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BEFORE THE HON'BLE COURT OF DIVISIONAL COMMISSIONER,

UT OF J&K, AT SRINAGAR

In the case of:-

1. Ghulam Mohammad Malik, aged 58 years,
2. Ghulam Hussain Malik, aged 53 years,

   Sons of Late Qasim Malik;

3. Tawseef Ahmad, aged 34 years,

   S/O Late Mst. Kulsooma,

   All residents of Village Balhama, Tehsil Panthan Chowk, District Srinagar;

4. Mst. Dilshda, Aged 42 years,

   D/O Qasim Malik,

   W/O Mehboob Ali,

   R/O At present Chenanbal Mirgund, Pattan, Baramulla, Kashmir.

...Petitioners/ applicants

V/S

1. UT of J&K through Commissioner/ Secretary Revenue, Srinagar;
2. Tehsildar concerned, Mouza Balhama, Tehsil Panthachowk District Srinagar;
3. Patwari Halqa, Balhama, Block Khunmoh Srinagar;
4. Mohammad Abass,
5. Mohammad Amin,

   Sons of Mst. Fatima,

   Residents of Balhama Srinagar.

....Respondents

In the matter of:- "Revision Petition on behalf of the petitioners above named against the mutation No. 2171 in respect of survey no. 318 pertaining to the land situated at village Balhama, Srinagar, Mouza Balhama, Tehsil Khas, District Srinagar and for the same petitioners are seeking revocation of above said mutation number and be set aside the impugned

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mutation no. 2171 which has been authenticated and attested by respondent no. 2 & 3 on 3.6.2022 and in view of these fake entries crept into the revenue records, the Tehsildar concerned may be directed for correction in the revenue entries in the records in respect of the above said mutation number and for attestation of fresh mutation in respect of the landed property of the petitioners strictly as per muslim law and accordance with already existing revenue record (Intikhab-e-Jamabandi and Intikhab-e-Girdawari attested on 13.3.2021 and 19.6.2021) also within the procedure laid down in the L.R Act and enquiry be conducted against the erred revenue officials who inducted fake and fraud entries of mutation to the exclusion of above said petitioners who are in the real possession and ownership of the said land and same mutation numbers be set aside/ revoked and correct the mutation number in the name of Petitioners.

May it please your honour,

The petitioners most humbly submit as under:-

1. That the petitioners are the permanent domiciles of UT of Jammu & Kashmir and invoking the appellate jurisdiction of this Hon'ble court for challenging the mutation number 2171 mutated by the respondent no.2 & 3 and executed by respondent no. 2 in favour of respondent no.4 & 5 and same is reflected in the revenue extract (Parti Patwar) attested by respondent no. 3 on 3.6.2022 and countersigned by respondent no.2 and same impugned revenue extract bearing the impugned mutation no. 2171 annexed herewith as Annexure (A).

2. That the impugned mutation number supra is very detrimental to the rights and interests of the petitioners being the de-facto & de-jure owners and possessors of the above mentioned land which is the matter under instant revision and before challenging the impugned mutation bearing no. 2171 it is pertinent to mention here that the factual matrix of the case follows as:-

a. That the Petitioners are the decedents of same ancestors namely Mst. Fatima D/O Mousin Mir W/O Sadiq Malik R/O Village Balhama Srinagar who left her son Jaffar Malik as her lone legal heir after her death and who happened the grandfather of petitioners, besides the petitioners there are other relatives owing their heir lineage from the same ancestors therefore the pedigree table of legal heirs of Mst. Fatima are given below:-

