

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
Present Dr. Pawan Kotwal, IAS.

<i>File No.</i> <u>Appeal</u> <u>12011-12</u>	<i>Date of Institution</i> 19-04-2011	<i>Date of Decision.</i> 06-01-2017
Ajit Singh S/o Surjeet Singh R/o Salathia Chowk, Udhampur, District Udhampur (Appellant)	V/S	1. Sarla Rani Wd/o Surjeet Singh 2. Jagjeet Singh S/o Surjeet Singh 3. Sunita Rani D/o Surjeet Singh All residents of Salathia Chowk, Udhampur, District Udhampur (Respondents)

In the Matter of:

Appeal against the judgment / order of Settlement Officer against Mutation No. 1566 dated 29-01-2009 under Section 121 Land Revenue Act of Village Barrian, Tehsil & District Udhampur, whereby land falling under Khewat No. 77 and Khasra No. 54 Min (01 Kanal) & 38 Min (01 Marla) total measuring 01 Kanal and 01 Marla, which is illegal, wrong with prayer to set aside the same.

Appearing Counsels: Advocate : Ashok Gupta for Petitioner

ORDER

1. The present appeal has been filed against the order of settlement officer passed on mutation No. 1566 dated 29-01-2009 under Section 121 Land Revenue Act of Village Barrian, Tehsil & District Udhampur.
2. The appeal has been filed on the following grounds:-
 - a. That the land in question is an ancestral land, a residential house and a shop has since been constructed by the father and grandfather of the appellant respectively. It is well settled Law that the child who is /was even in Womb acquire the right in the ancestral property.
 - b. That the land after the death of the father of the appellant has never been partitioned and the appellant and the respondents remained in joint possession of every inch of the land of the deceased Surjeet Singh S/o Sardar Singh as Co-Sharers of the ancestral land. It is pertinent to submit here that after the death of father of the appellant the inheritance mutation stand attested under Mutation No. 1674 dated 15-07-2010 in the name of appellant as well as respondents.
 - c. That it is very strange to point out here that the impugned mutation attested much prior to the inheritance mutation which clearly show that the landed property remained in peaceful possession of all the legal heir of deceased Sh. Surjeet Singh S/o Sardar Singh as co-Sharers / Co-owners.



- d. That it is also worthwhile to submit here that whole of the land of the appellant and respondents fall in the Village itself and almost all the area of the village has been converted into Abadi, as such the mutation under Section 121 of the Land Revenue Act has been wrongly attested and that too without jurisdiction, require to be set aside.
 - e. That the order impugned has been attested at the back of the appellant without issuing any notice or summoning as he is one of the co-sharer of the joint ancestral property as is evident from the mutation of inheritance No.1674 dated 15-04-2010, thus the order impugned is against the principle of Natural Justice.
 - f. That the appellant is only concerned in respect of 01 Kanal and 01 Marla of land falling under Khasra No. 54 Min(01K) and 38Min (01 M) total 01 Kanal and 01 Marlas under the impugned mutation and have no concern with the order land mutated in favour of various persons as reflected in the mutation No.1566 dated 29-01-2009 under Section 121 of land Revenue Act.
3. After the completion of service, the respondents filed preliminary objections but thereafter did not appear & were set ex-parte on 29-11-2013.
 4. Further on 13-06-2014 counsel for respondents filed application with a request to set aside ex-parte proceedings. Subsequently after hearing both parties the exparte proceedings initiated against respondents were set aside & the matter was fixe for arguments.
 5. It is pertinent to mention that after setting aside exparte proceeding, neither respondents not their counsel appeared since Jan 2015 till 19-05-2016 and they were thus again set exparte and the appeal was fixed for arguments.
 6. The counsel for appellant is heard wherein he reiterated the grounds taken in the memo of petition & further pleaded that the respondents have managed to exclude the property in dispute from the overall estate of their father Surjeet Singh by getting its title in the name of his mother Sarla Rani U/S 121 of LR Act which cannot be used to determined title. He cited circular of worthy Financial Commissioner J&K dated 08-06-1998.
 7. He further contended that mutation impugned has been attested when settlement operation was in process and that the property in dispute is a built up house with one shop which has been mutated in favor of only one of the legal heirs i.e the mother of the appellant & respondent 2 & 3.
 8. He prayed to set aside the mutation to the extent of land measuring 1k 1m comprising Khewat 77, Khasra Nos. 54 & 38Min.
 9. I have heard the counsel for appellant & record placed on file is examined. Which shows that the land in dispute has been mutated U/S 121 of LR Act in favour of Sarla Rani wherein her husband was alive as the mutation of inheritance has been attested on 15-07-2010.
 10. It has also been found that Ravinder Singh & Surjeet Singh Ss/o Surinder Singh are Co-Sharer& attestation of mutation U/S 121 in such a case do not arise. It may be noted that Sec 121 of LR Act is attracted if in the course of record of rights or of

revision of the record of rights, any question of title arises, Whereas in the present case.

11. It is imp't to mention that in the present case, the mutation has been attested where 1K of land is Gair Mumkin Makan & 1 Marla Gair Mumkin Dukan. So it can be concluded that which attesting mutation impugned neither instruction No.31 of "Jadid Bandobast" 1992 nor the formalities prescribed to be observed while taking actions under the said section have been followed in the present case and as such the mutation impugned so attested for the land measuring 1K 1M comprising Kh. No.54 min & 38 min of village Barrian is not as per the provisions of Sec. 121 of Land Revenue Act & deserves to be set aside.

In view of the above the appeal having merit is allowed and the order passed in mutation No. 1566 in favor of respondent No.1 to the extent of Land measuring 1 K 1 M is set aside.

Stay issued if any, shall stand vacated. The case file be consigned to records after due completion



(Dr. Pawan Kotwal) IAS,
Divisional Commissioner,
Jammu.

Announced
06-01-2017