

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

FILE NO.
305/FC-AP

DATE OF INSTITUTION
20.07.2013

DATE OF DECISION
28.05.2015

- 1) VINAY KUMAR S/O SAIN DASS R/O VILLAGE SERI PANDITA, TEHSIL AND DISTRICT JAMMU A/P SHARMA PET WORLD (SHOP), RAM TIRATH ROAD, AMRITSAR.

(PETITIONER)

VERSUS

- 1) SHARDA SHARMA D/O PT. THAKAR DASS R/O DURGYANA ABADI, AMRITSAR;
2) KEWAL KRISHAN S/O GURAN DITTA R/O VILLAGE SERI PANDITA, TEHSIL AND DISTRICT JAMMU;
3) CHANCHALA SHARMA D/O GURAN DITTA W/O KRISHAN LAL R/O VILLAGE BHALWAL, TEHSIL AND DISTRICT JAMMU;

(RESPONDENTS)

- 4) DEVINDER KUMAR S/O SAIN DASS R/O VILLAGE SERI PANDITA, TEHSIL AND DISTRICT JAMMU;
5) SURINDER KUMAR S/O -----DO-----;
6) NAIB TEHSILDAR, BHALWAL, JAMMU.

(PROFORMA RESPONDENTS)

In the matter of:

Reference dated 02.07.2013 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the order dated 27.07.1993 passed on mutation No. 1220 of village Barn, Jammu whereby inheritance of the

deceased Guran Ditta, real grandfather of the petitioner has been wrongly attested in the name of a stranger, respondent No. 1 depriving the petitioner and his brothers of their rights.

For Petitioner --- Advocate Dara Singh
For Respondent No. 1-3 --- Advocate Ajay Gupta

J U D G E M E N T

- 1) The summarised facts of the case are that one Guran S/O Kalu was an owner of some landed property falling under different Khasra numbers in village Barn, Tehsil and District Jammu. When he died, the Naib Tehsildar Bhalwal attested the impugned mutation no. 1220 by virtue of which the estate of the deceased was devolved upon the respondent Nos. 1 to 3 in equal shares.
- 2) Aggrieved, Sain Dass, father of the petitioner herein, challenged the impugned mutation before the Settlement Officer, Jammu in appeal. However, the case was dismissed as withdrawn on 30.10.2010. Later, the petitioner herein filed a revision petition challenging the same mutation before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of the Divisional Commissioner), Jammu for disposal under law. After an analysis of the records, the court below observed that the matriculate certificate of Sharda Sharma, respondent No. 1 is of Amritsar, Punjab. Also, a copy of the order passed by the Punjab Wakaf Board shows allotment of a residential house in her name. These facts indicate that she is a non state subject and it is not clear as to how she has come to inherit the property of the deceased. Thus, the court below has submitted the instant case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smtv) with the recommendation to set aside the impugned mutation and to remand the case to the Tehsildar concerned for a *de novo* enquiry in the matter and for passing fresh orders.

- 3) This court has carefully gone through the case file and the other connected records including the rebuttal filed by the respondents. It is observed that the whole controversy revolves around two questions. Firstly, whether the parties are the permanent residents of the state?; Secondly, what is the relationship of the *Propositus* with the parties ?. Both these questions have remained unsettled until now. Merely studying outside the state and getting a house through allotment does not mean that a person is not a permanent resident of the state. Nonetheless, this court notes with concern that despite serious allegations against respondent No. 1, she has not proved her status of being a permanent resident of the state. Besides, she has only talked of some legal infirmities in the order passed by the court below and levelled allegations against the petitioner that he too is not a permanent resident of the State. Thus, in order to reach a just conclusion, reply to the aforesaid queries is a must.
- 4) Having considered the facts and circumstances of the case and for the reasons aforesaid, the reference made by the court below is **NOT** accepted. The order dated 27.07.1993 passed on mutation no. 1220 is upheld for the time being. The case is remanded to the Deputy Commissioner, Jammu to hold a detailed enquiry into the matter with special reference to the observations made by this court. Both parties are directed to appear before the Deputy Commissioner, Jammu and prove their position regarding their permanent resident status. The enquiry shall as far as possible be completed within a maximum period of 03 months from the date of issue of this order. 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 **28th day**
of May, 2015 under my hand and Seal
of this Court.