

**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> |
|-----------------|----------------------------|-------------------------|
| 452/FC-ARC/AP   | 04.02.2014                 | 21.04.2015              |

**A)**

1) KANSHI RAM S/O GULLU RAM R/O FLORA HARMKUND, TEHSIL AND DISTRICT JAMMU.

**(APPELLANT)**

**VERSUS**

1) DURGA DASS S/O GULLU RAM R/O FLORA HARMKUND, TEHSIL AND DISTRICT JAMMU;

2) JALLU RAM S/O -----DO-----.

**(RESPONDENTS)**

In the matter of:

**Appeal against the order dated 09.12.2013 passed by the Tehsildar (S) Jammu on mutation No. 5 in the light of the order dated 04.12.2004 passed by the JARC, Jammu.**

**B)**

1) DURGA DASS S/O GULLU RAM R/O FLORA HARMKUND, TEHSIL AND DISTRICT JAMMU.

**(APPELLANT)**

**VERSUS**

1) KANSHI RAM S/O GULLU RAM R/O FLORA HARMKUND, TEHSIL AND DISTRICT JAMMU;

2) JALLU RAM S/O -----DO-----.

**(RESPONDENTS)**

In the matter of:

**Appeal against the order dated 09.12.2013 passed by the Tehsildar (S) Jammu on mutation No. 5 in the light of the order dated 04.12.2004 passed by the Joint Commissioner, Agrarian Reforms, Jammu.**

For Kanshi Ram --- Advocate Devinder Sharma

For Durga Dass --- Advocate Mukesh Kumar Sharma

For Jallu Ram --- Nemo

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

- 1) The present controversy concerns land measuring 17 Kanals and 06 Marlas falling under Khasra No. 93, 142 min. and 173 in the residential village of the parties. This land came under the purview of the Agrarian Reforms Act, 1976 and the ownership rights of the ex owners were extinguished and vested in the state. Consequently, mutation No. 84 dated 28.12.1981 was attested under Sec. 4 of the said Act by virtue of which Kanshi Ram, appellant at 'A' above was declared as the prospective owner of the said land. Later, another mutation No. 112 dated 04.06.1984 was attested under Sec. 12 of the same Act whereby Kanshi Ram was made the absolute owner of the land under consideration.
- 2) Aggrieved, the respondent No. 1 at 'A' challenged both these mutations in appeal before the court of the Joint Commissioner, Agrarian Reforms, Jammu. While examining the record, the court

below observed that the parties possessed two types of lands; one ancestral and the other acquired under the Agrarian Reforms Act. They being brothers partitioned both these lands amongst themselves in equal shares irrespective of the source of acquisition. Pending disposal of the case before the court below, a report was called from the field agency which explained that mutations under Sec. 4 and 12 has been attested in favour of Kanshi Ram only but all the brothers are possessing equal shares of the land under consideration and hence both these mutations have been attested in violation of the spot position. Relying on this report, the court below set aside the mutations and remanded the case to the Tehsildar concerned for a fresh enquiry on the spot in presence of the parties and other respectable citizens of the area after recording full evidence.

- 3) Complying with the directions, the Tehsildar (S), Jammu attested the mutation No. 5 dated 09.12.2013 and upheld the ownership rights of Kanshi Ram along with one of his brothers, Jallu Ram. As regards the land held by Durga Dass, the patwari concerned has been ordered to enter a mutation under Sec. 28-A of the said Act to declare the same as State.
- 4) Dissatisfied, both parties have inveighed the mutation No. 5 in counter appeals on various grounds. A bare perusal of the impugned mutation indicates that it has been attested at the headquarters without affording an opportunity of being heard to all the interested parties. Avoiding the express directions of the Joint Commissioner, Agrarian Reforms, Jammu, no enquiry was also held on the spot. Neither the Lambardar nor the Chowkidar of the village was present at the time of the attestation of the mutation.
- 5) Notably, Sec. 2 (12) of the said Act lays down that personal cultivation by a person shall mean cultivation by a brother. In the instant case, Durga Dass was in the possession of some land covered under Sec. 12

which in no way transgresses any of the provisions of the Agrarian Reforms Act, 1976. The land held by him can't be ordered to be vested in the state and therefore, the mutation impugned is liable to be set aside.

- 6) The only question which is required to be considered is whether the brothers of Kanshi Ram are entitled to any share out of the land under consideration or not ?. An examination of the case with the concept of coparceners and the joint family property vis-a-vis the separate or self acquired property would then be in order. Indeed, when a coparcener mixes his separate property with the joint family property and leaves no doubts that he does not want to treat it otherwise, his self acquired property too becomes part and parcel of the joint family property. This doctrine 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 an item of joint family property. The separate or self acquired property of a coparcener may be impressed with the character of 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 separate 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 also required to be ascertained as to whether the two brothers were coparceners or not.

7) Keeping in view the submissions made by both parties and for reasons aforesaid, both the appeals find merit and are, therefore, allowed. Accordingly, mutation No. 5 dated 09.12.2013 is set aside. The case is remanded to the Collector (AR) concerned for a **de novo** enquiry in the matter and for taking further necessary appropriate action in the matter. The enquiry shall strictly be conducted on the spot and in presence of the parties concerned as well as the other respectable citizens of the area including the Lambardar and the Chowkidar. 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 **21<sup>st</sup> day**  
**of April, 2015** under my hand and Seal  
of this Court.