

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 128/2021

Sikander Sharma

.... Petitioner/Appellant(s)

Through:- Mr. R.K.S. Thakur, Advocate.

V/s

**Additional Commissioner,
Jammu and others**

....Respondent(s)

Through:- Ms. Priyanka Bhat, Advocate vice
Mrs. Monika Kohli, Sr. AAG.
Mr. Ajay Abrol, Advocate.

**CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
ORDER**

09.02.2026

1. The petitioner, through the present petition, has challenged the order dated 06.01.2021 passed by the Revisional Authority, i.e., the Court of Additional Commissioner, Jammu (with the powers of Divisional Commissioner), whereby the revision petition was disposed of with a direction to the court below to proceed with the partition in accordance with the applicable partition rules, after affording an opportunity of hearing to the interested persons/parties, and thereafter to pass an appropriate order. While passing the aforesaid order, the Revisional Authority further directed that any status quo order earlier issued by it shall stand vacated.

2. The impugned order was admittedly passed with the consent of learned counsel for the parties. Before advertiring to the rival submissions, reference is required to be made to order dated 21.10.2019 passed by the

concerned Tehsildar, whereby the application for partition filed by respondent No. 4 was kept in abeyance and the applicants were advised to file a suit for possession in terms of Rule 12 of the Jammu and Kashmir Land Revenue (Partition) Rules, 1970.

3. For facility of reference, Rule 12 of the aforesaid Rules is reproduced hereunder:

"12. Limitation for appeals, revisions and reviews-(1) [Save as otherwise provided in this Act.] the period of limitation for an appeal under the last foregoing section shall be as follows:-

- (a) When the appeal lies to the Collector or an Assistant Collector of the first class.
- (b) When the appeal lies to the Financial Commissioner or Divisional Commissioner.

Provided that, in the Districts of Ladakh and Gilgit twice the ordinary period of limitation for appeals under this Section shall be allowed.

(2) Such provisions of the Limitation Act as apply to appeals, applications for revision and review in civil suits shall also apply to appeals, applications for revision and review under this Act."

4. Since the petitioner, in the application filed before the concerned Tehsildar, admitted that he was not in possession of the land sought to be partitioned, the Tehsildar recorded a finding that the partition proceedings were barred under Rule 12 of the aforesaid Rules.

5. Mr. Thakur, learned counsel for the petitioner, has further drawn the attention of the Court to another communication dated 23.11.2019 issued by the Deputy Commissioner, Samba, whereby the concerned Tehsildar was directed to attend the office along with the partition file, on the ground that

he had refused to effect partition at the final stage of the case, despite having obtained reports from his subordinate staff and field functionaries.

6. Pursuant thereto, the concerned Tehsildar passed an order dated 19.10.2020, whereby the Naib Tehsildar, Surara, was directed to deliver possession of the land to respondents No. 3 to 10 (private respondents herein) by evicting the petitioner. Aggrieved of the said order, the petitioner preferred a revision petition before the Additional Commissioner, Jammu (with the powers of Divisional Commissioner), which is the subject matter of challenge in the present petition.

7. By virtue of the aforesaid order passed by the Revisional Authority, the matter was relegated to the court below with a direction to proceed with the partition in accordance with the applicable Partition Rules, after affording full opportunity of being heard to all interested persons/parties, and thereafter to pass an appropriate order. The said order came to be passed with the consent of learned counsel for the parties.

8. The petitioner, through the medium of the present petition, has assailed the said order on the ground that the same is contrary to the facts and law and is liable to be set aside.

9. It has been vehemently urged by learned counsel for the petitioner that respondents No. 3 to 10 and Bharat Bhushan were not in possession of any portion of the land at any point of time. This fact, according to learned counsel, had already been admitted by the private respondents before respondent No. 2. Even in the application for partition, it was not specifically pleaded that they were in possession of any portion of the land, and rightly

so, as their predecessor-in-interest had already transferred his share to different persons.