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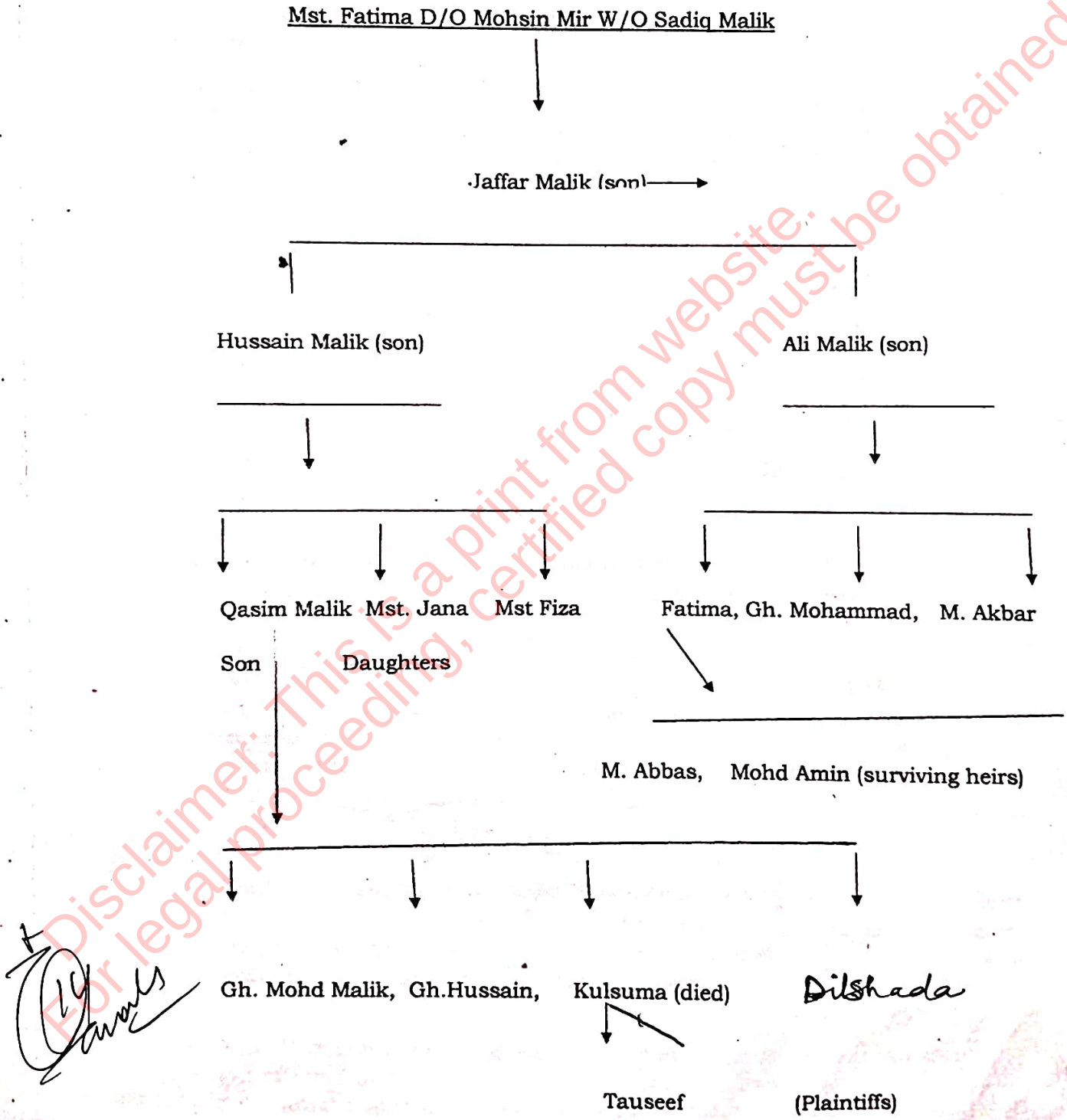

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while analyzing the above stated pedigree table, Mst. Fatima was survived by her son namely Jaffar Malik and later on Jaffar Malik was survived by two sons as his legal heirs namely Hussain Malik and Ali Malik out of whom two branches of heir lineage followed. Hussain Malik was survived by Qasim Malik (son) and Mst. Jana and Fiza (daughters) and later on Qasim Malik was survived by Ghulam Mohammad Malik, Hussain Malik (sons) and Mst. Dilshada and Mst. Kulsooma (deceased) and said Mst. Kulsooma was survived by her son Tawseef Ahmad therefore sons and daughter and grandson of Qasim Malik are herein referred as petitioners. Similarly Ali Malik S/O Jaffar Malik was survived by two sons and a daughter namely Mohammad Akbar Malik, Ghulam Mohammad Malik and Mst. Fatima, also Mst. Fatima is survived by Mohammad Abass Rather and Mohammad Amin Rather, therefore sons, daughter and grandsons of Ali Malik are surviving cousin relatives of the petitioners.

