

Before the court of Dr. M. S. Sood, IAS Jt. Financial Commissioner [AR]
With the powers of Financial Commissioner [Revenue],
J&K, Jammu/Srinagar

File No.

08/812 /HP

Date of Institution:

02.08.2005

Date of Decision:

18.03.2014

1. Mohammed Abdullah 2. Ghulam Mohamed sons of Mehda Bhat r's/o Baghati Barzulla
Tehsil Budgam.

... Petitioners

Vs

1. Mst. Zaina w/o Ab Gaffar Malik r/o Baghati Barzulla 2. Mst Raja w/o Ghulam Rasool
Malla r's/o Lanoora Tehsil Budgam 3. Mst. Amina w/o Ab. Hamid Sofi r/o Rawat Pora
Budgam 4. Mst. Sara w/o Mohammed Shafi r/o Humhama all daughters of Late Mehda
Bhat.

... Respondents

In the matter of:

Revision petition against the order of Addl. Dy. Commissioner, Budgam(Collector)
Budgam dated 24.05.2005 passed in appeal file No. 94/ADCB titled Mst. Zaina Vs
Mohammed Abdullah regarding inheritance of Late Mehda Bhat.

ORDER

This revision petition has been filed by petitioners against the order of Addl. Dy.
Commissioner, Budgam dated 24.05.2005 whereby Addl. Dy. Commissioner, has allowed
the appeal of respondents and set aside mutation no. 4181 dated 25.09.1986 regarding the
landed estate of late Mehda Bhat.

In the revision petition before this court, the respondents were summoned who
appeared before the court. Both the parties were represented by their respective counsels.
Both counsels have filed their written arguments.

The counsel for the Petitioner in his preliminary arguments has stated that:

1. Mutation no. 4181 has been rightly attested as per law of custom that was in vogue at
the time of attestation of mutation and which governed the family in matters of
inheritance.
2. The Respondents were satisfied with the order of mutation so much so that
respondents in furtherance of a compromise with the petitioners executed two deeds
in favour of petitioners.

- a] Deed of surrender dated 02.04.1996.
- b] Deed of Agreement dated 01.08.1997[copies of which have been placed on record].
- 3. After the execution of agreements with respondents, petitioners sold the whole land in question and on the basis of said sale, mutations in favour of vendees were attested. Details of said mutations are given in Jamabandi. [Extract of same have also been filed].
- 4. Respondents as an after thought filed frivolous and time barred appeal against the said mutation no. 4181 before Addl. Dy. Commissioner, Budgam who has passed impugned order which is illegal and against facts.

Aggrieved of the said order the Petitioners have challenged the impugned order on the following grounds:

- i] Petitioners have not been heard by Addl. Dy Commissioner, Budgam and have condemned unheard.
- ii] Respondents have executed relinquishment deed dated 02.04.1996 and agreement dated 01.08.1997 in favour of petitioners. But Addl. Dy Commissioner, Budgam has not considered these documents.
- iii] The whole land in question has been sold by petitioners long before the respective vendees have taken over possession of the same. Number of mutations stand attested in the name of such vendees. But Addl. Dy Commissioner, Budgam has not looked into this aspect.
- iv] Impugned mutation has already merged in the subsequent mutations so till these mutations were intact fresh mutation can be attested. But Addl. Dy Commissioner has not looked into revenue records.
- v. A mutation as per Standing order 23 -A is to be attested on two basic principles:
 - a] Possession &
 - b] Right

The petitioner had both possession as well as right.

- vi] The respondent have neither possession nor right.
- vii] Appeals before Addl. Dy Commissioner were grossly time barred. He did not decide the condonation matter as per mandatory procedure laid down under order 41 Rule 32 of C.P.C.
- viii] Addl. Dy Commissioner's order is vague and non speaking thus violative of order 41 Rule 31 of C.P.C.

In reply, the respondents in their arguments have stated that:

- i. The action of Naib Tehsildar in attesting such a mutation is without jurisdiction and is nonest in the eyes of law.

- ii. Mutation has been attested at the back of respondents.
- iii. There is no relevance of custom after present coming into force of Muslim Personal Law.
- iv. Revision can not lie against order of Addl. Dy Commissioner, Budgam as there is no question of jurisdiction involved.

I have considered the arguments of the parties and gone through the records. Although there is a relinquishment deeds executed by respondents on 02.04.1996 & 01.08.1997 respectively. However, such relinquishment deeds have been executed subsequent to passing of impugned mutation no. 4161 in favour of the petitioner which puts a question mark on the veracity of these relinquishment deeds. Moreover, these relinquishment deeds shall not be presumed to have any effect on the nature of the vesting of inheritance left by the father of the parties. There is nothing on record which could show that the parties were governed by custom in the matters of inheritance prior to passing of Shariat Act, 2007. Although Addl. Dy. Commissioner has passed a brief and sketchy order but has rightly arrived at conclusion of setting aside the impugned mutation. The impugned mutation seems to have been a one sided affair wherein the respondents who are the rightful claimants of the inheritance left behind by their father have not been brought in picture. Over and above, the impugned mutation has been passed against the provisions of Shariat although the parties are Muslim and Shariat law is mandatory to be applied between the parties in all matters of life including inheritance. Limitation has no role to play where an order which is put to challenge is without jurisdiction and has been passed in ex-parte.

In view of the above observations the order of Id. Addl. Dy. Commissioner, Budgam is upheld and the impugned order passed on mutation no. 4181 dated 25.09.1996 by Naib Tehsildar{S}, Budgam is set aside. This case is remanded back to the Tehsildar, Budgam who shall pass appropriate orders strictly in accordance with Shariat Law after hearing all the parties.

Interim order, if any, passed in the matter is vacated. File be consigned to records after due completion.

sd/-
(Dr. M. S. Sood) IAS
Jt. Financial Commissioner
J&U