10. In the aforesaid factual backdrop and in view of the admission of respondents No. 3 to 10, the petition for partition was held to be not maintainable and, accordingly, a reasoned order dated 21.10.2019 came to be passed by respondent No. 2, whereby further proceedings in the partition application were suspended with a direction to respondents No. 3 to 10 to file a suit for possession, as required under Rule 12 of the Partition Rules. The said order was not challenged before any appropriate fora and has, therefore, attained finality. The subsequent order dated 19.10.2020 passed by respondent No. 2 is, thus, *dehors* the law, without jurisdiction, and a nullity in the eyes of law, and is liable to be set aside.

11. Learned counsel for the petitioner has placed reliance on Rule 12 of the Partition Rules, which provides that where the parties are not in possession of any portion of the land, the Revenue Officer shall lay his hands off and suspend the proceedings, granting liberty to the applicants to file a regular suit for possession before the competent court of law. It is submitted that the said provision is mandatory in nature. Therefore, once a valid order dated 21.10.2019 was passed in conformity with Rule 12, the Revenue Officer had no jurisdiction to proceed further in the partition application.

12. It is further contended that respondents No. 3 to 10 admittedly did not file any suit for possession in respect of the land which was made the subject matter of the partition application. Accordingly, the further proceedings conducted by respondent No. 2 and the order dated 19.10.2020 were without jurisdiction and void *ab initio*.

13. *Per contra*, learned counsel appearing for respondents No. 3 to 7 submitted that the petitioner and the private respondents are co-sharers in land measuring about 182 kanals in Village Surara, Tehsil Hiranagar and since the land remained undivided and continues to remain same till date.

14. Mr. Ajay Abrol, learned counsel appearing on behalf of private respondents, submits that the private respondents herein are descendants of Sh. Punnu Ram and their father Sh. Parmanand, who was survived by three sons and two daughters, and that they had rightly filed a petition under Section 105 of the Land Revenue Act seeking partition of the joint land among co-sharers. The matter ultimately came to be decided by the Revisional Authority on 06.01.2021.

15. Learned counsel for the private respondents further submitted that the order passed by the Revisional Authority merely remands the matter to the concerned Tehsildar to proceed in accordance with the Partition Rules and, therefore, the present petition challenging the remand order is devoid of merit. According to learned counsel, the only plea raised before the Revisional Authority was that the petitioner had not been heard by the Court below while passing the impugned order, which plea, it is contended, is contrary to the record.

16. It has also been argued that the impugned order has been passed by respondent No. 1 with the consent of learned counsel for the parties and suffers from no legal infirmity. It is further submitted that the petitioner as well as the answering respondents continue to be co-sharers and are entitled to claim their respective shares in the land in question. In addition, it has also been urged that the private respondents have filed the petition under Section

105 of the Land Revenue Act strictly in accordance with the Rules, being co-sharers in the land, and are thus entitled to seek partition of their shares.

17. Heard learned counsel for the parties and perused the record.

18. With the consent of learned counsel for the parties, the instant petition is taken up for final disposal.

19. The order passed by the Revisional Authority was limited to directing the Court below to proceed with the partition in accordance with the applicable Partition Rules and, that too, after affording an opportunity of being heard to all interested persons/parties, and thereafter to pass an appropriate order. Thus, before passing any final order, the authority below was required to satisfy itself, in terms of the Partition Rules, whether partition was permissible and to do so only after granting due opportunity of hearing to the interested persons/parties.

20. Once the order, which is the subject matter of the present petition, was passed by the Revisional Authority with the consent of learned counsel for the parties, the petitioner is estopped in law from questioning the same through the medium of the present petition. A bare perusal of the operative portion of the said order shows that no prejudice has been caused to the petitioner, as the direction to the Court below is only to proceed in accordance with the Partition Rules after providing an opportunity of hearing to the interested persons/parties. In the absence of any plea of fraud, coercion or patent lack of jurisdiction, a consent order cannot ordinarily be reopened.

