

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

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File No:10/Jt.FC/AP

Date of Institution:27.06.2006

Date of Decision:15.05.2014

In the case of: Mst. Azizi W/O Mohd. Bhat (2) Mst. Fata W/O Gh. Mohd. Rather both residents of Natipora, Srinagar (3) Mst. Mukhti W/O Assad Bhat R/O Shankerpora, Chadoora all daughters of Rahim Dar.

(Petitioners)

V E R S U S

(1) Ali Muhammad (2) Muhammad Yousuf (3) Farooq Ahmad all sons of Mst. Zeeiba residents of Natipora.

(Real)

(4) Mohd. Akber (5) Mst. Jani legal heirs Sabir (6) Khazir (7) Assad sons of Aziz all residents of Natipora Tehsildar Chadoora.

(8) Mohammad Dar (9) Akber Dar sons of Ismal Dar (10) Bashir Ahmad Dar (11) Mushtaq Ahmad Dar sons of Rehman Dar (12) Khazir Dar S/O Aziz (13) Ghulam Mohammad Dar (14) Nazir Ahmad Dar sons and (15) Mst. Mali S/O Assad Dar R's/O Natipora, Srinagar.

(Respondents)

In the matter of: Revision against the order dated 24.02.1977 passed by the Tehsildar, Chadoora on Mutation No. 2113 situated in estate Natipora.

Appearing Counsels: 1) Mr. H.R. Salati, for Petitioners.
2) Mr. G.R. Dar, for Respondents.

O R D E R

Vide Mutation No. 2113 dated 24.02.1977, Tehsildar Chadoora has mutated the property belonging to deceased Rahim, the actual landholder in favour of descendents of Aziz, descendents of late Sabir [Aziz and Sabir are the brothers of deceased] and sons of Mst. Zeiba (one of the daughters of deceased) in the ratio of 1/3rd each. The petitioners who claim to be the real daughters of the deceased Rahim have been excluded from the inheritance of their father. Petitioners are aggrieved of the order and have assailed the same on the grounds:-

i) That the impugned mutation has been passed without summoning and hearing the petitioner. Only Part-i-Patwar of impugned order is available and Part-i-Sarker is untraceable which manifests that mutation proceedings are fraudulent and have been done in camera;

ii) That deceased Rahim was survived by four daughters as shown in pedigree table and the family was governed by Shariat in the matters of inheritance. However, the impugned order has been passed in abrogation of law whatsoever and the property was devolved upon collaterals and legal descendants of one of the daughters only;

2. After presentation, the respondents were summoned who caused their presence through their counsels. Ld. counsels for the parties filed written arguments and the matter was fixed for orders.

3. I have gone through the material placed on record and Part-i-Patwar of impugned mutation. I have also perused the written arguments filed by the counsels for the parties. The petitioners are the surviving daughters of deceased Rahim and at the time of attestation of impugned mutation, their presence was necessary. The copy of impugned mutation placed on file is merely a Part-i-Patwar counterfoil which does not make any mention of calling petitioners. As such, benefit of doubt goes in their favour which entitles them to assail the order at any point of time. Moreover, the impugned mutation has been attested in favour of collaterals and legal heirs of only one of the daughters of deceased Rahim. Such disposition is not tenable neither under Custom nor under Shariat. Under custom collaterals were not eligible to any share while as under Shariat 2/3rd of the property was to be vested in daughters and 1/3rd amongst collaterals. Impugned mutation has been attested under neither of the modes and is thus liable to be set aside.

4. In light of foregoing reasons, the revision petition is accepted and the impugned mutation is set aside. The matter is remanded to Tehsildar (South), Srinagar for denovo enquiry and passing of orders strictly in accordance with J&K Muslim Personal (Shariat) Application Act, 2007. Interim order, if any, passed in the matter is hereby vacated and main case file after due completion consigned to records.

Announced:
15.05.2012

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