

Before Shaleen Kabra, IAS, Financial Commissioner (Revenue) / Commissioner
Agrarian Reforms, J&K, Jammu

File No.
718/FC-AP

Date of Institution
16.11.2018

Date of Decision
31.03.2022

In the case of:

1. Charan Dass, S/o Sh. Teju R/o Village Rehambal Tehsil Udhampur Legal representative of both Late Smt. Ranjan Devi Wd/o Munshi Ram D/o Teju R/o Village Garnai, Udhampur and Late Achchri Devi Wd/o Sham Lal D/o Teju R/o Village Magiote Tehsil Udhampur.

.....**Petitioner.**

Versus

1. Thakur Bishan Dass Tana S/o Bhagat Ram Tana, R/o Village Rehmbal Tehsil Udhampur, A/P Shopkeeper Near Narwal Chowk , Jammu.


(Contesting Respondent)

2. Uttam Singh
3. Ajeet Singh
4. Lal Singh
5. Shubash Singh All legal heirs / representatives of Late Bishan Dass R/o Rehmbal Tehsil Udhampur.
6. Madan Singh
7. Inder Singh (Both sons of Dharma)
8. Ramesh Singh
9. Ravi singh
10. Kuldeep Singh
11. Mst. Basanti Devi W/o Nahar Singh, R/o Village Rehambal Tehsil Udhampur.
12. Bansi Lal
13. Dalip Singh
14. Arjun Singh
15. Mst. Reshu (Daughter)
16. Mst. Bimla Devi, Wd/o Sh. Mangat Ram Village Garnie
17. Mst. Benti Devi W/o Nand Lal (D/o Kirpu) R/o Village Ritti.
18. Mst. Paro Devi Wd/o Nanak Chand D/o Kirpu R/o Ritti.
19. Badri Nath, S/o Mst. Sweetan D/o Kirpu R/o Village Bhagtha A/P Jhajjar Kotli Tehsil Jammu.
20. Mst. Bano Through her son Rajinder Singh R/o Jhajjar Kotli Tehsil Jammu.
21. Mst. Bhati W/o Moti Ram D/o Kirpu R/o Village Bhagtha Tehsil Udhampur, A/P Tehsil Reasi.

(....Proforma Respondents)

In the matter of:-

Revision Petition against the order of the Deputy Commissioner (Collector) Udhampur dated 30.06.2017 whereby the appeal



filed by the petitioner against the mutation no. 703 (attested in favour of Respondent No. 1) has been dismissed.

Present:

- 1. Advocate Abhishek Wazir for petitioner.**
- 2. Advocate Iqbal Hussain for Respondent No. 01**

ORDER

Briefly stated facts of the case are that one Sh. Mal along with his brothers namely Kirpu, Dhammu, Teju, Nath and Mansa Ram owned and possessed land under Khewat No. 7 and 14 in estate Rehmbal, Tehsil Udhampur. The said Mal had married one Mst. Gulabi and after the death of Mal which is said to have taken place somewhere in 1926, his landed share came to be devolved on Mst. Gulabi through Mutation No. 135 dated 27 Poh 1982 BK. After the death of Mst. Gulabi, mutation No. 703 dated 23.12.1977, which is the subject of challenge came to be attested in the name of Respondent No. 1 (her daughter's son). The heirs of brothers of Mal claim sole right over the said land by pleading that Mal and Mst. Gulabi died issueless and accordingly an appeal came to be preferred against the Mutation 703 by the daughters of one of the brothers of Mal (later after their death represented by the brother Charan Dass, Petitioner herein) before Deputy Commissioner, Udhampur who vide order dated 30.06.2017 dismissed their appeal. It is this order of Deputy Commissioner, Udhampur alongwith Mutation No. 703 that have been put to challenge by way of the present Revision Petition.

2. The parties after service caused presence before this court and the matter was argued in detail.
3. Ld. Counsel for the Petitioner besides repeating the grounds taken in the memo of Revision Petition argued that Mal and Mst. Gulabi had no issue and so as provided under Section 13 of the Hindu Succession Act, 1956, it is the heirs of Mal, from whom Mst. Gulabi had inherited, who are entitled to the inheritance. A reference of Section 21 of the said Act is also given that said Mst. Gulabi having remarried Kirpu (one of the brothers of Mal) as such cannot succeed. It is also said that Mst. Bhagwati who is shown as daughter of Mal and Mst Gulabi was not born to the latter out of the said wedlock and Respondent 1, who is son of said Mst. Bhagwati does not have any

right over the land in question. The legality of the order of Deputy Commissioner, Udhampur has been questioned by pleading that the documents filed by the petitioners were not considered by the said court and the issue of limitation has been casually dealt with as the plea of petitioner that he was not associated with the mutation proceedings has not been taken care of. It is also said that at the time of attestation of mutation in favour of Mst. Gulabi, there is no mention of daughter in the said mutation, who otherwise also would have inherited then. The Court below is said to have decided the matter against the settled provisions of law that every effort should be made to decide the dispute between the parties on merits instead of knocking out the rightful claimants on the ground of delay.

