

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

File No.  
61/Appeal  
2012-13

Date of Institution  
20-02-2013

Date of Decision.  
07-01-2017

Ghulam Mohammad  
S/o Mir Hussain, Caste Gujar  
R/o Village Ari Tehsil Mendhar, District Poonch.

*Appellant*

**Versus**

Sairan Bi  
W/o Mohd Farooq R/o Village Lasana Tehsil Surankote  
At present Ari Tehsil Mendhar

*Respondent*

**In this Matter of :-**

Appeal against the order of Additional Deputy Commissioner Poonch dated 22-01-2013 passed in file no 120 titled Sairan Bi Bua Di Daughter of Mir Mohammand R/o Village Ari Tehsil Mendhar Distt. Poonch versus Ghualm Mohd, Shah Mohammed sons of Mir Hussian R/o Village Ari Tehsil Mendhar district Poonch Prayer for setting aside the same and restoring order passed on mutation No. 719 dated 20-04-1989 by Baib Tehsildar Harni Mendhar in favor of the appellants.

Present: -

1. Advocate *Y. M. Khan* for Appellant
2. Advocate Dara Singh for Respondent

**ORDER**

The present appeal has been filed against the order of Additional Deputy Commissioner Poonch dated 22-01-2013 on the following grounds:-

1. That procedure to hear and dispose of appeals under land revenue Act is the same procedure as prescribed under the civil procedure code. In other words order 41 of C.P.C. is made applicable expressly for disposing of the appeals under the land Revenue Act in terms of Rule 3-a of order 41, the appellate court not proceed with the merits of the case unless delay is condoned at the 1<sup>st</sup> stage.
2. The court below has committed a glaring error by passing order of appeal without touching the application for condonation of delay and no where even mentioned about the condonation of delay in the main order. In fact without deciding the condonation of delay in terms of order 41 Rule 3 – A read with section 3 and 5 of limitation Act on that score alone the impugned order is liable to be set aside and quashed.
3. That section 3 of the limitation Act bars entertainment of any appeal after expiry of limitation period. A settled and vested right of the party cannot be upset so lightly after the lapse of 3 years four months and without touching the application for condonation of delay especially in absence of any valid Justification either in the application or main order. Thus the order is perverse and not based on any sound material to Justification

exercise of discretion in favour of respondent who admittedly has lost every right to inherit the estate after her marriage outside the House with one Mohd. Farooq S/o Mohd Hussain R/o Village Lassana Tehsil Surankote.

4. That while deciding the case the court below has simply in an ambiguous manner mentioned that I have heard the arguments of both the parties but not mentioned what arguments were made by the parties only given reason for remanding the case that a report from Lambardar, Chowkidar in a case after the lapse of 23 years with court giving copy of the report to the appellant and examining the witness if any. The appeal is always preferred on law points and not on facts, the order of the below court is required to be set aside on this ground.
5. That court below has erroneously held that the respondent is residing in her mother's house as the mother of the respondent had remarried Shah Mohd. As such she has not been shown as widow of Late Mir Mohd. The father of the respondent and died as wife Shah Mohd. The appellant in below court Bua Bi died during the pendency of the appeal and no LR has been arrayed as such her right abated.
6. That during the pendency of the appeal in court below respondent No.2 Shah Mohd. Also died as such any decision or decree pasted against dead person is nullity itself by law.
7. That in terms standing order No. 23-A mutations the official attesting mutations report below only mentioned that the attesting officer has not applied his mind and not attested in accordance with standing order No. 23-A without ascertaining or pointing out the violation of any provision of standing order for anything else in fact from the perusal of the copy of the mutation No. 719 it is clear that the officer attesting the mutation has attested the mutation by fully applying his mind in accordance with the provisions of standing order No. 23-A The mutation was attested on spot in open public in presence of Lambardar, Shokidar and other prominent persons of the area and has clearly mentioned in the mutation order that due to the marriage outside the house of Sairan Bi, Boua Bi the estate of respondent reverted to rightly in favour of the appellant and there is no illegality or violation of the law as such order of mutation No. 719 is required to be restored as valid.
8. That respondent concealed the fact that she was a married woman as wife of Mohd. Farooq S/o Mohd. Hussain R/o Lasana Tehsil Surnkote Married in the year 1988 on that score along the appealed was liable to be dismissing as she has not come with clean hands before the court below as such cannot evoke the jurisdiction of the court.
9. That the appellant is in possession of the land in question since the death of Mir. Mohd Real brother and was cultivating the land whoever before the marriage of respondent was paying the maintenance to the respondent the appellant has also born the expenditure of the marriage of the respondent. The order impugned being contrary to the law and facts deserves to be set aside and quashed.
10. That reliance placed upon the so called report of Lambardar, Chowkidar and Sarpanch has mentioned in the order has never been brought to the notice of the appellant as and as already on the mutation before the attesting officer the Lambardar and Chowkidar put their signatures as such the appellate court below has committed error in setting aside the order of the mutation as the respondent has claimed that all the three girls are Khana Nasheen. But the mutation has been set aside to the extent of the share of respondent. The Lambardar and Chokidar have confirmed marriage of the respondent outside the house which is written in order on mutation No. 719 as "Beroon Khana" that means out of house and after the lapse of twenty three years on a simple report setting aside the mutation No. 719 is a glaring error as such the order of the below court is required to be

set aside and quashed. The law pertaining to inheritance after marriage of the girls has been fully applied at the time of attesting mutation No. 719.

11. That the appellants brother Shah Mohd died issueless during the pendency of first appeal in the lower court as such his name has not been included in this appeal.
12. I have heard the arguments advanced by both the parties. Record examined. Order impugned perused which shows that the Court below after hearing both the parties have set aside the mutation No.719 and remanded back the matter to Tehsildar concerned for denovo enquiry and for passing fresh order after hearing both the parties & the prominent persons of the village.
13. The main contentions of the appellant are that court below has proceeded without condoning the delay in filing appeal. & The respondent No.1 is married outside her father's house & is not Khana Nasheen Dukhtar. In this regard it may be noted that the court below has provided opportunity to both the parties to produce record / evidence in support of their claim.
14. Moreover it is a settled principle that no appeal / revision lies against a remand order.
15. In view of the above this court has come to the conclusion that the appeal in hand has no merit and thus dismissed. Parties shall appear before Tehsildar Mendhar for further proceedings in the matter.

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  
7-01-2017