



In the Court of Additional Commissioner, Jammu
(With the powers of Divisional Commissioner)
(Rail Head Complex, Jammu)

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File
57/Revision

Date of Institution
27.10.2021

Date of Decision
17.08.2022

1. Veena Kumari Alias Veena Kesar Age 65 years D/o Late Sh. Mehta Kailash Chander (W/o Late Sh. Raman Kesar R/o Neerojal Rajouri, A/p H. No. 52, Friends Lane, Talab Tillo, Jammu.
 2. Mohini Devi Alias Chander Lekha D/o Late Sh. Mehta Kailash Chander R/o Green Belt Park, H. No. 163, Gandhi Nagar, Jammu.
 3. Parvodh Kumari D/o Late Sh. Mehta Kailash Chander R/o A/p H. No. 52, Friends Lane, Talab Tillo, Jammu.
 4. Kanchan Devi Alias Sushma Kumari D/o Late Sh. Mehta Kailash Chander R/o H. No. 197, Sec-6, Lane No. 4, Opposite Green Belt Park, Channi Himmat, Jammu
- ...Petitioners**

Versus

1. Vijay Kumar S/o Late Sh. Mehta Kailash Chander R/o Ward No. 4, Salani Road, Near Hotel Ashirwad, Panja Chowk, Near Police Station Rajouri.
2. Romesh Chander S/o Late Sh. Mehta Kailash Chander R/o Near Hotel Ashirwad, Panja Chowk, Near Police Station Rajouri, A/p H. No. 141, Gali No. 2 Patoli Shant Nagar, Jammu.
3. Assistant Commissioner (Defence) Collector Land Acquisition Defence, Rajouri-Poonch, HQ-Rajouri.
4. Naib Tehsildar, Saaj, District Rajouri.

.....Respondents

5. Chander Prabha D/o Late Sh. Mehta Kailash Chander R/o jawahar Nagar, Rajouri.
6. Suman Devi D/o Late Sh. Mehta Kailash Chander R/o Kalakote, Rajouri.
7. Kailash Devi W/o Late Sh. Mehta Kailash Chander R/o Ward No. 4, Salani Road, Near Hotel Ashirwad, Panja Chowk, Near Police Station Rajouri.
8. Tehsildar Mendhar

....Proforma Respondents

In the matter of:-

Revision petition against the mutation No. 351 and 352 dated 04.10.2019 attested by Naib Tehsildar Saaj at the back of the petitioners and in violation

of the law of inheritance. Prayer for setting aside the same.

Or any other relief which this Hon'ble Court may deem fit and proper and may also granted in favour of the petitioners.

ORDER

The present revision petition has been filed against the mutation No. 351 and 352 attested on 04.10.2019 attested by Naib Tehsildar Saaj. The main submissions made in the revision petition are as under:-

1. That petitioners are the owner of the land comprising khasra No. 276/17, 279 min/17, 281/17, 282/17, 285/20, 37, 39, 40, 41, 44, 44 min, 45, 46, 47, 47/01, 47/1, 50, 97, 190, 190 min, 191, 191/1, 191/1, 195, 195/1, 190 min/1, 239/1, 242 min, 245, 247, 251, 261 situated at Nero Jal, Tehsil Thanna Mandi, District Rajouri as Co-sharer. The petitioners being the daughters of Kailash Chander are Class-1 Legal Heir of Kailash Chander and having one share in the land mentioned above.
2. That the father of the petitioners namely Mehta Kailash Chander inherited the entire estate of the grandfather of the petitioner namely Mehta Ramu. Mehta Ramu was survived by two sons namely Mehta Kailash Chander and Khem Raj. After the death of Kailash Chander, the father of the petitioners, the entire estate of father of the petitioners was to devolve upon five sisters and two brothers, who are petitioners, private respondents and proforma respondents. Brother of the father of the petitioner, Khem Raj survived by his wife namely Koushalaya Devi had died issueless and so the entire estate of Koushalaya Devi has to be reverted back and inherited in equal shares by the legal heirs of the Mehta Kailash Chander. But by virtue of impugned mutation No. 351 attested by Naib Tehsildar Saaj, District Rajouri, the entire estate of Khem Raj's wife Koushalaya Devi has been mutated in the name of the respondents No. 1 and 2 and other Class-I legal heirs of deceased Mehta Kailash Chander have been deprived of their lawful share. As per law of succession, the petitioners and private respondents are equally entitled to inherit the estate of Khem Raj and Koushalaya Devi. Hence the impugned

mutation No. 351 dated 04.10.2019 is bad in the eyes of law and is thus required to be set aside.

3. That the mutation No. 352 attested by Naib Tehsildar Saaj with respect to the Estate of Shanti Devi is also bad in the eyes of law as after the death of Shanti Devi, one of the co-sharer of the private respondents, all the other legal heirs of Mehta Kailash Chander were equally entitled to inherit the estate of Shanti Devi. Hence, the impugned mutation No. 352 dated 04.10.2019 is bad in the eyes of law and is thus required to be set aside.
4. That it is well settled law that there is no period prescribed for filing a revision petition and the revision petition can be filed at any time and however, it is submitted that delay if any in filing the revision petition is only because of the reason that the same is not within the knowledge of the petitioner and it came only in the knowledge of the petitioners just few days back.
5. That it is worthwhile to mention that the period of limitation starts from the date of knowledge, so, the present revision petition is within the limitation from the date of knowledge and the delay, if any, is also deserved to be condoned on the ground that the lis be decided on merits of the case and mere delay and latches does not be allowed to defeat the genuine claim of a poor litigant. Moreover in view of the Hon'ble Supreme Court Judgment due to Covid 19, the period between 15.03.2020 to 03.10.2021 shall not to be reckoned for any purpose, so the revision is also within limitation period on this count.

