

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

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

DATE OF INSTITUTION  
**20.07.2013**

DATE OF DECISION  
**10.03.2015**

1) AMAR CHAND S/O HOSHIARU R/O VILLAGE SANDHER, TEHSIL BASOHLI,  
DISTRICT KATHUA.

**(PETITIONER)**

**VERSUS**

- 1) VIKRAM CHAND S/O HOSHIARU R/O VILLAGE SANDHER, TEHSIL BASOHLI, DISTRICT KATHUA;
- 2) MST. KALO @ SANTOSH (D/O HOSHIARU) W/O RAJ KUMAR VILLAGE PLAKH, MOHRA FAMAT, TEHSIL BASOHLI, DISTRICT KATHUA;
- 3) KAMLO DEVI (D/O HOSHIARU) W/O LATE GIANO R/O VILLAGE HUTT MOHRA MASKA, TEHSIL BASOHLI, DISTRICT KATHUA;
- 4) NIRMALA DEVI @ NARMATA DEVI (D/O HOSHIARU) W/O KAMAL CHAND R/O BHOOND MOHRA GADODI, TEHSIL BASOHLI, DISTRICT JAMMU.

**(RESPONDENTS)**

In the matter of:

**Reference dated 17.07.2013 made by the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the order dated 22.12.2003 passed by the Sub Divisional Magistrate, Basohli setting aside the mutation No. 1716 in respect of land falling under Khewat No. 245 and 246 of village Sandher and against the mutation No. 1829 attested by the Tehsildar Basohli after remand.**

Nemo for the parties

## J U D G E M E N T

- 1) The facts briefly stated are that one Hoshiaru S/O Frangu was the owner of the landed property falling under Khewat No. 245 and 246 as per *Jamabandi* 1990-91 of village Sandher, Tehsil Basohli and District Kathua. During his life, he had executed a “**Will Deed**” dated 17<sup>th</sup> December, 1989 duly registered in the court of the Sub Registrar, Basohli bequeathing all his property in favour of his son Amar Chand (Petitioner herein) excluding all other legal heirs. However, after his death, the Naib Tehsildar concerned attested mutation No. 1716 whereby land falling under Khewat No. 245 was devolved upon Amar Chand and Vikram Chand (Respondent No. 1) in equal shares and land falling under Khewat No. 246 was given to Amar Chand only.
- 2) Aggrieved, respondent No. 1 herein along with his mother and one of the sisters challenged the said mutation before the Sub Divisional Magistrate, Basohli. The court below disposed of the matter simply on the ground that no opportunity of hearing was provided to all the interested persons. It was held by the court that the attesting officer was duty bound to provide hearing to all the legal heirs of Hoshiaru. Therefore, it set aside the impugned mutation remanding the case to the Tehsildar Basohli for a **de novo** enquiry and for further appropriate necessary action.
- 3) Complying with the directions, the Tehsildar Basohli conducted an enquiry into the matter and attested mutation No. 1829 dated 20.03.2009 devolving the land falling under Khewat 251 on his sons Vikram Chand and Amar Chand (06 shares each) and daughters Kamlo Devi, Nirmala Devi and Kallo Devi (01 share each). As far as khewat No. 256 is concerned, it was devolved upon Amar Chand (02 shares) and Vikram Chand (01 share).
- 4) Dissatisfied, the petitioner herein filed a revision petition before the Divisional Commissioner, Jammu challenging the order passed by the SDM, Basohli as well as the mutation No. 1829 who transferred it the Additional Commissioner, (with powers of Divisional Commissioner) Jammu for

disposal under law. The court below in *ex parte* proceedings observed that the record appended with the case file does not come out clearly on the title of the land. The question of land being mutated in favour of any of the party hinges on one fact only as to whether the land under deliberation was an inherited property of Hoshiaru or a self acquired one. Then again, the **“Will Deed”** bequeaths forever all his property to his son Amar Chand. Thus, it held that the mutation to be attested shall depend upon the mode of acquisition of land by Hoshiaru. The court below after taking these facts and circumstances into consideration has recommended the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smvt.) for setting aside the order passed by the Sub Divisional Magistrate, Basohli along with the impugned mutation and remanding the case to the Tehsildar concerned for a *de novo* enquiry and for passing fresh order strictly under law.

- 5) An examination of the case file and the other allied materials indicate that the Sub Divisional Magistrate, Basohli was right in holding that an opportunity of hearing ought to have been provided to all the interested persons. Coming to the reference made by the Additional Commissioner, Jammu, this court observes that if a mutation comes before a revenue officer for attestation on the basis of a **“Will Deed”**, the officer is required to advise the parties to go to a civil court to obtain a probate of the will deed. Indeed, receipt of probate is always the first 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 court below too could very well have recommended the aggrieved persons to go to a civil court first in this regard. Thus, this court opines that so long as the will deed exists, a mutation attested against its contents can't sustain.
- 6) Moreover, even a cursors look at the impugned mutation No. 1822 shows that the estate of the executant has neither been devolved upon the legal heirs as per the **“Will Deed”** nor as per the Hindu succession Act. It is not clear as to which methodology has been applied to devolve the inheritance of the deceased. Further, the mutation has a reference to *Jamabandi* of 1994-95 showing Amar Chand and Vikram Chand as owners of land. But

since the earlier mutation was set aside, the attesting officer was required to take the entries from the earlier Jamabandi of 1990-91 when Hoshiaru was the owner of the land.

- 7) Having considered the facts and circumstances of the case and for the reasons discussed above, the reference made by the Additional Commissioner (with powers of Divisional Commissioner) Jammu is accepted. Accordingly, the mutation No. 1829 dated 20.03.2009 is set aside. The order dated 22.12.2003 passed by the SDM, Basohli is upheld. The petitioner is advised to move a civil court for probate of the 'will', in question, whereafter fresh mutation can be attested in accordance with the orders of the Civil Court. 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 **10<sup>th</sup> day of March, 2014** under my hand and Seal of this Court.