

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

FILE NO.
/FC-AP

DATE OF INSTITUTION
02.03.2015

DATE OF DECISION
26.08.2015

- 1) GIRDHARI LAL S/O NANKU R/O TAJOOR, TEHSIL MAJALTA, DISTRICT UDHAMPUR;
 - 2) ROMESH KUMAR S/O -----DO-----;
 - 3) SHAM LAL S/O -----DO-----;
 - 4) PARSHOTAM KUMAR S/O -----DO-----;
 - 5) SUSHMA DEVI D/O -----DO-----;
 - 6) SHANTI DEVI WD/O -----DO-----.
- (PETITIONERS)**

VERSUS

- 1) SANDOKHU S/O SARBAN R/O PEONI, TEHSIL MAJALTA, DISTRICT UDHAMPUR;
- 2) DEPUTY COMMISSIONER, UDHAMPUR.

(RESPONDENTS)

In the matter of:

Reference dated 25.02.2015 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the judgement/order dated 04.05.2012 passed by the Deputy Commissioner (Collector), Udhampur.

For Petitioners --- Advocate Ashok Gupta
For Respondents --- Advocate O. P. Sharma

J U D G E M E N T

- 1) The summarised facts of the case are that one Sarban (Grandfather of petitioner Nos. 1 to 5 and father of respondent No. 1) was an owner of landed property falling in village Peoni, Tehsil Majalta, District Udhampur. When he died, the Naib-Tehsildar, Majalta attested mutation No. 249 dated 22.07.1965 by virtue of which the succession of the *propositus* was devolved upon his wife, Roopan and both sons namely, Nanku and Sandokhu in equal shares. Later, his wife also died and another inheritance mutation No. 402 dated 21.08.2001 was attested by the Naib-Tehsildar, Majalta devolving her estate upon Nanku and Sandokhu equally.
- 2) Aggrieved, Sandokhu, the respondent No. 1 herein questioned both these mutations in two separate appeals before the Assistant Commissioner Revenue, Udhampur contending that Nanku was not the son of Sarban and therefore, he was not entitled for any share in the property of his father. It was alleged that he was the son of one Mangtoo and stayed in some other village. The said court disposed of the case basically on the ground that the determination of parentage of any person is always the jurisdiction of Civil Courts. The Revenue Courts do not adjudicate in such matters and thus, it dismissed the appeals vide its order dated 31.12.2007 advising the parties to seek remedy before a Civil Court.
- 3) Dissatisfied, the respondent No. 1 challenged the order passed by the Assistant Commissioner Revenue, Udhampur in a further appeal before the Deputy Commissioner (Collector), Udhampur who vide his order dated 04.05.2012 set aside the impugned order as well as both the mutations. It was held by the Collector that the claim of the respondent with regard to the relation of Nanku with Mangtoo has not been satisfactorily countered by the appellate court and remanded the case to the Tehsildar, Majalta for further necessary action.
- 4) The father of petitioner Nos. 1 to 5 then filed a revision petition taking an exception to the order passed by the Deputy Commissioner (Collector), Udhampur before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of the Divisional

Commissioner), Jammu for disposal under law. Pending disposal of the case the said Nanku died and his legal heirs were brought on record. The court below while upholding the observations made by the Assistant Commissioner Revenue, Udhampur also questioned his jurisdiction to try the appeals under the Land Revenue Act, 1996 (Smt.). It said that the Assistant Commissioner Revenue is an Assistant Collector of the 1st Class who is not empowered to hear appeals under Sec. 11 of the said Act unless powers of Collector are conferred upon him by the Government or otherwise he is only authorised in this behalf when the Collector transfers cases to him for adjudication. However, in the circumstances of the case, the court below deemed the order passed by him as has been passed by the Collector and opined that technically no further appeal could lie against such an order before the Deputy Commissioner (Collector). It has accordingly submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smt.) with the recommendation to set aside the order passed by the Deputy Commissioner (Collector), Udhampur and to direct the parties to move a Civil Court to establish the parentage of Nanku.

- 5) This court has meticulously gone through the case file and commends that the court below has quite logically addressed the controversy. Questions regarding the biological relationship of a person are indeed not matters to be dealt with by the Revenue Authorities. It is always the domain of Civil Courts and thus, the court below has rightly returned its findings in this regard. But as far as the jurisdictional powers of the ACRs to try appeals under the Land Revenue Act, 1996 (Smt.) are concerned, the observations do not seem correct. The court below might not have come across the Annexure to the **Cabinet Order No. 466-C of 1956 dated 20.03.1956** whereby the Assistant Collectors of the 1st Class of the rank of Assistant Commissioners have been empowered to hear appeals against the orders of the Assistant Collectors of the 2nd Class. In this case, both these mutations have been attested by the Naib-Tehsildars who enjoys the powers of Assistant Collectors of the 2nd Class under the Land Revenue Act. Therefore, there was no jurisdictional hitch with the order passed by the Assistant Commissioner Revenue, Udhampur. Of course, as per Sec. 11 of the said Act, no second appeal lies against the orders

of the appellate authority if the initial order is confirmed in appeal. In that way, the Deputy Commissioner (Collector), Udhampur had admittedly no authority to entertain the said appeal.

- 6) Having thus analysed the facts and circumstances of the case and for the reasons supra, the reference made by the court below is accepted. The order dated 04.05.2012 passed by the Deputy Commissioner (Collector), Udhampur is set aside. The order dated 31.12.2007 along with the order dated 22.07.1965 passed on mutation No. 249 and order dated 21.08.2001 passed on mutation No. 402 is upheld. The parties are advised to move a Civil Court to get a declaratory decree regarding parentage of Nanku and thereafter the Revenue Authorities shall pass appropriate orders in the matter. 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 **26th day
of August, 2015** under my hand and seal
of this Court.