

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CM (M) No. 313/2024

Abdul Majeed Khanday and Anr.

... Petitioner(s)

Through: -

Mr. Waseem Afzal, Advocate

V/s

Ghulam Hassan Dar and Anr.

... Respondent(s)

Through: -

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge.

(ORDER)

28.08.2024

1. The facts admits of no dispute that at the time of his demise in the year 1982, Abdul Salam Khanday had two sons namely Abdul Majid Khanday and Gh. Qadir Khanday and one daughter Mst. Hajira all born from Mother Janna.
2. For unrevealed reasons, no mutation of inheritance/succession came to be sought by any of the legal heirs of said Abdul Salam Khandy until 19.03.2020 that is almost after a period of 40 years, when at the asking of and in presence of the petitioner no.1 Abdul Majid Khanday and the respondent no. 1, purported mutation of inheritance came to be attested by the Tehsildar Qazigund in favour of petitioner No. 1 Abdul Majid Khanday the respondent no.1 Gh. Hassan Dar and the respondent No.2 Gh. Qadir Khanday who claimed to be the adopted son.
3. The purported basis for attestation of mutation of inheritance was an alleged will of Abdul Salam Khanday.
4. The petitioner no.2 Mst. Hajira being married daughter of Abdul Salam Khanday stood disinherited in terms of the mutation so attested.
5. The petitioner came forward with a time barred appeal against the order of mutation No. 1515 dated 19.03.2020, before the appellate authority of the Commissioner Agrarian Reforms (Additional Deputy Commissioner)

Anantnag who vide an order dated 10.01.2022 came to reject the appeal by virtue of following reasoning:-

“I have gone through the records available on the file, heard the parties at length and perused the reference judgments relevant to this case and I am of the opinion that the Tehsildar Qazigund has attested the impugned mutation order after giving ample opportunity of being heard to the parties. The Tehsildar has also taken into consideration the judgment reference and had enquired with the position and possession of the suit property through Naib Tehsildar Vessu, wherein it has been disclosed that the ancestral property of Ab. Salam Khanday (estate holder) stands partitioned between appellant No.1 and respondents, decades ago in light of the will deed and other documents, which have not been challenged till date. Any interference by this Court at this time will given birth to many litigations between the parties. It is also established that the parties are enjoying their partitioned landed share peacefully.”

6. This order came to be challenged in a revenue revision by the petitioners before Divisional Commissioner, Srinagar who vide an order dated 12.12.2023 came to hold the mutation No. 1515 dated 19.03.2020 deserving to be set aside and case warranting attestation of fresh mutation as per Muslim Personal Law after a *de novo* enquiry in favour of all legal heirs of deceased estate holder.

7. Under J&K Land Revenue Act Svt 1996, the Divisional Commissioner, acting in its revisional jurisdiction is not competent to pass a final order and is obliged to make a reference, as such, a reference came to be made to the Financial Commissioner (Revenue) J&K on file No. 362/FC-AP which resulted in rejection of the reference and upholding of the order dated 10.01.2022, passed by the appellate authority of the Commissioner Agrarian Reforms (Additional Deputy Commissioner Anantnag) and that is how the present writ petition is coming forth from the petitioners' end being aggrieved of adjudication on the part of Financial Commissioner (Revenue) J&K.

8. Prima-facie, it appears that the full factual and legal aspects did not go into attestation of impugned mutation and, accordingly, the attestation of mutation remained infested with factual and legal infirmities in the sense that if attestation of mutation was being based upon a purported will of Abdul Salam Khanday then why after lapse of 40 years, the mutation of inheritance came to be sought and further whether the alleged will of Abdul Salam Khanday was a probated one or not.

9. There are other attending aspects with the matter which require consideration and hence prima-facie case is made out.

10. The present petition which is purported to be under 227 of the Constitution of India is in essence a petition under Article 226 of the Constitution of India seeking a writ of certiorari and is to be accordingly entertained as writ petition under Article 226 of the Constitution of India.

11. Issue notice to the respondents.

12. Petitioner to furnish registered postal covers within a period of one week.

13. In the meantime, operation of the impugned order dated 28.05.2024 on file no. 362/FC-AP shall remain stayed. Parties are directed to maintain status quo with respect to the property forming subject matter of succession/inheritance.

14. List on 21.10.2024.

(Rahul Bharti)
Judge

SRINAGAR

August 28th, 2024

"Aadil"