

Before the Court of Financial Commissioner (Rev)/ Commissioner

Agrarian Reforms, J&K Jammu.

File No.

793/FC-AP

Date of Institution

06-11-2019

Date of Decision

16-03-2022

Thoru Ram S/o Kapoora Sarayara, R/o Bhalwal Tehsil Jammu now Bhalwal

.....(Petitioner)

Versus

1. Shaloo Devi W/o Joginder Kumar, R/o Old Basti Bahu Fort, Tehsil Jammu.
2. Collector (Dy. Commissioner), Jammu.
3. Assistant Revenue Attorney, D.C. Office Jammu.

.....(Respondents)

IN THE MATTER OF: Revision against the order of the Collector (Dy. Commissioner), Jammu dated 04.10.2019 whereby he set aside the order of the Assistant Collector II Class dated 15.07.2013 passed on Mutation No. 111/Jeem of Village Bhalwal for setting aside the same.

Present:

Advocate S.K. Kapoor for petitioner

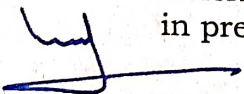
Advocate Keshav Chander Gupta for respondent 1.

ORDER

The subject of dispute in the present litigation is the landed estate owned by one Smt. Padma Devi in estate Bhalwal Tehsil Jammu which she is said to have inherited from her husband Chuni Lal. The petitioner herein, who is the brother of Chuni Lal approached the Naib Tehsildar concerned for attestation of inheritance mutation, with regard to the above said land, by claiming that Padma Devi has died issueless and he is the sole heir entitled to inherit the landed property. Naib Tehsildar concerned attested mutation No. 111 in his favour on 15.07.2013 which the respondent herein challenged in an appeal before Deputy Commissioner Jammu by laying claim to the said landed estate in the capacity of being adopted daughter of the deceased estateholder, Padma Devi and also relying upon the "Will" executed in her favour by Padma Devi. Deputy Commissioner vide order dated 04.10.2019 set aside the mutation and remanded the matter to Tehsildar concerned for attestation of a fresh mutation after a "denovo enquiry". It is this order of Deputy Commissioner which has been put to challenge in the present revision petition.

2. Both the sides caused presence before this court through their respective counsels who argued the case in detail. Records from Deputy Commissioner Jammu have also been summoned and placed on file.

4. Ld. Counsel for the petitioner pleads that after the death of Padma Devi, her inheritance was mutated in favour of the petitioner by Naib Tehsildar concerned in presence of zamindars of the village including chowkidar concerned. The said





order as pleaded by the Ld. counsel was wrongly challenged in appeal by respondent 1 before Deputy Commissioner, when under cabinet order No. 466-C of 1956 dated 20.03.1956, the order of Naib Tehsildar (Asstt. Collector II Class) is appellable before Asstt. Comm Revenue. The appeal before Deputy Commissioner was time barred which aspect was also not well addressed by the court below. With regard to the "will" executed by Padma Devi in favour of the respondent 1, it is said that respondent applied for the probate of will before Principal District Judge Jammu but the said petition for probate was dismissed vide order dated 29.07.2019. It is also argued that respondent admitted before the court below that she is not the real daughter of deceased Padma Devi or her husband who died issueless but was brought up by Padma Devi who later executed a will in her favour. The will is also said to have been challenged by the petitioner before civil court and in view of the pendency of the matter before the civil court, the Revenue officials have no competence to adjudicate upon the matter. The mutation attested in favour of the petitioner is said to be within the parameters of law and the collector have no jurisdiction to set aside the same. It is also said that a Revenue officer is competent to attest the mutation concerning adoption only on the basis of a registered adoption deed as contained in para-64 of Standing Order 23-A and there is no such deed in favour of respondent.

5. Ld. Counsel for respondent 1 on the other hand states that court below has simply remanded the matter to Tehsildar for a denovo enquiry and the revision petition as such is not maintainable as the order impugned is not a final order. Respondent 1 is said to be the adopted daughter of Padma Devi and after the death of Chuni Lal (husband of Padma Devi), the court of Accidental Tribunal Jammu in its order dated 15.01.1986 has held Padma Devi (widow) and Shaloo Devi (daughter) entitled for accidental claim of deceased Chuni Lal, and as such respondent (Shaloo Devi) is also entitled to inherit the landed property left by Chuni Lal. The competence of Naib Tehsildar to attest a disputed mutation has also been questioned and respondent 1 having been condemned unheard by the Naib Tehsildar also makes the mutation *void abinitio*. It is also said that Dy. Commissioner Jammu has passed the impugned order after detailed enquiry and as such need not to be interfered with.

6. Heard

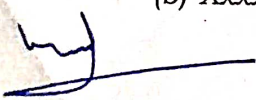
7. The contention of Ld. Counsel for the petitioner that order of Naib Tehsildar (Asstt. Collector 2<sup>nd</sup> Class) is not appellable before Deputy Commissioner is not tenable as Sec-11 of Land Revenue Act, (relevant portion reproduced herein as under) makes it amply clear that Deputy Commissioner has the jurisdiction to hear appeal against the order of Naib Tehsildar.

### **Section 11 - Appeals.**

*Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue officer as follows:-*

(a) To the Collector when the order is made by an Assistant Collector of either class:

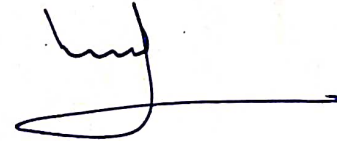
(b) XXXXXXXXXXXXX



8. Similarly para 29 (i) of Standing Order 23-A concerning Record of mutations debars an Assistant Collector of 2<sup>nd</sup> Class (Naib Tehsildar) from attesting a disputed mutation. The very nature of the case in hand, having been agitated before different forums, makes the matter a disputed one and Naib Tehsildar as such should have refrained from attesting the mutation. The mutating officer (Naib Tehsildar) has not properly enquired into the matter and thus rightly a denovo enquiry has been ordered by the court below.
9. The issue raised by the Ld. Counsel for the petitioner that appeal preferred by Respondent 1 before Deputy Commissioner Jammu, was time barred also is not relevant to the present dispute as the appellatant (Respondent herein) was not associated with the mutation proceedings and otherwise also when technical justice and substantive justice are pitted against each other, the latter has to prevail.
10. Thus, for the reasons, mentioned herein above, the revision petition being devoid of any merit is dismissed and the order impugned is upheld.
11. Interim Orders, if any, issued are vacated. File to be consigned to records after its due completion.

**Announced**

16-03-2022



**Shaleen Kabra (IAS)**  
**Financial Commissioner Revenue**  
**J&K**