b. That the immoveable property left behind by the common ancestors of petitioners and cousin relatives of petitioners are 11 kanals and 14 marlas of land falling within the survey number of 316 and 318 situated at village Balhama, Tehsil Khas District Srinagar and the details of the subject matter land are here:-

Khasra Numbers	Land
316	4 Kanals & 6 Marlas
318	7 kanals & 8 Marlas
Total land:	11 Kanals and 14 marla

c. That the above mentioned immoveable property i.e 11 kanals and 14 marlas got already devolved into two equal halves between the legal heirs of Qasim Malik and Ali Malik respectively and each party got entitled to 5 ½ Kanals and 7 marlas (5 kanals and 17 marlas) out of total 11 kanals and 14 marlas as their respective shares and inheritance mutation (Varasti Intikal) has already been effected in their names in the revenue records under mutation no.324 and same are reflected from the copies of revenue extracts Intikhab-e- Jamabandi dated 13.03.2021 and Intikhab-e- Girdawari dated 19.06.2021 and same are annexed herewith as Annexures R1 and R2.

d. That the property above described is already partitioned and every share holder has taken its due share out of the said inheritance property as per the law of Inheritance governed by the Shariah Law and the said property got devolved into two equal halves.

e. That it is pertinent to mention here that on 27.08.1990 Warasti Intikal got effected in favour of the petitioners pertaining to their due share i.e 5 ½ Kanal and 7 marlas out of 11 kanals and 14 marlas, and it is also

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came into the notice in the Register Mutation of village concerned that Hussain Malik who happened the grandfather of petitioners expired 10 years before the said mutation date i.e. 27.8.1990 and probably Hussain Malik got expired in 1979 and same fact are reflected in Parat Patwar Register Mutations, Mouza Balhama and same is annexed as Annexure (P).

f. That the father of petitioners namely Haji Qasim Malik also expired on 19.12.2008 and same are reflected in death certificate annexed herewith as Annexure (D).

g. That it is pertinent to mention here that Ali Malik who happened the Paternal uncle of the petitioners and whose surviving legal heirs are Mst. Fatima, Ghulam Mohammad, Mohammad Akbar, died in 1983 and same fact is reflected from the cenotaph of the grave of late Ali Malik and same is annexed herewith as Annexure (E).

h. That the legal heirs of Hussain Malik and Ali Malik are already in possession and occupation being the owners of their respective shares each 5 ½ kanals, 7 marals falling within khasra no. 316 and 318 by way of Inheritance as legal heirs and they are enjoying continuous possession as de-jure and de-facto title over their respective shares without any hindrances and it is pertinent to mention here that as per the Revenue extracts (Nakle Parat Patwar) issued by respondent no. 2 & 3 showing that under the mutation no. 2171 a gift has been executed by Mohsin S/O Sabli Mir in favour of Mohammad Amin and Mohammad Abbas sons of Ghulam Hyder hereinabove mentioned as respondent no. 4 & 5 pertaining to the land of 2 kanals falling under survey no. 318 situated at Balhama Srinagar and it is worthwhile to sated here that the said Mohsin Mir S/O Sabli Mir who happened the Great Grandfather of the petitioners and the respondent no. 4 & 5 had expired 260 years before when the mother and grandfather of the respondent no. 4 & 5 were not in physical existence and how come it would happen that the Great Grandfather of both petitioners and the respondent no. 4 & 5 had executed a Gift in favour of sons of Mst. Fatima who happened to be the daughter of Ali Malik (deceased) and Ali Malik (deceased) S/O Jaffar Malik and Jaffar Malik (deceased) S/O Mst. Fatima and Mst. Fatima D/O Mohsin Mir and from Mohsin Mir to Ali Malik all are deceased and Mst. Fatima and her sons namely Mohammad Abass and Mohammad Amin are surviving heirs of Ali Malik besides Ghulam Mohammad and Mohammad Akbar and it is matter of astonishment that when the Grand Parents were not in existence and how come they executed a Gift deed in favour of Mohammad Amin and Mohammad Abass sons of Mst. Fatima (hereinafter referred as respondent no. 3 & 4) therefore the said Gift transaction as has been shown in the alleged Annexure (A) under impugned mutation number 2171 is illegal, unlawful and detrimental to the ownership rights of the petitioners and other legal heirs of Ali Malik.

