

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

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

DATE OF INSTITUTION  
**25.08.2014**

DATE OF DECISION  
**28.05.2015**

1) SUNIL KUMAR S/O DEWAN CHAND R/O KOTLI JIJAN, TEHSIL AND DISTRICT UDHAMPUR.

**(PETITIONER)**

**VERSUS**

1) TEHSILDAR SETTLEMENT, UDHAMPUR;  
2) ADDITIONAL DEPUTY COMMISSIONER, UDHAMPUR;  
3) VIJAY KUMAR S/O KARNAIL CHAND R/O KOTLI JIJAN, TEHSIL AND UDHAMPUR;

4) MADAN LAL S/O -----DO-----;  
5) ANJU DEVI D/O -----DO-----;  
6) REETA DEVI D/O -----DO-----;  
7) GEETA DEVI WD/O -----DO-----;  
8) SANSARO DEVI D/O LATE GOHLU R/O -----DO-----;  
9) TARO DEVI D/O -----DO-----;  
10) SARU DEVI WD/O -----DO-----;

**(RESPONDENTS)**

11) DEWAN CHAND S/O -----DO-----.

**(PROFORMA RESPONDENT)**

In the matter of:

**Revision petition against the order dated 14.03.2012  
passed by the respondent No. 2 whereby appeal filed  
against the order dated 07.01.1998 passed by the**

**respondent No. 1 on mutation No. 895 with regard to the land measuring 06 Kanals and 19 Marlas falling under Khasra numbers 217 (old) and 223 (old) was dismissed.**

For Petitioner --- Advocate M. J. Khan  
For Respondents --- *Ex Parte*

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

- 1) The summarised facts of the case are that one Gohlu S/O Chandu R/O Kotli Jijjan, Udhampur was an owner of landed property falling under different Khasra numbers in his residential village as well as in village Harta Pan, Udhampur. He was married to one Saro Devi and both had four children namely, Dewan Chand, Karnail Chand, Sansaro Devi and Taro Devi. On 16.01.1996, the said Gohlu executed a **“will deed”** duly registered in the court of Sub-Registrar, Udhampur bequeathing his rights over land measuring 03 Kanals-13 Marlas falling under Khasra No. 217 (old) and 03 Kanals-06 Marlas falling under Khasra No. 223 (old) in village Kotli Jijjan in favour of his grandson Sunil Kumar S/O Dewan Chand. However, when he died, the Tehsildar, Udhampur attested the impugned mutation No. 895 dated 07.01.1998 in the ordinary course by virtue of which inheritance of the deceased was devolved upon all children as well as the widow in equal shares.
- 2) Aggrieved, the petitioner herein challenged the impugned mutation in appeal before the Additional Deputy Commissioner, Udhampur who vide order dated 14.03.2012 dismissed the same. The petitioner then moved the J&K Special Tribunal in revision assailing the order passed by the Additional Deputy Commissioner, Udhampur. However, after sensing the revision as misconceived he withdrew it and the Special Tribunal vide order dated 26.02.2014 dismissed the revision petition

as withdrawn with the liberty to the petitioner to approach the competent forum.

- 3) Afterwards, the petitioner challenged the order passed by the Additional Deputy Commissioner, Udhampur together with the impugned mutation No. 895 before this court on various grounds. Initially, the respondents were summoned to cause appearance in the matter but despite service, they preferred absence. This court, therefore, set them *ex parte* on 03.03.2015 and proceeded to decide the case on merits.
- 4) An examination of the case file and the relevant record indicates that the moot point to be considered in the case is as to whether the petitioner herein is entitled to the property which has been bequeathed in his favour by the executant. However, his rights in the land under consideration can be determined only when the “**will deed**” is probated by the civil court. Obviously, receipt of probate is always the opening step in the legal process of administering the estate of a deceased person, for resolving all claims and for distributing his/her property under that will. In this background, the petitioner is advised to move a civil court of competent jurisdiction.
- 5) Thus, keeping in view the facts and circumstances of the case and for the reasons aforesaid the order passed by the Additional Deputy Commissioner, Udhampur along with the mutation No. 895 dated 07.01.1998 is temporarily upheld with the stipulation that no alienation of the land involved in the impugned mutation be permitted till an appropriate order about the will’s probate is received from a Civil Court. If the prospective probate issued by the Civil Court favours the petitioner and be contrary to the impugned mutation, it shall be deemed to have been set aside and the Tehsildar concerned shall attest a fresh mutation thereafter in accordance with that order. 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.