

Before Dr. M. S. Sood, IAS, Joint Financial Commissioner (AR)  
with the powers of Financial Commissioner (Revenue),  
J&K, Jammu/Srinagar.

File No:  
82 /Jt. FC/AP

Date of Institution  
28.06.2004

Date of Decision:  
18.03.2014

Mohammed Sidiq Dar -s/o Ahmed Dar r/o Sadrakot Payeen, Tehsil Sonawari Distt. Bandipora.

... Petitioner

Vs

1. Abdul Rahim Dar s/o Ramzan Dar 2. Abdul Khaliq Dar s/o Ahmed Dar [Real respondents]  
3. Mohammed Afzal Dar s/o Ahmed Dar r's/o Sadrakote Payeen Tehsil Sonawari Distt. Bandipora.

... Respondents

In the mater of:

Revision petition against the order dated 12.06.2004 passed in appeal by Ld. Addl. Dy. Commissioner, Baramulla in the appeal captioned above against the order on mutation no. 474 regarding effectuation of oral gift in respect of survey no. 12 and 12/1 measuring 2 kanals 6 marlas estate Sudrakote Tehsil Sonawari Distt. Bandipora.

Present: - Mr. Showkat Saleem, Adv. for the petitioner.  
Mr. Shari-ud-din Adv. for respondent no. 1

**ORDER**

This is a revision petition against the order of Addl. Dy Commissioner, Baramulla dated 12.06.2004 passed in appeal titled "Mohammed Sidiq Dar Vs Abdul Rahim Dar and others" wherein he has kept in abeyance the proceedings in the case on the ground that Munsiff, Sumbal has taken cognizance of the matter and stayed the implementation of the mutation order of Tehsildar, Sonawari dated 27.12.1999 passed on mutation no. 474 village Sadrakote, Tehsil Sonawari. The revisionist is aggrieved with both the orders i.e. of addl. Dy. Commissioner, Baramulla/Settlement Officer and Tehsildar, Sonawari. The grounds mentioned in the memo of the revision are:-

1. That the appellate order under revision appears to have been passed on 12.06.2004 on the appeal against orders on mutation no. 474 dated 27.12.21999 [not 21.2.1999] either out of ignorance of law or deliberate

Page 1 of 3

- attempt to lend benefit to the adverse side to grab land in the wake of an illegal/unlawful alienation not otherwise tenable and recognized in law.
2. That an appeal against the order on mutation no. 474 dated 27.12.1999 in respect of some oral gift and that too by respondent no. 2 in favour of respondent no. 1 quite in violation of other allied established law and procedure devised there under thus liable to be quashed.
  3. That vide sub section of Section 26 of Land Revenue act the mutation proceeding being fiscal and administrative in nature does not as invariable implied come to halt in detriment to the preparation of an upto date Revenue Record otherwise also saved vide section 139 of the same Act and has in resultant been made subservient to the civil court order, if permitted under the relevant law.
  4. That hypothetically the appeal before the Id. ADC[Collector] Baramulla was against order on mutation no. 474 passed in the wake of an oral gift and that too in gross violation of law on the subject, preferred way back as 03.01.2004 should in the normal course being nonest in the eyes of law, have been quashed by now but not allowed to subsist through the medium of an illegal appellate order and desecration of enshrined Revenue record particularly during the subsistence of Settlement Operations on attributal of evident malafide otherwise.
  5. The landed property of Ahmed Dar r/o Sedrakote Payeen Kotpan Tehsil Sonawari being joint and unpartitioned among his lawful survivors in the wake of the incidence of doctrine of legal representation appear to have been alienated in consequence of an alleged oral gift in sequence to some surrender made before a Revenue Officer which cumulatively is unrecognized.
  6. Tehsildar order on mutation being exparte quite in violation of mutation rules prescribed in standing order 23-A , the delay not being deliberate was even otherwise condonable.
  7. The action of real respondent no. 2 besides being violative of the prevalent law is otherwise pre-emptively a mischief and smacks of interception of the normal inheritance of the landed property of Ahmed Dar by way of usual devolution of interest among legal heirs at the appropriate stage.
  8. That the appellate order Id. ADC, Baramulla dated 12.06.2004 under revision being gravely inconsistent to the conventional procedure to being Revenue proceedings against orders on mutation to a grinding halt is otherwise against the spirit of subsection 2 of Section 26 of Land Revenue act and nonest in the eyes of law thus liable to be quashed.

The counsel for the parties argued the case at length and counsel for petitioner also filed written submissions. Accordingly, the case was fixed for orders.

In his arguments, the counsel for the revisionist has stated the order under revision passed by addl. Dy. Commissioner/Asstt. Settlement Officer, Baramulla vide his order dated 12.06.2004 and the order passed on mutation No. 474 dated 27.02.1999 by the mutating officer [Tehsildar, Sonawari] be quashed as has been prayed for by him in his revision petition. The counsel for the respondent stated that the father of the respondent has

willfully during his life time gifted away the land in question to his son and he was legally justified to do so being sole owner of this landed property and as such the order of mutation need not any interference.

I have heard both the counsels and also perused the order of addl. Dy Commissioner, Baramulla dated 12.06.2004 and also the order dated 27.02.1999 not 21.02.1999 passed by the mutating officer [Tehsildar, Sonawari] on mutation no. 474 of village Saderkote payeen Tehsil Sonawari. The order dated 12.06.2004 passed by Addl. Dy Commissioner, Baramulla is brief and sketchy. He has not clearly stated why the appeal proceedings should be kept in abeyance. The only reason given by him is some order passed by the Munsiff, Sumbal but there is no evidence that he has seen and read the said order and then decided to keep the proceedings in abeyance in terms of law and rules on the subject. He has given no elaborate reasons. Similarly, on perusal of the Tehsildar's order, it transpires that he has attested a mutation on the basis of oral gift given by Abdul khaliq Dar s/o Ahmed Dar in favour of Ab. Rahim s/o Ramzan Dar who did not have title to the land so mutated and transferred. This means that the giver of the oral gift i.e. Abdul Khaliq Dar did not have the title as per the revenue records which was still recorded in the name of his father Ahmed Dar s/o Wahab Dar. However, it is not correct to say that provisions of Section 26 or Section 139 of the J&K Land Revenue Act have been violated by the addl. Dy Commissioner, Baramulla and Tehsildar, Sonawari as these Sections do not apply in the instant case. Section 26 is part of Chapter "Procedure for making Records" which is not the subject matter here. Although Section 139 deals with "Exclusion of Jurisdiction of Civil Courts" the instant matter under consideration does not seem to fall under any of the matters listed under section 139 for exclusion of jurisdiction of the civil courts. Nonetheless the orders of both Addl. Commissioner, Baramulla and Tehsildar, Sonawari deserve to be set aside on the grounds of non-application of mind and violation of the procedure for attestation of mutation as prescribed under Standing order 23-A respectively. Accordingly, both orders are set aside and Tehsildar Sonawari is directed to conduct a denovo enquiry in the presence of both the parties and after hearing them pass appropriate orders within a period of two months positively.

The interim order if any passed in the case is withdrawn. The file shall go to records after due completion. A copy of this order shall go to Tehsildar, Sonawari for further necessary action as directed.

*sd/—*  
**Dr. M. S. Sood, IAS**  
**Jt. Financial Commissioner (AR)**

*Page 3 of 3*