3. That the respondent no. 3 and 4 with the help of some land mafia persons got lured into the temptation and are eying over the property

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share of the petitioners and with the due assistance of official respondents they fraudulently shown to be the Donees of the share to the extent of 2 kanals gifted by Mohsin Mir S/O Sabli Mir who died 260 years before and on the strength of the sham and pseudo gift they mutated fraudulently in the survey no. 318 which totally illegal as the physical possession of the land already got mutated among the share holders including the petitioners by way of Inheritance Mutation (Warasti Intikal) bearing no. 324 dated 13.3.2021 and 19.6.2021. Therefore the alleged gift transactions as has been shown and inserted in the revenue records are detrimental to the ownership rights of the petitioners and other legal heirs of Ali Malik.

4. That when the petitioners came to know on 25.05.2022 about the said fraud and promptly applied for the said revenue extracts which they got on 3.6.2022 from the official respondents and also they filed an application before the Worthy Deputy Commissioner, Srinagar and prayed for its enquiry. Same application is annexed herewith as Annexure (F).

5. That the petitioners assailing the said impugned mutation no. 2171 on the strength of the following grounds:-

a. That the physical possession of the said land lies to the petitioners as owners and there was no any transfer of physical possession and hence the above said impugned mutation no. 2171 is void and illegal, and same needs to be cancelled.

b. That the Donor namely Mohsin S/O Sabli Mir who happened the Great Grandfather of the petitioners and respondent no. 3 & 4 as have been shown allegedly gifted land of 2 kanals falling within the survey no. 318 in favour of the respondent no. 3 & 4 by way of Gift as alleged in the said mutation had already expired since 260 years before the birth of respondent no. 3 & 4 and their parents and this fake transaction of gift and the subsequent mutation suffers serious legal lacunas which cannot be compensated or rectified. Therefore the alleged mutation is based on fraud and false and is void abnitio.

c. That as per the legal requirement under Land Revenue Act, the mutation is effected only when there is any registered document as envisaged u/s 17 of Registration Act but in instant case the compliance of mandatory section has not been taken by the official respondents, therefore in view of non compliance of section 17 of Registration Act renders the said mutation illegal and unlawful.

d. That so far as the transfer of the Property Act is concerned, the alleged mutation no. 2171 is bereft of Section 122 and 123 of transfer of Property Act as dead person cannot make any declaration as Donor regarding Gift/ Sale of the property and cannot effect the transfer when there is no declaration in this regard, therefore the said mutation is illegal and unlawful and same needs to be revoked/ cancelled.

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e. That no any instrument has been signed or executed by the dead persons as being allegedly attributed in the mutation no. 2171, so therefore the said mutation cannot stand on the strength of legality in the eyes of law, therefore deserves to be cancelled.

f. That as per the law when the property is already acquired by the legal heirs of the same ancestor and the Inheritance Mutation (Warasti Intikal) got already effected with respect to the shares holding by the share holders/ legal heirs to the extent of their shares cannot be subverted by way of the alleged gift deed as allegedly shown gifted in favour of the respondent no. 3 & 4 which is bereft of legal rational and logic, and deserves to be revoked.

g. That the said mutation has been inserted in violation of the rules and regulations of the Land Revenue Act and needs to be set aside.

6. That this petition is supported by duly sworn affidavit

In the premises it is therefore most humbly prayed that this Revision Petition be allowed and for the same declare the mutation bearing no. 2171 pertaining to the survey number 318 with regard to land measuring 2 kanals situated at Balhama, Mouza Balhama, Tehsil Khas District Srinagar as illegal and null and void, and the respondents 3 & 4 may be abstained from creating any third party interest in the subject matter of the revision petition and not to change the status of the mutation bearing no. 324 dated 19.06.2021 as the said mutation number no. 324 be treated as real and legal with regard to the above said property to the extent of share mentioned in the said mutation no. 324 in respect of the petitioners.

It is further prayed that the above said impugned mutation as inserted in the entries of revenue records bearing No. 2171 be treated null and void under law and be revoked/ cancelled and further enquiry may be ordered/ conducted against the erred officials who have committed the insertion in the revenue records prejudicial to the legal rights and interests of the petitioners and same be done to meet the ends of justice and further any other order/ direction be passed in favour of the petitioners and against the respondents in the context of above stated facts and circumstances.

Dated: 15.07.2022

Place: Srinagar

Petitioners through Counsel

Adv. Taffazul Hussain

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