

**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>
459/FC-ARC/AP	24.12.2013	21.04.2015

- 1) PARKASHO DEVI WD/O LATE AMAR NATH S/O BHAGGU RAM R/O VILLAGE MOKHE, TEHSIL R.S.PURA, JAMMU;
 - 2) TARSEM LAL S/O -----DO-----;
 - 3) PREM CHAND S/O -----DO-----;
 - 4) DARSHAN LAL S/O -----DO-----.
- (APPELLANTS)**

VERSUS

- 1) JAGDISH RAJ S/O SAIN DASS R/O VILLAGE MOKHE, TEHSIL R.S.PURA, JAMMU;
- 2) MILKHI S/O -----DO----- ;
- 3) TARO DEVI D/O SAIN DASS R/O JINDER BELU, TEHSIL R.S.PURA, JAMMU;
- 4) KAMLA DEVI D/O SAIN DASS R/O BOHRAN WALI, BATALA, GURDASPUR, PUNJAB;
- 5) JANAK RAJ S/O BIMLA DEVI R/O VILLAGE RATHANA, TEHSIL R.S.PURA, DISTRICT JAMMU;
- 6) MANDA DEVI WD/O SAIN DASS R/O VILLAGE MOKHE, TEHSIL R.S.PURA, DISTRICT JAMMU.

(RESPONDENTS)

In the matter of:

**Appeal against order dated 04.05.2005 passed by the
Tehsildar R.S.Pura under Sec. 27 of the Agrarian
Reforms Act, 1976 with the prayer to set aside the**

same and for restoration of possession of the appellants over land measuring 18 Kanals and 09 Marlas.

For Appellants --- Adv. Rameshwar Singh Jamwal,
Adv. Manisha Kohli
For Respondents (1,2,3 & 5) --- Adv. G. C. Sharma
For Respondent No. 4 --- *Ex Parte*

J U D G E M E N T

- 1) This court has gone through the case file and observes with regret that the petitioner has neither been able to put forth the factual matrix of the case nor the relevant revenue record. On 21.01.2015 when it came to the fore that the relevant revenue record was not tagged with the case file, the parties were accordingly informed in open court. But they have still failed to submit the necessary documents. Obviously, one who asserts a claim has the responsibility to provide sufficient facts and proof in support of his contentions; but in this case this hasn't been done at all.
- 2) Assuming the available information as true, it appears that one Sain Dass was conferred with the ownership rights of land measuring over 50 Kanals in village Mokhe under the Big Landed Estates Abolition Act, 1950. His brother Amar Nath was a minor at that time. Some land out of the total land went in possession of this Amar Nath. The ownership rights of this land were transferred to him under Sec. 4 and 8 of the Agrarian reforms Act, 1976. The mutations attested under Sec. 4 & 8 were challenged in appeal before the Joint Commissioner, Agrarian Reforms, Jammu who set aside both the mutations. The J&K Special Tribunal upheld the order passed by the Joint Commissioner, AR in a revision petition. The respondents then moved the Tehsildar R.S.Pura

under Sec. 27 of the Agrarian Reforms Act, 1976 and the prayer was accepted. Consequently, the appellants were disposed of the land and the possession was restored to the respondents. This is the brief subject of challenge before this court.

- 3) The only question in the instant case which needs to be considered is whether Amar Nath, who was a minor at the time of conferment of ownership rights on Sain Dass under the Big Landed Estates Abolition Act, 1950, was entitled to any share out of the land under consideration or not. A detailed analysis of the circumstances vis-a-vis the concept of co-parcenary in the joint family property or the self-acquired property is required to set the whole controversy at rest. Indeed, when a coparcener mixes his self-acquired property with the joint family property and doesn't clarify as to whether he wants to treat it as the latter or not, it becomes part and parcel of the joint family property. This law of throwing into the common stock and blending has been settled by numerous decisions of the High Courts and the Apex court. The point is clearly and unequivocally based on the intention of the owner of the separate property to convert his property into a part of the joint family property. The separate or self acquired property of a coparcener may be impressed with the character of a joint family property, if it is voluntarily thrown by the owner into the common stock with the intention of abandoning, waiving or surrendering his rights in it as separate property. Such an intention can be known by his words or his acts and conduct. For instance, a *Karta* may have his own personal fields and also joint family fields. Wheat may be grown in both. If the produce of all the fields is brought into the same barn and mixed together without weighing as to how much was the produce of the separate fields and how much from the joint family fields, it is a clear case of blending. But

prior to this, it is required to be ascertained as to whether the two brothers were coparceners or not.

- 4) In view of what has been observed above, the revision petition being devoid of merits fails and is, therefore, dismissed. The order impugned is upheld. The petitioners are advised to move a civil court in the matter to prove their claim over the property. Only thereafter can the revenue authorities take appropriate action 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 **21st day
of April, 2015** under my hand and Seal
of this Court.