

**Before ShaleenKabra, IAS, Financial Commissioner (Revenue) / Commissioner
Agrarian Reforms, J&K,**

File No.

1106/FC-AP

Date of Institution

16-03-2022

Date of Decision

09.06.2022

In case titled:

Rashpaul Singh (Age-66 years) S/o Sh. Late Rama R/o Village Amb, (Marjali) Tehsil Bhalwal, District Jammu.

(...Petitioner)

Versus

1. Baldev Singh S/o Late Sh. Rama R/o Village Amb, (Marjali) Tehsil Bhalwal, District Jammu.
2. Tehsildar Bhalwal.

(...Respondents)

In the matter of: Revision petition under section 15 of Land Revenue Act against the order dated 18.02.2022 passed by the Sub-Divisional Magistrate, Jammu North (with the powers of Collector under Land Revenue Act) in the File No. 27/SDM/JN/AP whereby the appeal filed by the petitioner challenging the order dated 08.12.2020 passed by respondent no. 2 on mutation no. 4749 of village Amb, Tehsil Bhalwal in respect of land falling under KhasraNos 1164 (12K), 1205 (07K), 1206 (2K-3M), 1204 (04K-1M) and 1207 (2K-16M) total measuring 28 Kanals situated at revenue village Amb Tehsil Bhalwal, District Jammu was wrongly dismissed.

Present:

1. Advocate RakeshChargotra for the petitioner.
2. Advocate K. S. Chib for the respondent.

ORDER

1. The parties to the dispute are the real brothers who are litigating over the land measuring 28 Kanals covered under different Khasra Nos of village Amb Tehsil Bhalwal, for which occupancy tenancy rights under section 3A of Agrarian Reforms Act were conferred to their father through mutation No. 2087 dated 09.04.1992. After the death of the father, these rights have been devolved upon the respondent 1. herein to the exclusion of the petitioner through mutation No. 4749 dated 18.12.2020. The petitioner, claiming his right from the inheritance of his father preferred an appeal against the mutation 4749 before the Sub

Divisional Magistrate (North) Jammu, who vide order dated 18.12.2022 dismissed his appeal on the ground that the petitioner has inherited the property of his aunt in the capacity of an adopted son. The order of Sub Divisional Magistrate has been challenged in the present Revision petition.

2. The parties appeared through their respective counsels and argued the matter. Case file summoned from Sub Divisional Magistrate has also been placed on record.
3. Ld. Counsel for the petitioner in his arguments pleaded that the respondent has failed to prove the fact of adoption of the petitioner and has taken different stands before different forums. Before the Custodian General, the respondent is said to have projected the petitioner as his uncle, before the civil court admitted to be his brother and before the court below as adopted son of one Prema Devi. The petitioner further claims to have inherited the landed property of her aunt on the basis of a will deed. The decree issued by the civil court in favour of the petitioner has also been referred to, which he stated is binding on the revenue authorities. It is also said that Sub Divisional Magistrate in the impugned order has wrongly mentioned that the appellant (petitioner herein) has admitted to have been adopted by her aunt. The petitioner further claims to be a co-allottee of the land as his name also figures in Form-Alif when the allotment was made in favour of the family.
4. Ld. Counsel for the respondent 1. on the other hand has taken the stand that the petitioner in the capacity of adopted son has inherited his aunt and by

relying on Rule 15-B of the "Allotment of Land to Displaced Persons Rules, 1954" an adopted son is debarred from inheriting his natural father. It is also said that the present revision petition is not maintainable as there is no legal ground questioning the illegality in the order impugned which has been passed after hearing the parties and after conducting detailed enquiry.

5. Heard both the counsels for the parties and perused the records placed on file as well.
6. The court below in the impugned order has held that the petitioner (appellant) therein has admitted the fact of having been adopted by his aunt and accordingly justified the attestation of impugned mutation in favour of the respondent alone by relying upon para 15 (B) of Cabinet Order 578-C which provides that *after the death of an allottee, his interest in the allotted land shall devolve on the other members of his family in whose favour allotment of land has been originally made or regularized under these rules and on those who may have become members of his family by way of marriage / birth or adoption after such allotment excluding those who may have died earlier or may have left, the family an account of marriage or adoption.*

Neither the statement of the petitioner to prove his admission of adoption nor any such document which could reflect the petitioner as adopted son of her aunt has been placed on record. Even the mutation attested in the name of the petitioner with regard to the landed property of her aunt does not make a mention of adoption of the petitioner. The respondent thus having failed to

prove the factum of adoption of the petitioner cannot lay exclusive claim to the inheritance of his father and the reference of section 15 (B) is thus irrelevant. Furthermore, there is on record the judgment dated 06.10.2018 of Ld. Sub Judge (13th FC) Jammu, whereunder the plaintiffs (petitioner and respondent) have been declared as the legal heirs / head of the family of deceased namely Rama (father of private parties herein) and entitled to get financial assistance / ex-gratia etc in equal shares. The said decree as such cannot be lost sight of.

7. Thus, for the aforementioned reasons, the revision petition is accepted, the order impugned together with mutation 4749 of village Amb is set aside. Matter *is* remanded to Tehsildar concerned for a denovo enquiry in presence of both the parties and orders afresh in light of the observations of this court.

8. Parties to appear before the Tehsildar concerned on 20.06.2022, who shall not issue fresh summons to the parties who were present here and have been informed for their appearance before the Tehsildar on the above said date. Interim orders, if any, issued by this court to continue till the matter is heard by the Tehsildar.

Announced
09.06.2022


Shaleen Kabra IAS
Financial Commissioner Revenue
J&K