

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

Case:- WP(C) No.2529/2022

Suram Singh & Anr.

..... Petitioner(s)

Through: Mr. Rameshwar P Sharma, Sr. Advocate
with Mr. Nigam P. Saroop, Advocate

Vs

UT of J&K & Ors.

....Respondent(s)

Through: Ms. Chetna Manhas, Advocate vice
Ms. Monika Kohli, Sr. AAG
Mr. Rajdeep Singh Thakur, Advocate

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
(24.09.2025)

1. The petitioners, through the medium of the present writ petition, have challenged order dated 18.05.2025, passed by the Financial Commissioner, Revenue (Commissioner Agrarian Reforms, J&K) Jammu, whereby reference made by the Divisional Commissioner, Jammu in respect of mutation No.318 dated 08.12.1956 has been rejected and the order of the Assistant Commissioner (Revenue), Reasi has been upheld.
2. Heard learned counsel for the parties and perused record of the case.

3. It appears that the mutation No.318 dated 08.12.1956, pertaining to village Beolian, Tehsil Reasi, (now Pouni), came to be attested by the Naib Tehsildar Pouni, by virtue of which estate of late Shiv Ram was transferred in favour of the petitioners, who happen to be the sons of Late Shiv Ram. Respondent No.5-Mst Rano Devi, who happens to be the daughter of Late Shiv Ram, was excluded from the mutation.
4. Respondent No.5 challenged the aforesaid mutation order before the Court of Assistant Collector (Assistant Commissioner, Reasi) by way of an appeal on 23.05.2015. The Assistant Commissioner Revenue, Reasi, vide his order dated 17.07.2018, set aside the said mutation order and remanded the case to the Tehsildar concerned with a direction to conduct de novo enquiry into the case in the presence of both the parties. It was observed by the Assistant Commissioner that respondent No.5 Rano Devi has been inadvertently excluded from the heirs of Late Shiv Ram.
5. The aforesaid order came to be challenged by the petitioners by way of a revision petition before the Divisional Commissioner, Jammu. Vide order dated 11.09.2021, the Divisional Commissioner, Jammu accepted the revision petition and made a reference to

the Financial Commissioner, Jammu, with a recommendation that order of the Assistant Commissioner, Reasi be set aside. The Divisional Commissioner, Jammu while making the recommendation observed that since the impugned mutation was attested on 08.12.1956 and the Jammu & Kashmir Hindu Succession Act had come into force thereafter on 28.12.1956, as such, respondent No.5 was not entitled to inherit the estate belonging to her father.

6. The learned Financial Commissioner while passing the impugned order rejected the reference of the Divisional Commissioner on the ground that the date of enforcement of the Hindu Succession Act, 1956 has to be reckoned as 06.11.1956, the date on which assent to the said legislation was accorded by the Sadr-i-Riyasat. On this ground, it has been observed that mutation was attested in the present case after coming into force of the J&K Hindu Succession Act, 1956, as such, in terms of the provisions contained in the said Act, respondent No.5, being the daughter of the estate holder, is entitled to inherit share in the property of her father.
7. The issue as to when J&K Hindu Succession Act came into force in the erstwhile State of Jammu & Kashmir may not be of much relevance in the present case. Even if it is

assumed that Jammu & Kashmir Hindu Succession Act has come into force with effect from 06.11.1956, the date when it received the assent of Sadr-i-Riyasat, still then the issue as to whether daughter of the estate holder was entitled to inherit the estate has to be determined with reference to the law applicable at the time of death of the estate holder, when the succession to his property opened or began to take effect, and not when the mutation order was passed.

8. In the present case, as per the mutation order No.318 dated 08.12.1956 attested by the Naib Tehsildar concerned, the death of the estate holder-Late Shiv Ram, as per the statements of the parties recorded on spot, had taken place one year prior to the said order i.e., somewhere in the year 1955. Admittedly in the year 1955, Jammu & Kashmir Hindu Succession Act had neither been promulgated nor had it been enforced in the erstwhile State of Jammu & Kashmir. Prior to the enforcement of the said Act, a daughter had no right of inheritance in the estate of her father. Therefore, the law governing the succession at the time when Shri Shiv Ram passed away has to be applied, while attesting the mutation of inheritance in respect of the estate left behind by him. Date of attestation of mutation is irrelevant for the

purpose of attestation of mutation of inheritance. The Financial Commissioner has landed himself into a grave error by ignoring the aforesaid aspect of the matter.

9. Even otherwise the provisions contained in Section 5 of the General Clauses Act, 1897 could not have been made applicable in determining the date of enforcement of J&K Hindu Succession Act, as the provisions contained in Act of 1897 apply only to Central legislations and not to the legislations made by the States. Even though Section 5 of J&K General Clauses Act, 1920 has been incorporated in the year 1957, yet it has retroactive application and it applies to all legislations past and future made by J&K legislature. As per this provision, a statute which does not specifically provide for date of its enforcement, would become applicable with effect from the date it is published in Govt. Gazette. J&K Hindu Succession Act has been published in Govt. Gazette on 28th December, 1956. Thus the said Act has to be applied with effect from 28th December 1956. The mutation in favour of the petitioners has been attested on 08.12.1956. Therefore, J&K Hindu Succession Act, 1956 cannot be made applicable to the present case for this reason as well.

10. For the foregoing reasons, the impugned order dated 18.05.2025 passed by the respondent-Financial

Commissioner, Jammu (Commissioner, Agrarian Reforms, J&K), is not sustainable in law and the same deserves to be set aside and the mutation order No.318 dated 08.12.1956 deserves to be upheld.

11. The writ petition is accordingly allowed and the impugned order dated 18.05.2022, passed by the Financial Commissioner (Revenue), J&K is set aside and mutation order No.318 dated 08.12.1956 is upheld. Any order passed by any subordinate revenue authority in pursuance to the impugned order dated 18.05.2022 shall also stand quashed.



(SANJAY DHAR)
JUDGE

JAMMU
24.09.2025
Sneha

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No