

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

FILE NO.  
**354/FC-AP**

DATE OF INSTITUTION  
**30.01.2015**

DATE OF DECISION  
**28.05.2015**

- 1) KRISHNA DEVI WD/O GIRDHARI LAL R/O VILLAGE AMB, TEHSIL AND DISTRICT JAMMU;
  - 2) GURDEV KUMARI D/O -----DO-----.
- (PETITIONERS)**

**VERSUS**

- 1) SUKHDEV KUMAR S/O CHUNI LAL (SO CALLED SON OF GIRDHARI LAL) R/O VILLAGE AMB, TEHSIL AND DISTRICT JAMMU;
  - 2) CHUNI LAL S/O MASSU -----DO-----.
- (RESPONDENTS)**

In the matter of:

**Reference dated 20.01.2015 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the order dated 21.04.1995 passed on mutation No. 2162 by the Naib Tehsildar Gharota by virtue of which succession of Girdhari Lal has been devolved in favour of the petitioners and the respondent No. 1.**

For Petitioners        ---    Advocate S. N. Gupta  
For Respondents       ---    *Ex Parte*

**J U D G E M E N T**

- 1) The present dispute pertains to landed property falling under Khasra No. 1587 and 1589 in village Amb, Tehsil and District Jammu. One Girdhari Lal S/O Massu along with his brothers Dewan Chand and Chuni Lal was an owner of this land. When the said Girdhari Lal died, the Naib Tehsildar, Gharota attested the impugned mutation No. 2162 dated 21.04.1995 devolving inheritance of the *Propositus* on Sukhdev Kumar, respondent No. 1 herein (five shares), Gurdev Kumari (wife) and Krishna Devi (daughter), one share each.
- 2) Aggrieved, the petitioners herein challenged the impugned mutation in revision before the Divisional Commissioner, Jammu who transferred it to the Additional Commissioner (with powers of Divisional Commissioner), Jammu. The court below in an *ex parte* proceedings observed that the parentage of Sukhdev Kumar, has been shown as Girdhari Lal in the matriculation provisional certificate issued by the Govt. High School, Gharota as well as in the impugned mutation. But the date of death of Girdhari Lal is 18.02.1984 and the date of birth of Sukhdev Kumar is 05.08.1985 which negates the fact of Girdhari Lal being his father. Girdhari Lal had died surviving Krishna Devi (widow), petitioner No. 1 and Gurdev Kumari (daughter), petitioner No. 2 who were actually entitled to inherit the property of the *Propositus*. Sukhdev Kumar is the son of Chuni Lal and he was wrongly and fraudulently shown by the attesting officer as the son of Girdhari Lal; when he was not even his adopted son. Therefore, the court below held that the impugned mutation needs to be set aside to the extent of property devolved upon Sukhdev Kumar. It has submitted the instant case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smvt) with the recommendation to set aside the impugned mutation and to remand the case back to the Tehsildar concerned for fresh orders with the further direction to the petitioners to appear before this court on 02.02.2015.
- 3) On receipt of the reference from the court below, a fresh notice was issued to the respondents but they chose not to appear again. They were, therefore, set *ex parte* on 21.04.2015 and this court proceeded to decide the case on merits.

- 4) In line with the observations made by the court below, it transpires that Sukhdev Kumar was neither born to Girdhari Lal nor was he his adopted son. The date of birth of Sukhdev Kumar and date of death of Girdhari Lal undoubtedly solves this issue. However, to decide relationship of any person with another one is always the jurisdiction of civil courts. Nevertheless, another issue which intrigues this court is that the parentage of Sukhdev Kumar has been written as Girdhari Lal in the provisional certificate issued by the Govt. High School Gharota. This is also required to be ascertained as to how it happened and why no one has challenged the same hitherto. All this however, does cast a shadow on the validity of the impugned mutation.
- 5) It is noted that the petitioner No. 1 has put her thumb impression on the mutation sheet which infers that she was present at the time of its attestation which fact has also been admitted by her. Once she has put her thumb impression on the mutation, it shall be presumed that she was in full knowledge of the facts. She is pleading illiteracy now in her defence and her impression that the property was being mutated in her favour, which in such circumstances can be believed.
- 6) Further, a cursory look at the impugned mutation shows that the GQ has not compared the old entries with the new ones in the impugned mutation. **Rule 21 of the Standing Order 23-A** lays down that the Field Qanungo should see as to whether the **Surat Sabiq** is correct as per the **Jamabandi**. He must compare and attest by personal examination the papers to ensure that every entry made by the Patwari in the **Parat Patwar** and the **Parat Sarkar** is correct. He must also note in the **Parat Sarkar** that he has done so with the date below his report with his signatures on both the **Parats**. But the same has not been done in the impugned mutation.
- 7) For the reasons aforesaid and after a careful reflection over the matter, the reference made by the court below is accepted. The order dated 21.04.1995 passed by the Naib Tehsildar Bhalwal on mutation No. 2162 is set aside. The respondents are advised to move a civil court in the matter and to approach the Tehsildar concerned thereafter for fresh orders after the decision of the civil court. No alienation of the property involved in the

impugned mutation shall take place till then. In case, the respondents don't take any action within 3 months of the issue of this order, Tehsildar Bhalwal is directed to attest a fresh mutation in accordance with Hindu Succession Act and Standing Order 23-A. 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 **28<sup>th</sup> day  
of May, 2015** under my hand and Seal  
of this Court.