

**IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
DR. PAWAN KOTWAL, IAS**

File No. Revision
2010-11 *Date of Institution* *Date of Decision.*
20-05-2010 06-01-2017

1. Kanshi Ram
2. Banarsi Dass
3. Bahadur Dass Sons of Late Kirpa, R/o Vilage Pindi Charkan Khurd, Tehsil Bishnah at present Mohalla Krishana Nagaar and Dapatian, Jammu.
4. Smt. Shankari Devi (Deceased D/o Late Sh. Kirpa, Through her son Ghara Ram, Sewa Ram, Tilak Raj.
5. Taro devi, D/o Late Sh. Kirpa R/o Village Pindi Charkan, Tehsiol Bishan, Distt. Jammu.

Petitioners

Versus

1. Shanker Dass S/o Kirpa Ram, R/o H.No. EP-763 Mohalla Jogi Gate, Jammu.
2. Naib-Tehsildar Bishnah.

Respondents

In this Matter of:-

Revision petition against ex-parte order passed by the Naib-Tehsildar Bishnah on mutation No. 248 of village Pindi Charkan Kurd, Tehsil Bishnah, whereby the petitioners ancestral and inherited property has been mutated in the name of respondent No. 1. Pray for setting aside the same.

Appearing Counsel : Advocate A G Sheikh for petitioners
Advocate Vinod Abrol for respondents

ORDER


1. The Revision petition has been filed on the following grounds:-
 - a) That the order on impugned mutation is against law and facts of the case and is liable to be set aside.
 - b) That the order impugned has been passed at the back of the petitioners, as such the same is in violation of principles of natural Justice.
 - c) That the Naib-Tehsildar had absolutely no Jurisdiction to attest a disputed mutation in view of the fact that all the sons and daughters of deceased Kirpa Ram were not summoned nor afforded any opportunity of being heard. Thus the impugned order is not sustainable.
 - d) That the order on impugned mutation has been passed in violation of principles of natural Justice. As such the same is liable to be set aside.
 - e) That the respectable persons of the village i.e Village Lumberdar and Chowkidar have also not been summoned. On this ground as well the impugned order is not sustainable.
2. The counsel for respondent filed objections to the application for condonation of delay & submitted that:-
 - a. A revision which cannot be entertained at this belated stage as the same has been filed after 14 years of passing of an order.

- b. That admittedly the petitioners and respondent No. are the real brothers and sisters.
- c. That the instant application of the petitioners is the blatant specimen of malafides and has been filed by them only to take the benefit of their own wrongs and in doing so, with a view to abuse the process of this Hon'ble Court, As per indisputable position as is gathered from the petition itself, the petitions have challenged the mutation No.248 allegedly passed exparte by the Baib Tehsildar Bishnah do not justify their claim. The fact on the contrary is that. They right from the day of passing the impugned order of mutation were in the knowledge for which they have also consented by swearing their respective affidavits before the Sub-Judge, Judicial Magistrate, 1st Class, Jammu confirming to have knowledge of execution of will by their father in favour of respondent No.1 and further having no objection about recording mutation of the land falling under Khasra No.440 measuring 11 Kanals & 6 Marlas situated at Village Pindi Charkan Khurd, Tehsil Bishnah.
- d. This Hon'ble Court may very kindly be pleased to dismiss the above titled application along with the revision petition which has no merit in the eyes of law, with an exemplary cost. -+
3. Petitioners filed written arguments and submitted that:-
- a. That the petitioners and respondent No.1 are real brothers and sisters and are legal heirs of Kirpa Ram their father.
- b. That as per entry made in Jamabandi of Pindi Charkan Khurad Tehsil R.S Pura at present Bishnah of the years 2000-2001 B.K, Kirpa was shown in cultivating possession of 11 Kanal & 6 Marlas of land falling under Khasra No.440 as Tenant at Will under Dharam Singh Land owner.
- c. That a note made by the patwari in the Khasra Girdawari in Rabi 1963, Kirpa Ram is shown to have been given possession of Khasra No.440 under section 12 of BLEA Act 2007. He went on cultivating this land in next crop paying Rent "Naqdi Hassab Parta Deh". But in Kharif 1964 one Rooda was shown to be cultivating this land as tenant paying (Batai Rent).
- d. That this land was again shown in the cultivation of Kirpa against Labour charges, but as per another Note made in the Khasra Girdawari in Rabi 1966 Kirpa was to be cultivating this land as owner. How and when he got ownership rights is not shown in Khasra Girdawari. It may be noted here that such an important entry is not containing any reference to any mutation order under which ownership rights were conferred on him. Obviously this entry is not supported by any documentary evidence.
- e. That it may be submitted here that firstly no valid mutation or any other order is available to suggest that ownership rights have been granted to Kirpa . Secondly, as the things stand, this land on the death of Kirpa was to devolved on the petitioners and other legal heirs in the normal rule. But Irony of the fate is that respondent No.1 in collusion with the Revenue Field Staff manipulated a false Will Deed dating it as April 1979.
- f. That the illegal design the respondent succeeded in getting mutation No.248 attested in his favour on 10-06-1999 on the bases of false will. The mutation had been taken for attestation directly and it does not carry even verification report of concern Girdawar. It is a necessary concocment in such matter, the mutation, therefore, deserves to be set aside.

- g. That the petitioners were not aware of any such Will Deed having been made by their late father and that too in favour of only one son. This "Will" besides being false will
4. The case came up for hearing. Both the parties along with counsel present. They are heard.
 5. The contentions of the petitioners are that:-
 - a. The order has been passed at their back.
 - b. Naib Tehsildar was not having Jurisdiction to pass order.
 - c. The respectable persons of the village i.e. Lambardar Chowkidar have not been summoned.
 6. Further it is argued that how can a tenant at will" give away the escheated land by way of "Will" to only one his sons. He prayed to set aside the mutation.
 7. Whereas counsel for respondent submitted that the land in dispute was escheated to state under BLEA Act and since Kirpa Ram was in possession of that land being tiller so it remained with him. This fact his been found in the enquiry of Tehsildar and a mutation has been attested accordingly and that the mutation under challenge has been attested as per law & pray to upheld it.
 8. I have heard the arguments of the parties. Written arguments of petitioners perused & record examined which shows that land in question measuring 11k 6 m comprising Kh. No. 440 of Village Pindi Charkan Khurd escheated to state under BLEA Act. Thereafter father of the parties remained in possession of this land.
 9. However, this land had been shown in possession of one Ram Dhan in Jamabandi of 1958-59 and then in Kharief 1964 Roodha has been recorded in cultivating possession as tenant.
 10. But is may be noted that from 1966 Rabi onwards the land remained in continuous possession of Kirpa Ram and has been recorded in ownership column as owner in Rabi 1966.
 11. It may be noted this it was not an ancestral properly inherited by Kirpa Ram but he got the rights whatever may be over the land in question by way of his own possession and was thus competent to execute a "Will".
 12. It is to be mentioned that since the mutation impugned is based on "Will Deed" & till it is not proved otherwise, the mutation under challenge cannot be interfered with.
 13. Moreover the petitioners have admitted in their petition that they have already filed a civil suit for the cancellation of the false "Will" so the order of Civil court in this matter will take its own course.
 14. The contention of the petitioners that how a tenant at will can give away the escheated land by way of "Will" to only one of his sons has no substance because whatever rights Kirpa was having over land in dispute were transferred to Shanker Dass respondent herein.
 15. In view of the above facts, this count has observed that the order passed on mutation No.248 is as per law & do not need any interference. Hence the petition is dismissed and the order under challenge is upheld

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

Announced:


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