

**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>
A- /FC-ARC/AP	22.06.2009	26.08.2015
B- /FC-ARC/AP	25.05.2012	26.08.2015

A)

1) SHUBHAN KRISHAN S/O PREM NATH RAINA R/O POOLIA VERINAG,
TEHSIL DORU, DISTRICT ANANTNAG A/P MUTHI JAMMU;

2) BAL KRISHAN S/O -----DO-----.

(APPELLANTS)

VERSUS

1) JAI KISHORI W/O JANKI NATH RAINA R/O POOLIA VERINAG, TEHSIL
DORU, DISTRICT ANANTNAG A/P TUMAL BODI, JAMMU;

(CONTESTING RESPONDENT)

2) MAHARAJ KRISHAN S/O PREM NATH RAINA R/O POOLIA VERINAG,
TEHSIL DORU, DISTRICT ANANTNAG A/P MUTHI JAMMU;

3) TEJ KRISHAN S/O PREM NATH RAINA R/O POOLIA VERINAG, TEHSIL
DORU, DISTRICT ANANTNAG A/P BODI ZEROLINE, JAMMU.

(PROFORMA RESPONDENT)

In the matter of:

**Appeal against the order dated 27.10.1987 passed on
mutation No. 663 attested by Tehsildar Doru under Sec. 4
of the Agrarian Reforms Act, 1976 pertaining to land
measuring 11 Marlas falling under Khasra No. 26 min and
03 Kanals and 01 Marla falling under Khasra No. 314 in
village Poolia, Tehsil Doru, Anantnag.**

B)

- 1) MAHARAJ KRISHAN S/O PREM NATH RAINA R/O POOLIA VERINAG, TEHSIL DORU, DISTRICT ANANTNAG A/P C/O H. NO. 10, LANE NO. 0, ANAND NAGAR BOHRI, JAMMU;
 - 2) TEJ KRISHAN S/O -----DO-----.
- (APPELLANTS)**

VERSUS

- 1) JAI KISHORI W/O JANKI NATH RAINA R/O POOLIA VERINAG, TEHSIL DORU, DISTRICT ANANTNAG A/P TUMAL BOHRI, JAMMU;
(CONTESTING RESPONDENT)
 - 2) SUBHAN KRISHAN S/O PREM NATH RAINA R/O POOLIA VERINAG, TEHSIL DORU, DISTRICT ANANTNAG A/P C/O H. NO. 10, LANE NO. 0, ANAND NAGAR BOHRI, JAMMU;
 - 3) BAL KRISHAN S/O -----DO-----.
- (PROFORMA RESPONDENTS)**

In the matter of:

Appeal against the order dated 29.11.2006 passed on mutation No. 798 attested by Tehsildar Doru under Sec. 8 of the Agrarian Reforms Act, 1976 with regard to the above stated land.

For Appellants --- Advocate M. L. Bhat

For Respondent No. 1 --- Advocate Varun Kotwal

JUDGEMENT

- 1) Briefly stated, the facts of the case are that one Prem Nath Raina S/O Tara Chand was an owner of the above stated land which was also recorded in his self cultivation. The Tehsildar, Doru attested the impugned mutation No. 663 dated 27.10.1987 under Sec. 4 of the Agrarian Reforms Act, 1976 by virtue of which the rights, title and interests of the ex-owner in that land

were extinguished and vested in the State. Consequently, one Jai Kishori W/O Janki Nath Raina, respondent No. 1 herein (Sister-in-Law of Prem Nath Raina) was declared as the prospective owner thereof. As a part of the due process, another mutation No. 798 dated 29.11.2006 was attested whereby she was conferred with absolute ownership rights over the said land.

- 2) Aggrieved, the appellants at 'A' above challenged the impugned mutation No. 663 initially before the Additional Deputy Commissioner (Commissioner Agrarian Reforms), Anantnag in an appeal. Later they filed an application before this court to withdraw the same from the said court and transfer it to Jammu. After considering the migrant status of the appellants in the interest of justice, this court vide its order dated 22.06.2009 felt it just and proper to transfer the said case to the Joint Financial Commissioner for disposal under law. However, as the transferee court lacked jurisdiction to try the case arising out of the Agrarian Reforms Act, 1976, it submitted the case back to this court. Moreover, pending disposal of this case, another appeal came to be filed by the proforma respondents at 'A' against the mutation No. 798 dated 29.11.2006 attested with regard to the same land. In this background, this court deemed it fit to club both cases for joint disposal.
- 3) The respondent No. 1 had been showing continuous absence in the case and when she did not appear even after the service was effected, she was set *ex parte* vide this court's order dated 16.12.2014. However, after sometime she filed an application for setting aside the *ex parte* order and requested to allow herself to take part in the proceedings. On 04.02.2015, counsel for the respondent was provided with a copy of the written arguments filed by the appellant's side with the direction to file his response. On 04.03.2015, he was given a last opportunity to file rebuttal but on 08.04.2015, which was the next date of hearing, he informed that the parties have arrived at a compromise. On 29.07.2015, he remained absent and therefore, this court, without wasting more time, proceeded to decide the issues on merits.
- 4) After looking the matter from various angles, this court observes that the moot point for consideration in the case is as to whether a person's sister-

in-law (Brother's wife) can be his tenant?. Interestingly, Prem Nath Raina and Janki Nath Raina both sons of Tara Chand were brothers and Jai Kishori is the wife of the latter. If we travel through the definitions of "Family" and "Personal Cultivation" as given in the Agrarian Reforms Act, 1976, it becomes amply clear that cultivation by sister-in-law of an owner of land shall be his personal cultivation and therefore, no ownership rights can be conferred on her under the said Act. Rather, she could become an owner of the said land by other means but not in the way as has been done here. Thus, the impugned mutations are patently illegal and uncalled for, which need to be set aside.

- 5) Keeping in view the facts and circumstances of the case and for reasons aforesaid, both the appeals find merit and are, therefore, allowed. Accordingly, mutation No. 663 dated 27.10.1987 alongwith mutation No. 798 dated 29.11.2006 are both set aside. The case is remanded to the Tehsildar concerned for a *de novo* enquiry in the matter and for taking further necessary 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 **26th day**
of August, 2015 under my hand and seal
of this Court.