

Sr. No. 16
Regular.

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP 584/2018

MOHAMMAD MAQBOOL

...Petitioner(s)/appellant(s)

Through: Mr. Gaash Asrar-ul Haq, Advocate

Vs.

State of J&K & Ors.

...Respondent(s)

Through: Mr. Hakim Aman Ali, Dy. AG.
Mr. W.M. Shah, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

10.02.2025

1. In the instant petition filed under Section 226 of the Constitution of India, the petitioner herein has challenged order dated 27.03.2018, passed by the Financial Commissioner (Revenue) in case titled "*Mst. Rehti Vs. Mohammad Maqbool and Anr.*"
2. Facts emerging from the record would reveal that one Shaban Ganie, the father of petitioners and respondent No. 3 herein, after his death had left landed estate at village Jawalapora, Budgam. While the petitioner 1 and respondent 3 are stated to be major at the time of their father's death, the petitioner 2 is stated to have been a minor at that relevant point of time.
3. Mutation No. 804 is stated to have been attested in the year 1986, qua the estate of the deceased Shaban Ganie, however, only in favor of petitioners herein, excluding respondent 3 herein, followed by Mutation No. 929, in terms whereof petitioner 2 herein, had surrendered her share inherited from her father, in favor of petitioner 1 herein.
4. The respondent 3 herein, feeling aggrieved of both mutations being Mutation no. 804 as well as 929, filed a revision petition before respondent 1 herein, stating therein that she, along with petitioner 1 and 2 herein,

succeeded her father Shaban Ganie after his death, and was entitled to a share as his daughter out of the estate left behind by her father and alleged that she was illegally excluded while attestation of Mutation No. 804 in favour of the petitioners herein and that the subsequent Mutation 929, attested in favor of petitioner 1 herein, being outcome of the Mutation 804, is also not legally sustainable.

5. The respondent 1, herein upon considering the revision petition and after hearing the contesting parties, being the petitioners and respondent 3 herein, in terms of impugned order, allowed the revision petition and set aside the impugned mutations fundamentally on the ground that the initial mutation 804 has been attested in a violation of Standing Order 23-A and illegally excluded the respondent 3 herein, from succeeding her father Shaban Ganie and that the subsequent mutation 929, since owes its origin to initial mutation 804, the said mutation as well is not sustainable.

6. The Respondent 1 further observed that the plea of limitation raised by the respondents before the Financial Commissioner being petitioners herein, would not be attracted in view of law laid down by this Court in case titled as "*Akhtara Vs. State of J&K and Ors.*"

7. The petitioners herein aggrieved of the impugned order dated 23 March 2018 have assailed the same in the instant petition, *inter alia*, on the grounds that the initial mutation was attested in their favor, excluding the respondent 3 herein, as she had already received her share in cash from petitioner 1, contending further that respondent 1 passed the impugned order without appreciating the said fact, as also the evidence made available on record, inasmuch as illegally entertained time barred revision petition.

8. Reply to the petition has been filed by respondent 3 wherein the petition is being opposed *inter alia* on the premise that at the time of attestation of the initial Mutation No. 804, the respondent 3 herein was not present, and that the said mutation came to be attested in violation of rules and regulations, depriving the respondent 3 of her share out of the estate of her father, and that in view of the glaring breach and violation of rules and regulations qua the attestation of mutations, the plea of limitation would not be applicable to the case, and attracted against the Respondent 3.

Heard learned counsel for the parties and perused the record.

9. It is not in dispute that the petitioners and respondent 3 are siblings who succeeded their father, Shaban Ganie. It is not also in dispute that after the death of Shaban Ganie, Mutation No. 804 came to be attested in the year 1986 in favor of petitioners alone, excluding the respondent 3 herein.

10. Perusal of the record available on file manifestly tends to show that while the petitioners and respondent 3 have been shown to have succeeded Shaban Ganie in the matter of inheritance, only the petitioners herein have been vested with a share out of estate of Shaban Ganie, excluding respondent 3 herein. It is not forthcoming from the record as to why respondent 3 have had been excluded from inheriting the estate of her father, Shaban Ganie, as to whether the said exclusion is based upon a custom or else the respondent 3, at the time of attestation of Mutation No. 804, was present and had relinquished or surrendered her share in favor of the petitioners herein.

Since record does not reveal as to why respondent 3 herein was excluded to inherit her father and under what circumstances mutation 804 came to be attested in her absence, it can safely be said that the said mutation has been attested in breach and violation of the law of succession under Muslim Personal Law, inasmuch as the provisions of Standing Order 23-A. The respondent 1 has rightly noticed the aforesaid position and has thus not committed any irregularity or perversity while passing the impugned order and setting aside not only the basic mutation 804, but also the consequent mutation 929, having been attested pursuant to the said mutation 804. Further, in view of the aforesaid position obtaining in the matter, the Financial Commissioner has rightly entertained the revision petition and overruled the plea of limitation urged by the petitioners herein against the maintainability of the revision petition filed by respondent 3 herein, wherein the impugned order has been passed.

Furthermore, it is significant to mention here that the impugned order notwithstanding the setting aside of the impugned mutations is essentially an order of remand, requiring the officer concerned to attest fresh mutations in accordance with Muslim Personal Law, as well as procedure laid down by Standing Order 23-A and the petitioners herein in this view of

the matter as well, will have an ample opportunity to project their case and claim against the case and claim set up by the respondent 3 herein before such attesting officer.

11. For what has been observed, considered, and analyzed herein above, there is no merit in the instant petition and is accordingly dismissed, upholding the order passed by the Financial Commissioner (Revenue) dated 27.03.2018.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
10.02.2025
Junaid