21. The issue involved in the present case is squarely covered by the judgment of this Court in '**Sooba and another vs. Amar Nath Krishan Lal**', Civil 1st Appeal No. 15 of 1981, decided on 29.09.1987, has held as under:

“7. The other point canvassed by the learned counsel for the appellants is that the agreement entered into between the parties was not reduced in writing by the trial Judge and in absence of such statements it cannot be said that the parties consented to the order being passed. In my opinion, this argument is also not tenable because their need not be any written terms of agreement between the parties placed before the court and it is enough if the judgment discloses that the decree was passed on the basis of the consent of the parties. Advocates of both the parties are authorized agents for the parties and their statements before the court would bind the parties and the parties are estopped from resiling there from in appeal by saying that it was not a decree u/s 96(3) C.P.C. In the present case the counsel for the parties arrived at certain agreement and because of the consent given by them, the trial Judge passed the consent decree. The decree thus passed by the trial court was a consent decree and as contemplated u/s 96(3) C.P.C. the present appeal is incompetent.”

22. The principle laid down in the aforesaid judgment of this Court clearly settles that statements made by learned counsel, acting as authorized agents of the parties, are binding upon them and operate as an estoppel. Once the record reflects that an order has been passed on the basis of consent so given, it is not open to a party to subsequently contend that such consent was not validly given or that the order is not binding. The ratio of the said judgment squarely applies to the facts of the present case.

23. The Hon’ble Supreme Court in ‘**Ajanta LLP vs. Casio Keisanki Kabushiki Kaisha d/b/a Casio Computer Co. Ltd. and another**’, 2022 **LiveLaw (SC) 127**, has observed:

“12. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn-out fight. A compromise decree creates an estoppel by judgment. It is relevant to note that in *Byram Peston Gariwala (supra)*, this Court held that the Appellant therein did not raise any doubt as to the

validity or genuineness of the compromise nor a case was made out by him to show that the decree was vitiated by fraud or misrepresentation. While stating so, this Court dismissed the Appeal.

13.Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding. Even assuming there is a mistake, a consent decree cannot be modified/ altered unless the mistake is a patent or obvious mistake. Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/ misunderstanding by a party to the consent decree."

24. The law, therefore, stands settled that consent given by learned counsel, acting within the scope of their authority, binds the parties whom they represent. In the absence of any allegation of fraud, misrepresentation or patent mistake, a consent order cannot be permitted to be challenged merely because a party subsequently wishes to resile from the position taken through its counsel.

25. Applying this settled position to the present facts, since the order of the Revisional Authority was passed with such valid consent and remains unchallenged on grounds of fraud or mistake, the procedural mandate contained therein must now be given full effect. It was, therefore, incumbent upon the Court below to proceed strictly in conformity with the Partition Rules and to grant an opportunity of being heard to the interested persons before passing any appropriate order. However, that stage has not arisen, as the order passed by the Revisional Authority came to be challenged before this Court, whereupon status quo was granted on 01.02.2021. As a result, the Court below was not permitted to proceed with the partition proceedings in terms of the Partition Rules.

26. This Court is of the view that continuation of the interim direction is not in the interest of justice. Accordingly, the ends of justice would be met if the interim restraint imposed by this Court is lifted and the order passed by the Revisional Authority is revived by relegating the parties to the court below, with a direction to proceed with the partition in accordance with the Partition Rules, after affording an opportunity of being heard to the interested persons/parties. Such course would enable adjudication on merits by the competent authority in the first instance.

27. In view of the foregoing discussion, and particularly in light of the settled legal position governing consent orders, this Court finds no illegality or jurisdictional error in the order dated 06.01.2021 passed by the Revisional Authority. The said order merely directs the Court below to proceed in accordance with the applicable Partition Rules after affording opportunity of hearing to all interested persons and does not cause any prejudice to the petitioner.

28. Accordingly, the interim order dated 01.02.2021 passed by this Court is vacated. The order dated 06.01.2021 passed by the Revisional Authority is upheld and the matter is remitted to the court below to proceed strictly in accordance with the Partition Rules, after granting opportunity of hearing to all concerned, and to pass an appropriate reasoned order.

29. The petition is, accordingly, **disposed of**.

(Wasim Sadiq Nargal)
Judge

Jammu:

09.02.2026

Michal Sharma/PS