

Before the Court of Financial Commissioner (Rev)/Commissioner Agrarian Reforms. J&K.

File No.
600/FC-.AP

Date of Institution.
28-06-2017

Date of Decision
23-03-2022

In the case of:- Munshi (deceased) S/o Sant Ram R/o Village Dhamma Tehsil Majalta
District Udhampur, through LRs.

- i. Chain Singh (Son)
- ii. Darshan Devi &
- iii. Gudi Devi (both married daughters)

(Petitioners)

Versus

1. Rattan
2. Sagar
3. Purshotam sons of late Dharam Singh
4. Neelam
5. Anita daughters of late Dharam Singh.
6. Smt. Satya w/o late Dharam Singh, (all residents of village Dhamma, Tehsil Ram Nagar (old) now Majalta, District Udhampur.

(Respondents).


In the matter of:-

Reference dated 26-04-2017 passed by Addl. Commissioner (with Powers of Divisional Commr.) Jammu in revision petition against the order of District Collector (Dy. commissioner) Udhampur dated. 26-05-2012.

- Present:**
1. Adv. Dara Singh for Petitioners.
 2. Adv. Keshav Chander Gupta for Respondents.

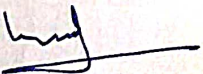
ORDER

The present dispute concerns the land owned by deceased estateholder Sant Ram (Predecessor-in interest of parties herin) in estate Dhamma Tehsil Majalta. After the death of said Sant Ram, his landed estate came to be devolved on Munshi (father of Petitioners) through mutation no. 162 dtd. 23-10-1997 BK. Thereafter, another mutation with regard to the same landed property, bearing No. 377 dtd. 8-6-1986, shown as "Tarteebi mutation." came to be attested in the name of both Munshi and Dharam Singh sons of Sant Ram. Munshi questioned this mutation



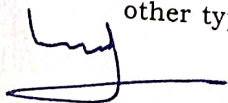
377 by way of an Appeal before Assistant commissioner (Rev) Udhampur who vide order Dated 27-7-2009 dismissed the appeal. Appeal against this order of ACR was preferred by Munshi before Deputy Commissioner Udhampur who too vide order dated 26-05-2012 rejected his Appeal. Both these orders of Assistant commissioner and Dy. Commissioner, udhampur came to be challenged before Div. Commisioner Jammu by way of a revision petition, who has transferred it to Addl. Commissioner Jammu and the latter vide refrence in hand has recommended to set aside the orders of Asstt. Commissioner, Dy. Commissioner Udhampur and also order passed on mutation no. 377, with a further recommendation to remand the matter to Tehsildar concerned for a denovo enquiry and orders afresh.

2. After receipt of the reference, parties to the dispute caused presence before this court through their respective counsels and the matter was argued in detail.
3. Ld. Counsel for the petitioners at the outset questioned the competence of Naib Tehsildar to attest a disputed mutation by referring to Para 29 of standing order 23-A (Record of mutations). It is also stated that "*Tarteebi mutation*" is not a recognized class of mutations and as such non-est in the eyes of law. The said mutation is also said to have been passed in ex-parte and the presence of Munshi shown at the time of attestation of mutation is also denied. It was also argued by the Ld. Counsel that in the existence of earlier mutation 162, no. 2nd mutation could be attested. The legitimacy of Dharam Singh having been shown as son of Sant Ram has also been questioned.
4. Ld. Counsel for the respondents, on the other hand argued that mutation 377 was attested on behest of Munshi, who himself approached the revenue authorities for inclusion of the name of his brother Dharam Singh in the revenue records, who earlier had been left out in mutation 162. It is also said that Munshi under law is estopped from agitating mutation no.377, which was attested in his presence as reflected in the said mutation. The question whether Dharam Singh is son of Sant Ram or not cannot be agitated before the revenue authorities and otherwise also this question has never been raised by Munshi or his successors before any forum. Attestation of mutation no.377 is justified by pleading that it is not a new mutation but only a left out heir has been brought on record and the class of mutation reflected as "*Tarteebi mutation*" is recognized under Standing order 23-A. The rejection of the reference of court below has also been prayed for by pointing out that the conclusion drawn by the said court has been wrongly arrived at.
5. Heard.
6. During the hearing of the case, it was requested by both the Ld. Counsels for the parties to summon the "Parat Sarkar" of mutation no. 377, which accordingly was summoned and placed on record. A perusal of the said "Parat" reveals that the "Waqia" on the mutation has been entered by the patwari concerned on the request