Ld. Counsel for respondent No. 1 and 2 submitted written objections.

The main submissions of the Ld. Counsel for the respondent No. 1 and 2 are as under:-

- a. That one Rama who died in 1947 was survived by three sons - Hem Raj, Nanak Chand and Kailash Chander.
- b. That Hem Raj married one Kaushalya Devi, Hem Raj died in 1947 and his wife died in the year 2014. Couple was issueless.
- c. That Nanak Chand married with Shanti Devi, but died within three months of marriage.
- d. That Kailash Chander married Kailash Devi and died in 1968.

- e. After the death of Nanak Chand, Shanti Devi as per customary law of Chuni Chadana started living with Kailash Chander.
- f. Out of marriage between kailash Chander and Kailash Devi following children were born;
- i. Chander Prabha
 - ii. Veena Kumari
 - iii. Vijay Kumar
 - iv. Mohini Devi
 - v. Parvodh Kumari
 - vi. Kanchan Devi alias Sushma Kumari
- g. After Chuni Chadana Custom of Shanti Devi with Kailash Chander following children were born to them;
- i. Ramesh Chander
 - ii. Suman Devi
- h. That Smt. Shanti Devi expired in the year 2018. Kailash Devi is still alive.
- i. That Smt. Kaushalya Devi who had expired in the year 2014, had already gifted land/property of 33 kanals 10 ½ marlas out of khewat no. 1 in favour of respondent No. 1 and 2 way back in the year 1970 which is in peaceful possession of the applicants.
- j. Shanti Devi inherited property of Nanak Chand in absolute terms alongwith Kaushalya Devi Wd/o Hem Raj and Kailash Chander in equal proportion. In addition to that Shanti Devi has also share in the property of Kailash Chander, thus her share comprises of entire estate of Nanak Chand alongwith 1/10th share of Kailash Chander.
- k. As per mutation no. 352, the estate left behind by Shanti Devi comprising of approximately 100 kanals will devolve upon her children i.e. Ramesh Chander and Suman Devi only. Whereas, no other legal heir has any right to succeed to the estate left behind by Shanti Devi, who has already become owner of the property left behind by her husband namely Nanak Chand and share in estate left behind by Kailash Chander. The total land left behind by the Shanti

Devi is approximately 110 kanals i.e. 100 kanals land left behind by Nanak Chand which she inherited in absolute terms alongwith share in the estate left behind by kailash Chander and there are nine other co-sharers and every co-sharer is entitled to have share which has already been settled at the time of death of Late Kailash Chander when succession of Late Kailash Chander opened at that time and entries according to the share of each of the surviving successor to the Late Sh Kailash Chander has already been reflected.

7. That the petitioners have neither challenged the mutation of Late Kailash Chander when he died in 1968. Moreover, petitioners have no locus to file the case with respect to the land / estate of Smt. Shanti Devi as she is the step mother of the petitioners.

The matter was argued by both the counsels. Ld. Counsel for the petitioner has not raised any objection to the details of the successors of Rama as provided by the Ld. Counsel for the respondents. He reiterated the memorandum of appeal and stated that mutation No. 351 is contrary to the law and as such may be declared vide ab-initio. Ld. Counsel for the respondents also repeated the written objections filed by him and stated that petitioner do not have any locus standi in the mutation No. 352. However, he stated that he does not have any objection if the mutation No. 351 is remanded to the Tehsildar concerned for denovo enquiry and passing fresh order as per law.

I have gone through the record placed on the file and after hearing both the counsels, it has been observed that substantial point of law is involved in the matter and also in view of the COVID-19 pandemic, the delay in filing the revision petition is condoned. From the arguments put forth by both the counsels and examination of the record, it has been observed that mutation No. 351 and 352 have been selectively attested in respect of ancestral/inherited land in favour of only two persons leaving behind other legal heirs. In view of this, both the mutations are set aside and the case is remanded to the Tehsildar Thanna Mandi for denovo enquiry and passing fresh order strictly in terms of law governing the subject and after providing due opportunity of being heard to the concerned. The Deputy Commissioner, Rajouri shall conduct enquiry with regard to the gross

irregularity in attestation of mutation without following due process of law and take necessary action accordingly. However, this is subject to confirmation by the Ld. Financial Commissioner, Revenue, J&K. The interim order issued by this court, if any, shall stand vacated. The case file in original along with the order of this court is submitted to Ld. Financial Commissioner, Revenue, J&K in terms of Section 15 of the Land Revenue Act Svt. 1996 for kind consideration. The parties are directed to appear before the Ld. Financial Commissioner, Revenue, J&K on 30.08.2022.

Announced
17.08.2022

Sd/-
Pawan Kumar Sharma, JKAS
Additional Commissioner, Jammu
[with the powers of Divisional Commissioner]