

**BEFORE DR. M.S. SOOD, IAS; JOINT FINANCIAL COMMISSIONER
JAMMU AND KASHMIR AT JAMMU.**

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File No: 257/JFC/AP

Date of Institution: 13.08.2001

Date of Decision: 24.06.2014

In the case of: Dharmu alias Dharm Chand S/O Hari Sein alias
Sariaru R/O Doggan Tehsil Bani District Kathua.
(Petitioner)

V E R S U S

1. Lekh Raj S/O Chet Ram Thakar R/O Doggan P.O.
Doggan Tehsil Bani District Kathua.
2. Tehsildar, Bani.

(Respondents)

In the matter of: Revision against the order dated 15.07.2009
passed by Tehsildar Bani on Mutation No. 1039
with regard to inheritance of one Vidhya Devi.

Appearing Counsels: 1) Mr. C.M. Gupta, for Petitioner.
2) Mr. Dharminder Singh, Mr. S.C. Sharma and
Mr. K.S. Samyal for Pvt. Respondent.

O R D E R

The petitioner herein has assailed the order passed on Mutation No. 1039 on 15.07.2009 by Tehsildar, Bani District Kathua in respect of the inheritance of one Vidhya Devi whose landed estate is situated at village Doggan Tehsil Bani. By virtue of the impugned mutation, Tehsildar Bani has mutated and vested the land in question in respondent No. 1 on the basis of a will deed duly registered on 20.05.2003 allegedly executed by deceased landlady Vidhya Devi in favour of the respondent No.1.

2) Aggrieved, the petitioner has assailed the impugned mutation on grounds that the impugned order is in contrary to grounds realities; that the petitioner who happens to be the husband of deceased landlady is in possession of the land in question; that the deceased Vidhya Devi has executed a subsequent will deed on 16.04.2007 by virtue of which the prior will deed dated 20.05.2003 has been cancelled/revoked and the land in question has been vested in favour

of the petitioner but the Tehsildar while attesting the mutation failed to summon the petitioner and hear him and no consideration was given to the will deed executed in favour of the petitioner by the actual landlady.

3) After presentation, the respondents were summoned. Respondent No.1 appeared before this court and was represented by his counsel who filed written arguments in the case followed by the written reply/counter of the petitioner counsel.

4) I have perused the material placed on the record as also the copy of the impugned mutation. I have also gone through the written submissions filed by the respective counsels. The perusal of the impugned orders reveal that prior to passing of impugned order, Tehsildar Bani has issued an order dated 29.07.2008 wherein in view of stay order passed by Judicial Magistrate (Munsiff), Traffic cases, Kathua the proceedings on the mutation has^{been} kept pending by the said Tehsildar. The impugned order dated 15.07.2009 itself makes a mention that the Tehsildar had deputed the Chowkidar of the village to summon the petitioner. Such facts indicate that the petitioner had adequate information regarding the proceedings in the matter. Moreover, Tehsildar appears to have made efforts to summon the petitioner in the matter. Therefore, there is no incidence of passing of order at the back of the petitioner without calling him.

5) The petitioner herein bases his claim on a will deed allegedly executed in his favour by the deceased Vidhya Devi, subsequent to execution of prior will deed executed in favour of the respondent No.1 by her. The petitioner states that since the later one has been executed in his favour, same shall have an overriding effect over the prior deed and it will prevail over the previous. However, the prior will deed has been duly registered by Sub-registrar and the presumption under law goes that the said deed is genuine and factual. Such presumption, however, does not connote that the later deed executed in petitioners favour is unauthentic. But there is a legal rider attached to it. One who makes any assertion and wishes that the court to act upon such assertion/fact must substantiate the said fact by dint of evidence to be adduced by him. Since, the duty of thrashing the evidence and verifying the authenticity of the fact of execution of will deed is cast on the civil court, therefore, it is advisable for the petitioner to move civil court in order to determine the veracity of will deed produced by him so that appropriate orders are passed in matter. Although some exercise has made in that regard which has not, however, reached its culmination.

6) Therefore, the petition is accordingly disposed of with the directions to the petitioners to approach competent civil court for establishing the veracity and genuineness of the will deed dated 20.05.2003 so that the appropriate orders are passed on the mutation. Interim order, if any, passed in the matter is hereby vacated. File shall go to records after due completion.

Announced:
24.06.2014

Sd/-
(Dr. M.S. Sood) IAS
Joint Financial Commissioner