4. Ld. Counsel for the Respondent No. 1 on the other hand argued that the order of Deputy Commissioner is an explanatory order based on records and every document filed by the parties has been taken into consideration. It is also that the petitioner who had the timely knowledge of the mutation failed to satisfy the court below for belated filing of the appeal as no cogent reason was put forth for condonation of such a huge delay. The casual approach of the petitioner in filing the petition on behalf of a dead petitioner and against a dead person has also been highlighted.
5. The issue of bringing on record the legal heirs of erstwhile proforma Respondent (Bishan Das and also deletion of petitioner (Achchri Devi) from the list of petitioners, has been resolved by this Court as consented to by both the sides and accordingly the petitioner counsel filed an amended memo which has been placed on record.
6. It is seen from the records that prior to attestation of mutation No. 703, an application has been moved before the Tehsildar by one of the brothers of Mal for expunging the name of Mst. Gulabi from the records by stating that after the death of her husband, she has left the village and land recorded in her name continues to be in his possession alongwith other brother Kirpu. The said "Waqia" has been entered on mutation No. 300 dated 4th Magh 1997 BK. Mst Gulabi's statement has been recorded through interrogatories sent to her. The mutating officer finally on 20.09.99 BK has rejected the mutation and the name of Mst. Gulabi continued in the records. It is relevant to mention here that said Gulabi on being questioned by the mutating officer has clearly stated that she had a daughter aged 16 years from Mal and a son from Kirpu (brother of Mal). No challenge has been put to this mutation till date.
7. Again, as is evident from records, Mutation No. 703, has been attested in presence of the heirs of Kirpu, Dhammu and Teju on 23.12.1977, and the appeal against the said


mutation has been preferred before Deputy Commissioner in year 2007 i.e. almost after 30 years, when the period prescribed for such an appeal is 60 days. The appellants before the Deputy Commissioner are the daughters of Teju, and Charan Das son of said Teju himself has been present at the time of attestation of mutation. Since the parties had been claiming and counter claiming the land in dispute right from the attestation of mutation 135 in favour of Mst. Gulabi in 1926 and the petitioner subsequently having been associated with mutation 703 in 1977, cannot plead ignorance of the impugned mutation and thus challenge to the said mutation at such a belated stage is not justified as rightly held by the court below. Ideally the Court below should have confined its findings to the issue of limitation only but the said court with abundant caution has proceeded to the merits of the case by holding it as a case of significant nature.

8. The argument of Ld. Counsel for the petitioner that Mal and Gulabi had no issue and the name of Mst. Bhagwati as their daughter has wrongly been shown is required to be substantiated by documentary evidence, which the petitioner has failed to place on record and before the court below also, petitioner has not been able to place any such document on record as is evident from the order of Deputy Commissioner which does not make any mention of any such documents. Even the petitioner has not been able to satisfy the court about the date of death of Mal and the date of birth of Mst. Bhagwati. Instead, uncertified photostat copies of mutation 135, mutation 300 and Birth Register Certificates have been placed on record which have little evidentiary value, if any. Moreover while going through mutation 703, Prakash, Son of Kirpu from Gulabi has stated before the mutating officer that he was born after the death of Mal but Mst. Bhagwati is the daughter of Gulabi born from the wedlock with Mal and Bishan Dass son of Mst. Bhagwati is the lone heir entitled to the inheritance in dispute. Mst. Gulabi herself also has admitted before the mutating officer that she had a son namely Prakash from Kirpu but the daughter namely Mst. Bhagwati is from Mal. This issue has been thoroughly enquired into by the mutating officer while attesting mutation 703 and the Lamberdar Amar Nath who was present at the time of attestation of mutation has categorically stated that Mst. Bhagwati is the daughter of Mal and Gulabi, and the said daughter too has expired and is survived by the lone son (Respondent No. 1 herein) who alone is entitled to the property of Mst. Gulabi. The Deputy Commissioner too has examined all these matters and held that Mst. Bhagwati deceased (mother of contesting respondent) was the daughter of Mal and

the respondent therefore is fully entitled to inherit the share of Gulabi, his maternal grandmother.

9. Thus, for the above mentioned reasons, the Revision Petition being devoid of any merit is dismissed. In case the petitioner intends to raise the question of legal heir, based upon documentary or other evidence, the right forum is the civil court of competent jurisdiction.
10. Interim orders, if any, issued are vacated and file consigned to records after due completion.

Announced



Shaleen Kabra (IAS)
Financial Commissioner, Revenue
J&K, Jammu