of Munshi, who clearly has stated that "Dharam Singh" is his real brother and has been left out in the earlier mutation. The mutating officer (Naib Tehsildar) too in his orders has categorically held that Dharam Singh was born after the death of Sant Ram but on spot is in Possession of his share and this all has happened in the presence of Munshi. Thus, as rightly pointed out by Ld. Counsel for the respondents, Munshi or his successors under law are estopped to put a challenge to the mutation.

7. It is also seen from the records that Dharam Singh has died on 25-08-2003 and Munshi during the lifetime of said Dharam Singh never questioned mutation no. 377 despite having knowledge of the same. The challenge to the said mutation was put for the first time in 2007, which clearly shows that it is an afterthought and the orders passed on mutation being consented have rightly been upheld by both ACR and Dy. Commissioner.
8. The other contention of the ld. Counsel for the petitioners that "Tarteebi Mutation" is not a recognized class of mutations and in the existence of earlier mutation no. 162, the subsequent mutation 377 should not have been attested, also is not a relevant argument as it is not the nomenclature of the mutation that matters but the contents reflected in the mutation are of significance. It is true that ideally a challenge should have been put to mutation no. 162 before attestation of the fresh mutation 377, but the beneficiary of mutation 162 (Munshi) himself has approached the revenue authorities for including the name of his brother (Dharam Singh) in the mutation, and thus this argument of Ld. Counsel for the petitioners also loses relevance.
9. The claim that Dharam Singh, is not the real son of Sant Ram, is a question which exclusively falls within the domain of civil court and such an issue cannot be adjudicated upon by the revenue authorities. The aggrieved party, if so choses, can seek remedy by approaching the appropriate forum in this behalf.
10. The court below through reference in hand has recommended to set aside mutation no. 377, order of Asstt. Commissioner (Rev) and also the order of Dy. Commr. Udhampur, by holding that:-
 - i. The mutation has been attested by an incompetent authority,
 - ii. The Assistant Commissioner is not competent to entertain the Appeal in the matter directly without the case being transferred to him by the District Collector and
 - iii. The 2nd Appeal will not lie before the Dy. Commissioner.It will be relevant to mention here that Para 29 of standing order 23-A clearly mentions that in practice, nearly the whole of the attestation of mutation work is disposed of by Assistant Collector of first and second class and the latter is only debarred from attesting a disputed mutation and some other types of mutations detailed therein. The mutation under discussion is




a simple inheritance mutation, attestation of which has been consented to by the parties to the dispute and as such in no way is a disputed mutation. The observation of the court below that Asstt. Commissioner can hear the Appeals only which stand transferred to him by the Collector is also not a valid observation as the court below has lost sight of cabinet order 466 of 1956 dated 20th March, 1956 which clearly provides that Revenue Officer of the rank of Asstt. Commissioner, is empowered to hear an appeal against the order of an Asstt. Collector 2nd class (Naib Tehsildar). Similarly, as provided under Section 11 of the Land Revenue Act, an appeal against the order passed by an Assistant Collector of either class shall lie to the Collector. In the instant case, the order of Assistant Commissioner (Asstt. Collector 1st class) has been appealed before the Dy. Commissioner (Collector), which in all respects, is within the parameters of Law.

11. Thus, viewed in the context, the reference of the court below, not being a reasoned one, is rejected and the mutation no.377 is upheld.
12. Interim orders, if any, issued are vacated. File to be consigned to records after due completion.

Announced

23.3.2022.


23/3/22
Shaleen Kabra (IAS)
Financial Commissioner, Revenue
J&K