Before Shaleen Kabra, IAS, Financial Commissioner (Revenue), J&K/ Commissioner Agrarian Reforms, J&K

File No.	RCCMS Ack. No.	Date of Institution	Date of Decision
311/FC-AP	RD0050000063836	09.10.2023	26.12.2023

In the case of:

1. Ghulam Mohammad Malik.
2. Ghulam Hussain Malik Sons of Late Qasim Malik.
3. Tawseef Ahmad S/o Late Mst. Kulsooma. All residents of village Balhama, Tehsil Oantha Chowk.
4. Mst. Dilshada D/o Qasim Malik W/oMehboob Ali R/o At present Chenabal Mirgund, Pattan Baramulla.

..... **(Petitioners)**

Versus

1. UT of J&K through Commissioner/Secretary to Govt.
2. Tehsildar Panthachowk.
3. Patwari Halqa Balhama Kunmoh Srinagar.
4. Mohammad Abbas.
5. Mohammad Amin Sons of Mst. Fatima R/o Balhama Srinagar.

.....**(Respondents)**

In the matter of:

Reference dated 12.09.2023 made by Additional Commissioner (with powers of Divisional Commissioner) Kashmir in Revision Petition against the mutation No. 2171 in respect of Survey No. 318 pertaining to the land situated at village Balhama Srinagar.

Present: - Advocate: Tafaza Hussain for Petitioners.
Advocate: Parvaiz Ahmad Zargar for Pvt. Respondents.

ORDER

Through mutation no. 2171 dated nil based on oral gift, land measuring 2K covered under Khasra no. 318min of estate Balhama Tehsil Pantha Chowk District Srinagar came to be transferred in favour of the private respondents herein from the common predecessor-in-interest of the parties herein, Mohsin Mir, who is shown as donor in the mutation. Apart from this, various other

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parcels of the land too have been mutated in favour of various other persons. Aggrieved, the petitioners herein, challenged the above said mutation concerning land measuring 2K under khasra no. 318min, by way of a revision petition before Divisional Commissioner Kashmir who transferred the same to Additional Commissioner (with powers of Divisional Commissioner) and the latter vide reference in hand has recommended to set aside the mutation to the extent it pertains to land in question on the ground that the mutation under discussion is an outcome of fraud as the donor, who is the great grandfather of the private parties, had died some 260 years before.

2. The parties after service appeared through their Counsels. Ld. Counsel for the private respondents 4 and 5 has pleaded that they have accepted the contents of revision petition before the Court below and made prayer to set aside the mutation.

3. From the record file of the Court below, it is seen that the respondents 4 and 5 have admitted before the said Court that the mutation in question has been managed by the official respondents without following the due procedure. It has been contended that the mutation has been attested without the knowledge of the private respondents herein. The private respondents have further contended that the petitioners and private respondents, who are the successors of the common predecessor, Mst. Fatima, have partitioned the land and are in possession of their respective shares as per the entitlement. A copy of Khasra Girdawari of Rabi 2011 has been enclosed to show possession of the parties over their respective shares.

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4. Thus, it is clear and also as admitted by the parties, the donor had died since long and reflecting a dead person as donor makes the impugned mutation nonest and void ab-initio.

5. The court below has thoroughly dealt with the issue, accordingly, the reference in hand being a reasoned one, is accepted and the impugned mutation no. 2171 dated nil of estate Balhama is set aside to the extent it pertains to land measuring 2K under khasra no. 318 min and the entries prior to the attestation of mutation are restored.

6. It is also seen from the records that the petitioners have approached the Deputy Commissioner by way of an application, alleging therein fraudulent sale of their ancestral land; this aspect the Deputy Commissioner shall inquire into and pass orders as per law. The Deputy Commissioner shall also inquire into whether similar fraudulent transactions have taken place with respect to other parcels of land too.

7. All the records, of this Court as well as the sub-ordinate Courts are uploaded on RCCMS (https://rccms.jk.gov.in/) for ease of reference in any future litigation.

8. Interim orders, if any, issued by this Court are vacated.

9. Files of the Court below to be returned and that of this Court be consigned to records after due completion.

Announced
26.12.2023

Shaleen Kabra, IAS
Financial Commissioner Revenue
J&K

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