

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

FILE NO.
311/FC-AP

DATE OF INSTITUTION
24.06.2013

DATE OF DECISION
22.04.2015

- 1) KUNDAN LAL S/O LATE PARSHOTAM DASS R/O MOHALLA SHANKER NAGAR, POONCH (THROUGH LEGAL HEIRS);
- 2) BRIJ LAL S/O -----DO-----;
- 3) PUSHPA DEVI D/O LATE PARSHOTAM DASS R/O R. S. PURA, JAMMU;
- 4) SUMAN LATA D/O LATE PARSHOTAM DASS R/O MOHALLA JARNALI, POONCH.

(PETITIONERS)

VERSUS

- 1) NANKI DEVI W/O SHANKER DASS (D/O DES RAJ) R/O WARD NO. 7, TEHSIL HAVELI, DISTRICT POONCH;

(RESPONDENT)

- 2) LEGAL REPRESENTATIVES OF KALO DEVI W/O NANAK CHAND R/O GADI GARH, JAMMU.

(PROFORMA RESPONDENT)

In the matter of:

Revision petition against the order dated 01.08.2011 passed by the Additional Commissioner (with powers of Divisional Commissioner), Jammu by virtue of which the appeal filed by respondent No. 1 has been accepted and remanded the case to the Deputy Commissioner, Poonch for *de novo* enquiry.

For Petitioners --- Advocate K. S. Puri
For Respondent --- Advocate B. R. Sharma

J U D G E M E N T

- 1) Briefly stated, the facts of the case are that one Narain Dass S/O Arjan Dass R/O W. No. 5, Poonch was married to one Janki Devi (widow of one Sant Ram who had two daughters, Parwati and Kalo Devi from her earlier marriage). After the death of the said Narain Dass, mutation No. 753 dated 30.12.1978 was attested whereby inheritance of the deceased was devolved on Janki Devi. Later, when she also died, another mutation No. 851 dated 12.03.1982 was attested by virtue of which her succession was devolved on Nanki Devi D/O Des Raj (brother of Narain Dass)
- 2) Aggrieved, Parwati (mother of petitioners herein) and Kalo Devi, proforma respondent herein challenged the mutation No. 851 before the Deputy Commissioner (Collector), Poonch who vide order dated 11.08.1982 set aside the impugned mutation and held that both the daughters of Janki Devi from her earlier husband are entitled to inherit the property under consideration. The order passed by the Deputy Commissioner, Poonch was assailed in revision before the Divisional Commissioner, Jammu who had recommended this court to set aside the same. The then Financial Commissioner Revenue, however, rejected the reference citing different reasons and the order dated 11.08.1982 passed by the Deputy Commissioner, Poonch was upheld. Afterwards, the order passed by this court was challenged before the J&K Special Tribunal in revision which vide order dated 19.02.1988 had dismissed the impugned order as not maintainable. In parallel, the respondent No. 1 herein had also challenged the mutation No. 753 dated 30.12.1978 in revision before the Divisional Commissioner, Jammu but this too was dismissed vide order dated 31.05.1984.
- 3) Dissatisfied, the respondent No. 1 herein moved the Hon'ble High Court in writ petition. The Hon'ble High Court observed that the first question which is required to be gone into is as to whether Janki Devi ever came to have

any relationship with Narain Dass. Until and unless, this aspect of the matter is proved, she could not inherit the property. It is only if she derived any legal title to the property from him that she could get the benefit in terms of Sec. 14 of the Hindu Succession Act. Further, it was held by the Hon'ble Court that this basic factual position was not gone into by any of the authorities while interpreting the legal provisions and by assuming that Janki Devi was married to Narain Dass, a finding has been recorded in her favour. The order passed by the revenue authorities was thus set aside. Accordingly, the Hon'ble Court remanded the case to the Deputy Commissioner, Poonch with the direction to re-examine the matter more particularly as to whether Janki Devi had any legal relationship with Narain Dass and to pass appropriate order.

- 4) Complying with the directions of the Hon'ble High Court, the Deputy Commissioner, Poonch disposed of the matter by holding that Janki Devi was the legally wedded wife of Narain Dass. The two daughters namely, Parwati and Kalo Devi are the legal heirs of Janki Devi and are, therefore, entitled to inherit the property under dispute.
- 5) Still unsatisfied, the respondent No. 1 herein challenged the order passed by the Deputy Commissioner, Poonch in appeal before the Divisional Commissioner, Jammu who transferred the case to the Additional Commissioner (with powers of Divisional Commissioner), Jammu for disposal. After a thoughtful consideration over the matter, the court below observed that even after the explicit directions of the Hon'ble High Court, the Deputy Commissioner, Poonch has left the factual position unclear and rushed to determine the legal aspect of the case. The enquiry Officer relied on the statements of two witnesses only who were the relatives of the petitioners herein and no independent witness was produced. The factual position as called for by the Hon'ble High Court could only be ascertained by adopting the proper procedure as per the instructions contained in Standing Order 23-A and after conducting an on-the-spot enquiry in presence of the interested parties and other respectables of the estate.
- 6) Opening a new chapter of discussion, the court below has pointed out that the family of Narain Dass and Des Raj were originally a resident of POK who

had migrated to Poonch as Displaced persons. The provisions of Rule 15-B (2) of the Cabinet Order No. 578-C of 1954 dated 07.05.1954 which provides for the law of survivorship may have some bearing on the issue. In addition, Janki Devi seems to have executed a “**will deed**” dated 16.06.1978 duly registered in the court of Sub-Registrar, Poonch which aspect also needs to be looked into.

- 7) Dissatisfied, the petitioners herein have filed the present revision petition before this court on various grounds. When the petitioners did not attend the case on many occasions, the revision petition was dismissed in default on 29.05.2013. Later, they filed an application for its restoration and on 02.04.2014, this court felt it just and proper to restore the revision petition to its original status but subject to a cost of Rs. 3000/- (Three Thousand only) which was paid to the respondent No. 1.
- 8) This court has gone through the case file as well as the written submissions filed by both parties and the other connected record. The findings drawn by the court below are detailed and well reasoned. This court finds no reason to disagree with the observations made by the court below. In addition, while rebutting the point of partisan witnesses, the counsel for the petitioners has submitted that relatives are the best witnesses to depose with regard to the relations of the parties. This court too observes that it can't be laid down as an invariable rule that a partisan witness can never form the basis for dealing with a case unless corroborated by the statement of independent witnesses. However, in line with the findings of the court below, this court is of the opinion that partisan witnesses may be relied upon only if independent witnesses be not available. The statement of partisan witnesses, however, may aid and supplement the statement of the independent witnesses.
- 9) Also the case is complicated by the “discovery” of a will duly registered on 16.06.1978 of the deceased Janki Devi mentioned by the court below as well as by the order of this court dated 03.12.1985. This matter, therefore, would need thorough investigation and if found correct will go against both parties.

10) For the reasons aforesaid and after a careful reflection over the entire matter, the revision petition being devoid of merit is dismissed. The order passed by the Additional Commissioner (with powers of Divisional Commissioner), Jammu is upheld. The case is remanded to the Deputy Commissioner, Poonch for a *de novo* enquiry in the matter with special reference to the observations made by the Hon'ble High court of J&K and the Additional Commissioner, Jammu and for taking further appropriate necessary action. No costs. Interim directions, if any, shall stand vacated. The case file be relegated to records after due completion.

(Dr. Arun Kumar) IAS
Financial Commissioner Revenue
(Commissioner Agrarian Reforms)
Jammu and Kashmir, Jammu

Announced today on this the **22nd day**
of April, 2015 under my hand and Seal
of this Court.