

**THE COURT OF FINANCIAL COMMISSIONER REVENUE
(COMMISSIONER AGRARIAN REFORMS)
JAMMU AND KASHMIR AT JAMMU**

FILE NO.
394/FC-AP

DATE OF INSTITUTION
28.10.2014

DATE OF DECISION
29.07.2015

- 1) AMAR NATH S/O DHAMMA RAM R/O VILLAGE KOTHEY KALYANA, TEHSIL R. S. PURA, DISTRICT JAMMU;
 - 2) JOGINDER PAUL S/O -----DO-----.
- (PETITIONERS)**

VERSUS

- 1) KRISHNA DEVI WD/O MELA RAM R/O VILLAGE BANSULTAN, MIRAN SAHIB, TEHSIL R. S. PURA, DISTRICT JAMMU;
 - 2) NAIB TEHSILDAR, R. S. PURA.
- (RESPONDENTS)**

In the matter of:

Revision against the order dated 24.04.2014 passed by the Commissioner, Survey and Land Records (Ex officio Settlement Commissioner), J&K whereby he has rejected the revision petition and upheld the order dated 19.10.2012 passed by the Settlement Officer Jammu and order dated 24.08.2009 passed by the Tehsildar (S), R. S. Pura on mutation No. 641 of village Kothey Kalyana, Tehsil R. S. Pura. Prayer to set aside all the orders passed by the subordinate courts and that on the above stated mutation.

For Petitioners

--- Advocate G. C. Sharma

J U D G E M E N T

- 1) Briefly stated, the facts of the case are that one Mela Ram S/o Dhamma R/O Kothey Kalyana, R. S. Pura had executed a “will deed” dated 15.10.2008 bequeathing all his property falling in villages Rathana and Kalyana both in Tehsil R. S. Pura favouring the petitioners herein, his real brothers. However, when the said executant died, the Tehsildar (S), R.S.Pura attested the mutation No. 641 dated 24.08.2009 in an ordinary course of law and the inheritance of the *propositus* was devolved upon the respondent No. 1 herein only. In the process of doing so, the “will deed” was not taken into consideration.
- 2) The respondent No. 1 herein challenged the said “will deed” before the Munsiff, R. S. Pura who vide order dated 19.12.2009 stayed its operation. Prior to that, the petitioners herein had also challenged the mutation No. 641 before the Settlement Officer (Collector), Jammu in an appeal who vide order dated 19.10.2012 had dismissed the same primarily on the ground that the disposal of the case is dependent on the outcome of the case in which the “will deed” is under challenge before the civil court.
- 3) Aggrieved, the petitioners herein brought an action before the Settlement Commissioner, Jammu and Kashmir challenging the order passed by the Settlement Officer, Jammu. The claim of the petitioners again met with the same fate and the revision petition was dismissed more or less with the same observations as were made by the Settlement Officer, Jammu. The court below while disposing of the case directed that fresh orders shall be passed by the Tehsildar concerned only after necessary instructions are received from the civil court.
- 4) Dissatisfied, the petitioners have assailed the order passed by the Settlement Commissioner, Jammu and Kashmir in revision before this court on various grounds. Initially respondent No. 1 was summoned to take note of the revision petition but she preferred absence. She was then serviced through registered post but she did not appear again. This court, therefore,

deemed it just and proper to set her *ex parte* on 21.04.2015 and to proceed thereafter to settle the issues on merits.

- 5) This court has gone through the case file as well as the material placed on record and observes that the orders passed by the Settlement Officer, Jammu and that of the court below are quite logical and cogent. Otherwise also the mutation was required to be attested on the basis of the said “will deed” after it had been duly probated by a civil court. Now that the case with regard to the same is sub-judice before the civil court, necessary orders can only be passed after the disposal of the case.
- 6) For the reasons aforesaid and after a careful reflection over the matter, the revision petition is dismissed. The orders passed by the Settlement Officer (Collector), Jammu and the court below are upheld. It is, however, ordered that no alienation of the property covered by the impugned mutation be permitted till the orders of the Civil Court are received. No costs. Interim directions, if any, shall stand vacated. The case file be relegated to records after due completion.

Sd/-

**(Dr. Arun Kumar) IAS
Financial Commissioner Revenue
(Commissioner Agrarian Reforms)
Jammu and Kashmir, Jammu**

Announced today on this the **29th day
of July, 2015** under my hand and Seal
of this Court.