-in-interest of Late Sada Nand, have challenged the impugned judgment passed by the learned writ court on the grounds that in the instant case, a partition had taken place between Vasu Dev, Rattno Devi and Shanti Devi, as such, they had become absolute owners of their respective shares of the joint holding. It has been contended that after the partition, the share holding of each of the co-sharers became their self-acquired property and therefore, it cannot be stated that possession of Sada Nand over the portion of land that had come to the share of Shanti Devi and Rattno Devi is the possession of a co-sharer. It has been submitted that Sada Nand was inducted as a tenant by Shanti Devi and Rattno Devi in respect of the land which had come to their respective shares and that he was sharing the crops with the aforesaid two persons in the ratio of 50:50.

11. It has also been contended that Sada Nand was a protected tenant, which is evident from the revenue entries and the said entries have never been challenged. Thus, the finding of the Commissioner, Agrarian Reforms, the J&K Special Tribunal and the learned Single Judge that Sada Nand was a co-sharer of the land in question is not legally sustainable. It has further been contended that a co-sharer does not come within the definition of 'family' as contained in J&K Agrarian Reforms Act, as such, it cannot be stated that Shanti Devi and Rattno Devi were in personal cultivation of the land in question in terms of the definition of 'personal cultivation' as contained in the said Act. It has also been contended that Mutation Nos. 79 and 85 had attained finality as the same were not challenged by the private respondents

within the prescribed period of limitation, but the learned Joint Agrarian Reforms Commissioner decided the appeal filed by the private respondents on its merits without adverting to the question of limitation.

12. We have heard the learned counsel for the parties and we have also gone through the material on record, including the grounds of appeal and the impugned judgment passed by the learned Singe Judge.

13. A perusal of the record including the revenue record in respect of the land in question would reveal that 95 kanals of land situated at Village Rajiani District Kathua came to be mutated in three equal shares in favour of Vasu Dev, Rattno Devi and Shanti Devi after the death of their mother-Kubjaan, who had acquired the said land from her son (Amar Nath)upon his death in war. Sada Nand, who happens to be the son of Vasu Dev, claimed that he was the tenant of Shanti Devi and Rattno Devi and in this regard, reliance is being placed upon the copy of Jamabandi (chaar sala) for the years 1968-69 and copy of khasra girdhawari for the Kharief 1971. In both these documents in the ownership column, names of Shanti Devi and Rattno Devi and successors of their brother, Vasu Dev, including Sada Nand are shown to be owners in equal shares. In the cultivation column of khasra girdhawari for the year 1971, the name of Sada Nand has been shown as a protected tenant paying rent to the owners. However, there is no material on record, nor is there any entry in the revenue record to show that there has been any partition of the land inherited by Shanti Devi, Rattno Devi and Vasu Dev from their mother. The plea of partition has been projected by the appellants for the first time in the present appeal. In the writ petition, they have not

pleaded that there was any partition of the property between the shareholders, namely, Rattno Devi, Shanti Devi and Vasu Dev. Therefore, it can safely be stated that the land that had devolved upon the aforementioned three shareholders from their mother had remained un-partitioned and it was in cultivating possession of Sada Nand, the predecessor in interest of the appellants.

14. It is a settled law that the possession of one co-owner is possession of other co-owner in respect of unpartitioned joint holding. Attestation of mutation under sections 4 and 8 of the J&K Agrarian Reforms Act in respect of the portion of land which fell to the share of Rattno Devi and Shanti Devi was not legally permissible, because a co-owner cannot be a tenant of another co-sharer. However, so far as Shanti Devi is concerned, she had entered into a private agreement with Sada Nand in terms of section 12 of the J&K Agrarian Reforms Act, whereafter she received the levy in respect of her share of land measuring 31 kanals 13 marlas from Sada Nand, thereby conferring ownership rights in his favour. The successor in interest of Shanti Devi has not challenged the said compromise; as such, the conferment of ownership rights upon Sada Nand in respect of her share of joint holding has attained finality.

15. So far as 31 kanals 13 marlas of land which had fallen to the share of Rattno Devi is concerned, out of the said land, one of her successors, namely, respondent Kailash Chander, resumed a portion of the land under section 7 of the J&K Agrarian Reforms Act leaving behind of 27 kanals and 3 marlas of land which fell to the share of other successors of Rattno Devi. Sada Nand

or his successors in interest being co-sharers of the land in question cannot claim to be tenants of their co-sharers and therefore, learned Tribunal has rightly set aside Mutation Nos. 79 and 85 to the extent of 27 kanals and 3 marlas which fell to the share of private respondent Nos. 5 to 10, the successors in interest of Rattno Devi.

16. It has been contended by the learned counsel for the appellants that a co-owner does not fall within the definition of 'family' as contained in the J&K Agrarian Reforms Act, as such, a land holder cultivating land though a co-owner, cannot be stated to be in personal cultivation of the said land. Thus, it cannot be stated that Rattno Devi and Shanti Devi were in personal cultivation of their respective shares of joint holding just because co-owner Sada Nand was cultivating the said land. On this ground, it is being urged that Sada Nand was the tenant of Rattno Devi and Shanti Devi.

17. In the above context, it is to be noted that each co-owner is deemed to be in possession and ownership of every inch of unpartitioned joint holding. Thus, when one co-owner is in cultivating possession of joint holding, it is to be deemed that all co-owners are in cultivating possession of the said land. The co-owners are deemed to be in personal cultivation of the joint holding even if, only one or few of them are actually cultivating the land. The argument of learned counsel for the appellants is, therefore, misconceived.

18. So far as the contention of the appellants that the appeal filed by the private respondent Nos. 5 to 10 before the Joint Agrarian Commissioner was time barred is concerned, in this regard a perusal of the record of the Joint Agrarian Commissioner would reveal that the appellants therein had along

with the appeal filed an application seeking condonation of delay in filing the appeal. In the said application, it was specifically pleaded that they came to know about the impugned Mutation Orders only on 25.01.1989 because the impugned mutation orders were passed at their back. The learned Joint Agrarian Commissioner has specifically passed an order condoning the delay in filing an appeal, whereafter he has proceeded to deal with the merits of the appeal.

19. A bare perusal of Mutation Orders bearing Nos. 79 and 85 would reveal that the same have been passed at the back of the private respondents or their predecessor in interest. Copies of these mutation orders which are on record would reveal that the same do not bear thumb impression or signatures of private respondents or their predecessor in interest and in fact, their presence is not even recorded in the mutation orders. Thus, the assertion of the private respondents that the mutation orders were passed at their back and they had no knowledge about the said orders appears to be well founded.

20. For all what has been said, analysed and discussed hereinbefore, we do not find any ground to interfere with the impugned order passed by the learned writ court. The instant *intra* court appeal lacks merit and is dismissed accordingly.

(SANJAY DHAR)
JUDGE

RAJNESH OSWAL)
JUDGE

Jammu
29.10.2026
Rakesh PS

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