

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

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

DATE OF INSTITUTION  
**12.12.2014**

DATE OF DECISION  
**26.08.2015**

- 1) SUBHASH CHANDER S/O NATHU RAM R/O WARD NO. 13, PEER KANJU, TEHSIL AND DISTRICT RAJOURI;
- 2) POLA RAM S/O -----DO-----;
- 3) ROMESH CHANDER S/O -----DO-----.

**(PETITIONERS)**

**VERSUS**

- 1) BIMLA DEVI (D/O NATHU RAM) W/O DHARAM PAL R/O WARD NO. 5, NOWSHERA, DISTRICT RAJOURI;
- 2) SHAKUNTALA DEVI (D/O NATHU RAM) W/O SALIG RAM R/O W. NO. 4, JAWAHAR NAGAR, RAJOURI;
- 3) TOSHI DEVI (D/O NATHU RAM) W/O KULDIP RAM R/O KALAKOT, RAJOURI;
- 4) BABLI DEVI (D/O NATHU RAM) W/O HARDESH CHAND R/O MURADPUR, TEHSIL AND DISTRICT RAJOURI;
- 5) RATNA DEVI (D/O NATHU RAM) W/O SANSAR CHAND R/O KALAKOT, RAJOURI.

**(RESPONDENTS)**

In the matter of:

**Reference dated 02.12.2014 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the order dated 10.09.2011 passed by the Deputy Commissioner (Collector), Rajouri on File No. AS/94.**

For Petitioners --- Adv. Ashok Gupta & Associates  
For Respondents --- Nemo

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

- 1) The brief facts of the case are that one Nathu Ram S/O Ishar Dass R/O Rampur, Rajouri was an owner of some landed property in his residential village. After his death, the Tehsildar, Rajouri attested the mutation No. 1638 dated 31.01.1997 by virtue of which he devolved the inheritance upon the sons, petitioners herein (3 shares) and the daughters, the respondents herein (1 share).
- 2) Aggrieved, the respondents herein challenged the said mutation before the Deputy Commissioner (Collector) Rajouri in an appeal. The Collector observed that the sons and the daughters of Nathu Ram were entitled to equal shares as per the amendment made in the Hindu Succession Act, 1956. Accordingly, the appeal of the respondents herein was allowed and the mutation No. 1638 was set aside vide his order dated 10.09.2011.
- 3) Dissatisfied, the petitioner herein filed a revision petition challenging the order passed by the Deputy Commissioner (Collector), Rajouri before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of the Divisional Commissioner), Jammu for disposal under law. The court below while examining the relevant record observed that Nathu Ram was holding a joint ancestral property and not a self acquired property. In that case, the inheritance of the deceased was to be devolved upon the legal heirs under Sec. 5 of the Hindu Succession Act. Keeping the same into consideration, it held that the sons are entitled to take three shares whileas one share of the deceased has to be devolved upon his sons, daughters and widow in equal shares. This principle has neither been followed by the Tehsildar nor by the Deputy Commissioner, Rajouri. It was of the view that the appellate court has rather relied upon Hindu Succession (Amendment) Act, 2005 which is not applicable to the state of Jammu and Kashmir. Viewed thus, the court below felt that the impugned order as well as mutation No. 1638 are patently illegal and deserve to be quashed. It has accordingly submitted the

case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smtv) with the recommendation to set aside both these orders and to remand the case to the Tehsildar concerned for deciding the inheritance of the deceased strictly in accordance with Sec. 5 of the J&K Hindu Succession Act as stated above.

- 4) This court has carefully gone through the case file and feels the case would first need an indepth enquiry regarding the status of the property as to whether it was Nathu Ram's self acquired property or joint family property or a combination of both. No record is available on the case file which could clear matters in this regard. The impugned mutation has a reference to *Jamabandi* of 1969-70 wherein at one place Nathu Ram is shown to have purchased some land along with his brother and in the second, he is shown as an owner in the column of ownership. This causes confusion regarding the coparcenary clause of the property in question.
- 5) For the reasons aforesaid and after a careful reflection over the matter, the reference made by the court below is **NOT** accepted. However, the order dated 10.09.2011 passed by the Deputy Commissioner (Collector), Rajouri along with the order dated 31.01.1997 passed on mutation No. 1638 are both set aside. The case is remanded to the Tehsildar concerned for a **de novo** enquiry into the matter and for taking further appropriate necessary action under law. 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 **26<sup>th</sup> day**  
**of August, 2015** under my hand and seal  
of this Court.