

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

<u>FILE NO.</u>	<u>DATE OF INSTITUTION</u>	<u>DATE OF DECISION</u>
342/FC-AP/2014	27.11.2014	26.08.2015

1) MULKH RAJ S/O NATHU RAM R/O GURAH MANDA, TEHSIL AKHNOOR,
DISTRICT JAMMU.

(PETITIONER)

VERSUS

1) RATTAN LAL S/O OM PARKASH (SO CALLED ADOPTED SON OF BINDRU
MEGH) R/O MANDA, TEHSIL AKHNOOR, DISTRICT JAMMU;
2) TEHSILDAR AKHNOOR.

(RESPONDENTS)

In the matter of:

**Reference dated 19.11.2014 made by the court of the
Additional Commissioner (with powers of Divisional
Commissioner) Jammu in revision petition against the
order dated 18.12.2009 passed by the Deputy
Commissioner (Collector), Jammu.**

For Petitioner	---	Advocate S. K. Kapoor
For Respondent No. 1	---	Nemo

J U D G E M E N T

1) The background of the case is that one Bindru had executed a “will deed” duly registered in the court of the Sub-Registrar, Akhnoor on 06.06.2007 bequeathing the land measuring 41 Kanals and 19 Marlas falling under different Khasra numbers in village Manda, Akhnoor in favour of Rattan Lal,

the respondent No. 1 herein. When the said testator died, the Tehsildar, Akhnoor attested the mutation No. 2069 dated 08.05.2008 on the basis of the "will deed" by virtue of which land falling under Khasra No. 70, 390, 401 and 434 was devolved upon the legatee. It appears that at the time of the attestation of mutation No. 2069, an inheritance mutation No. 2007 regarding succession of the said Bindru stood already attested.

- 2) Aggrieved, the petitioner herein brought an action against the mutation No. 2069 before the Deputy Commissioner (Collector), Jammu in an appeal. Interestingly, the ownership rights with regard to land measuring 24 Kanals and 05 Marlas falling under Khasra No. 70 and 434 were conferred upon Bindru under the provisions of the Agrarian Reforms Act, 1976 and an appeal in that regard was also pending before the Joint Commissioner Agrarian Reforms, Jammu. Similarly, the said "will deed" was also subject to challenge before the court of the Munsiff, Akhnoor. Looking into the pendency of two cases regarding the subject matter before different forums, the appellate court vide its order dated 18.12.2009 abated the proceedings.
- 3) Dissatisfied, the petitioner herein filed a revision petition assailing the order passed by the Deputy Commissioner (Collector), Jammu 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 court of the Joint Commissioner Agrarian Reforms, Jammu had set aside the mutations conferring ownership rights on Bindru (mutation No. 741) and had restored the previous position. In this manner, the court below observed that the land which formed part of the Agrarian Reforms case was also an element of the "will deed" and the same has been reverted back to the ex owners. Thus, the impugned mutation No. 2069 has become defective and illegal. As for the *lis* concerning "will deed" is concerned, the court below has said that orders of the civil court shall prevail. Now, commenting on the impugned order abating the appeal, the court below held that the same is not based upon any legal justification more particularly when sizeable land brought on the mutation showing it to be

the proprietary land of Bindru has been reverted back to the ex-owners. Keeping these factors into consideration, it has submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smt.) with the recommendations to set aside the order passed by the Deputy Commissioner (Collector), Jammu and to direct him to dispose of the appeal of the parties under law.

- 4) A meticulous examination of the case file indicates that the court below has failed to ponder upon the basic merits of the case. There were many lacunas in mutation No. 2069 and the major focus should have been on the same. Since an earlier mutation No. 2007 for succession of Bindru stood already attested, the mutation No. 2069 could deserve dismissal on the said sole ground. In addition, attestation of mutations in cases where a person dies intestate is to be conducted after probate of the “will deed” by a civil court. But the materials placed in the case file do not confirm that and therefore, the said mutation was required to be quashed on this count also.
- 5) Most importantly, the substantial question of law in the matter which required appraisal was as to whether a person vested with ownership rights under the provisions of the Agrarian Reforms Act, 1976 can execute a “will deed” or not?. Sec. 28-A provides that no person who is vested with ownership rights under this Act shall transfer such land or rights therein in any manner whatsoever to any person other than the Govt. It further lays down that any transfer of the land or rights therein made in contravention of this provision shall be null and void. The person who has contravened this provision shall after being given an opportunity of being heard, be dispossessed of such land by a Revenue Officer, not below the rank of Tehsildar and the land shall vest in the State and shall be disposed of in accordance with the provisions of Sec. 15 of this Act. No “will deed” can be executed, therefore, with regard to such properties.
- 6) Having thus analysed the facts and circumstances of the case and for the reasons supra, the reference made by the court below is NOT accepted as there remains no question to be adjudicated upon by the Deputy Commissioner (Collector), Jammu. Exercising the suo moto powers of revision under Sec. 15 of the Land Revenue Act, 1996 (Smt.), the

proceedings before the Deputy Commissioner (Collector), Jammu are also withdrawn and disposed of in light of the observations made supra. Accordingly, the mutation No. 2069 dated 08.05.2008 is set aside. The case is remanded to the Tehsildar concerned for taking further necessary action in the matter in light of the observations made by this court and the orders of the civil court as and when 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 **26th day**
of August, 2015 under my hand and seal
of this Court.