

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

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File No: 163/Jt.FC-AP

Date of Institution: 16.07.2012

Date of Decision: 15.05.2014

In the case of: Mst. Hajra D/O Late Lala Khanday R/O Ada Mohallah,
Shalla Bug, Tehsil and District Ganderbal.

(Petitioner)

V E R S U S

- 1) Mst. Shahmali W/O Amir Khanday
 - 2) Mst. Halima W/O Mohammad Maqbool
 - 3) Mst. Khati W/O Abdul Rehman Khanday
- All daughters of Shalla Bug, Tehsil and District Ganderbal.

(Respondents)

In the matter of: Revision petition against the order dated 21.10.1992
passed by the Tehsildar, Ganderbal on Mutation No.
2298 in respect of land situated at Shalla Bug,
Ganderbal.

Appearing Counsels: 1) Mr. Sajad Hyder Salati, for Petitioner.
2) Mr. Syed Yaseen & Associates for Respondents.

O R D E R

The petitioner happens to be the daughter (legal heir) of one deceased Lala Khanday who expired leaving behind landed estate situated at Shalla Bugh, Ganderbal. The property left behind by the deceased has devolved as a joint property in favour of the petitioner and respondents who are the real sisters. By virtue of impugned mutation, the property inherited by the parties was however mutated in favour of respondent No. 1 and 2 only excluding the petitioner and respondent No. 3. The petitioner is aggrieved of the impugned mutation and has assailed the same on the grounds that:-

- a) The impugned mutation has been attested in absence of and at the back of the petitioner as clearly admitted by the Mutating Officer;
- b) The devolution of the property has not taken place under law;

c) The Mutating Officer has attested the mutation placing reliance merely on the statement and material filed by the respondent;

d) The Mutating Officer has passed the order on the basis of some unauthenticated instrument executed allegedly by the deceased landholder Lala Khanday in favour of the respondent 1 and 2.

2. The respondent was summoned after the presentation. Parties were represented by their respective counsels. Counsel for the petitioner filed written arguments in support of his petition while as the counsel for the respondents advanced oral arguments in the matter.

3. I have heard and considered the arguments of the parties. I have gone through the material placed on record as the impugned mutation. The impugned order has been passed in absence of the petitioner although the order itself speaks that the petitioner has been summoned. However, no respectable person of the village has been made witness at the time of attestation. The Mutating Officer has passed the order on the basis of some agreement deed executed by the father of the parties in favour of respondent 1 and 2. However, actual nature of such instrument have not been ascertained. Presuming the instrument as will deed is not tenable in so far as the "will" under Shariat operates to the extent of 1/3rd only and by its operation, legal heir cannot be excluded from inheritance. The instrument is not registered and cannot be treated as "Gift deed" also. Therefore, reliance on the said document while attesting the impugned mutation is grossly erroneous. Moreover, the procedure laid down under Standing Order 23-A has not been followed while attesting the mutation. The Mutating Officer has also relied on custom while passing the impugned order which, however, has not been pleaded and proved at the time of attestation.

4. In such background, the revision is accepted and the impugned mutation No. 2298 dated 21.10.1992 is set aside. The matter is remanded back to Tehsildar, Ganderbal for denovo enquiry and passing of fresh orders strictly under J&K Muslim Personal Law (Shariat) Application Act, 2007. Interim order, if any, passed in the matter is vacated. File shall go to records after due completion.

Announced:
15.05.2014

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