

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

FILE NO.
371/FC-AP/2015

DATE OF INSTITUTION
26.03.2015

DATE OF DECISION
26.08.2015

1) MOHD. SULTAN S/O SATTAR R/O VILLAGE MALHAR, TEHSIL BILLAWAR,
DISTRICT KATHUA. **(PETITIONER)**

VERSUS

1) GIAS-UL-DIN S/O SATTAR R/O VILLAGE MALHAR, TEHSIL BILLAWAR,
DISTRICT KATHUA. **(RESPONDENT)**

In the matter of:

Reference dated 04.03.2015 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the order dated 03.08.2010 passed by the Deputy Commissioner (Collector), Kathua and also against the order dated 24.05.2001 passed by the Naib-Tehsildar Lohai Malhar on mutation No. 1239 regarding succession of the land transferred to Sattar S/O Sabhan under the Agrarian Reforms Act, 1976 on the basis of an unregistered "will deed".

For Petitioner --- **Nemo**
For Respondent --- **Nemo**

J U D G E M E N T

- 1) The brief facts of the case that one Sattar S/O Sobhan, father of the petitioner and the respondent, respectively, was an owner of the landed property measuring 43 Kanals and 07 Marlas falling under Khewat No. 254 in village Lohai Malhar, Tehsil Billawar, Kathua. The ownership rights were conferred upon him under Sec. 8 of the Agrarian Reforms Act, 1976. When he died, the Naib-Tehsildar concerned attested the impugned mutation No. 1239 dated 24.05.2001 on the basis of an alleged notarised “will deed” said to have been executed on 21.07.1997 by Sattar whereby the land measuring 13 Kanals and 07 Marlas was given to the petitioner herein and 30 Kanals to his brother, the respondent.
- 2) Aggrieved, the petitioner herein moved the Deputy Commissioner (Collector), Kathua in an appeal questioning the legality of the mutation No. 1239. After considering the claims of the parties vis-à-vis the legal position, the Collector observed that the land under consideration was transferred to Sattar under the provisions of the Agrarian Reforms Act, 1976. So this became his self acquired property and he had every right to execute a “will deed” with regard to the same. It was accordingly held by the Collector, vide his order dated 03.08.2010, that the mutation needed no interference.
- 3) Dissatisfied, the petitioner herein filed a revision petition challenging the order passed by the Deputy Commissioner (Collector), Kathua before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of the Divisional Commissioner), Jammu for disposal under law. In an *ex parte* examination of the relevant record, the court below observed that the so called “will deed” has been declared as null and void by the Court of Munsiff 1st Class, Billawar vide order dated 13.09.2012 and therefore, the mutation No. 1239 needs to be set aside as it was based

on the same. It has accordingly submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smtv) for favour of final orders.

- 4) A meticulous examination of the case file indicates that the court below has addressed the legal aspects of the case in quite a rational manner. However, the substantial question of law which needed the attention of the courts below is as to whether a person vested with the ownership rights of land under the provisions of the Agrarian Reforms Act, 1976 can execute a “will deed” or not?. Sec. 28-A provides that no person who is vested with ownership rights under this Act shall transfer such land or rights therein in any manner whatsoever to any person other than the Govt. It further lays down that any transfer of the land or rights therein made in contravention of this provision shall be null and void. The person who has contravened this provision shall after being given an opportunity of being heard, be dispossessed of such land by a Revenue Officer, not below the rank of Tehsildar and the land shall vest in the State and shall be disposed of in accordance with the provisions of Sec. 15 of this Act. No “will deed” can be executed, therefore, with regard to such properties because then the tenant-turned-owner can “will” the same to anyone, defeating the noble intentions and purpose of the Agrarian Reforms Act, 1976 to return land to actual cultivators.
- 5) For the reasons aforesaid and after a thoughtful consideration of the matter, the reference made by the court below is accepted to the extent of setting aside the impugned mutation. The order dated 03.08.2010 passed by the Deputy Commissioner (Collector), Kathua is also set aside. The case is remanded to the Tehsildar concerned for a **de novo** enquiry into the matter and to attest a fresh mutation strictly in accordance with the laws of succession under the Muslim Personal Law and the decree dated 13.09.2012 passed by the Munsiff 1st Class,

Billawar. 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 **26th day
of August, 2015** under my hand and seal
of this Court.