

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

FILE NO
317/FC-AP

DATE OF INSTITUTION
10.09.2013

DATE OF DECISION
06.01.2015

1) OM DEI D/O LATE DHANI RAM R/O SERIPURA, SANGALDAN TEHSIL
AND DISTRICT RAMBAN.

(PETITIONER)

VERSUS

1) TEHSILDAR MAHORE;
2) ASSA DEVI W/O TEJ RAM R/O SERIPURA, SANGALDAN, TEHSIL AND
DISTRICT RAMBAN.

(RESPONDENTS)

In the matter of:

**Reference dated 10.09.2013 made by the court of
the Additional Commissioner (with powers of
Divisional Commissioner) Jammu in revision
petition recommending to set aside mutation No.
219 dated 28.10.1976 belonging to the above
noted location.**

For Appellants --- Advocate Mohd. Latif Malik

For Respondents --- Advocate Nonu Khera

J U D G E M E N T

1) The summarised facts of the case are that one Dhani Ram S/O Gannu R/O Seripur, Sangaldan, Ramban was married to Paro Devi and Om Dei, the petitioner herein was born to the couple. However, after some time and for reasons unknown, his wife left him for residence at some other

place where she appears to have married another man. Further, it is alleged that the said Dhani Ram “married” Assa Devi, respondent No. 2 herein later on. After the death of Dhani Ram in 1976, the Tehsildar Gool Gulabgarh attested the impugned mutation devolving the inheritance of the deceased on the petitioner and the respondent No. 2 equally.

- 2) Aggrieved, the petitioner herein filed a revision petition before the court of the Additional Commissioner (with powers of divisional Commissioner) Jammu challenging the impugned mutation on various grounds. The court below after examining the matter observed that Assa Devi could only inherit the property of the deceased had she been legally married to him. It put reliance on an affidavit dated 25.10.2010 filed by one Tej Ram H/O Assa Devi, stating therein that she was married to him around 46 years ago and till date he had not divorced her. The same was also confirmed by the Panchayat members of the village Seripura.
- 3) Furthermore, the court below was of the view that Assa Devi getting into a relationship with Dhani Ram is not disputed but whether she solemnized marriage with him as per Hindu religious rites and customs and whether she had obtained a valid divorce from Tej Ram, her husband is not forth coming from the record placed on the case file. It concluded with the observation that the said Assa Devi was not the legally wedded wife of Dhani Ram and therefore, she can't inherit his property. On the other hand, Om Dei is the sole legal heir entitled to the property of the deceased. Accordingly, it has reported the case to this court with the recommendation to set aside the impugned mutation and to remand the case back to the Tehsildar concerned for a **de novo** enquiry and to pass fresh orders after affording the parties an opportunity of being heard.
- 4) This court has diligently gone through the case file of the court below and the written submissions filed by respondent No. 2. It has been observed by the court below that the respondent No. 2 could inherit the property of the deceased only if she was legally married to him as per Hindu customs and rituals. However, she does not seem to be the legally wedded wife of Dhani Ram because of an affidavit from one Tej Ram that he had not divorced her. The affidavit, however, admits that Assa

Devi, resp. No. 2 left Tej Ram four or five years after marriage “and never came back”. This means that Tej Ram more or less consented to his wife leaving him and never protested about this event. In parallel, there are other affidavits on record attesting to the solemnizing of Resp. No. 2’s marriage with the petitioner’s father “as per Hindu rites and customs”. The moot point is that whether the marriage was legal or not, is NOT a matter to be decided by the Revenue Courts. The petitioner shall be well advised to take up this matter to other suitable fora, which she probably has already tried.

- 5) In absence of any such clear-cut ruling on the subject i.e., whether Resp. No. 2 was the legally wedded wife of petitioner’s father; from a Civil Court, the Revenue Courts can’t acquiesce to the throwing out of an old lady in her nineties out of a property that she has considered home for so long. The reference, therefore, is rejected. There is no need to play around the impugned mutation, which is upheld. 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 **06th day of
January, 2015** under my hand and seal of
this Court.