

Mutation Entries Only Fiscal In Nature, Do Not Confer Any Title In Respect Of Property To Which They Relate: J&K&L High Court

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**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR
ALI MOHAMMAD MAGREY; CJ., SANJAY DHAR, J.**

LPAOW No.166/2016; 02.11.2022

MUGLI BEGUM & ORS. versus FINANCIAL COMMISSIONER & ANR.

Appellant (s) Through: - Mr. Nisar Ahmad Bhat, Advocate.

Respondent (s) Through: - Mr. G. A. Lone, Advocate, with Mr. Mujeeb Andrabi, Advocate.

J U D G M E N T

Sanjay Dhar, J:

1) The instant Letters Patent Appeal is directed against judgement dated 27.06.2016 passed by the learned Writ Court in a writ petition filed by the predecessor-in-interest of the appellants against the respondents. In the said writ petition, the writ petitioner had challenged order dated 28th March, 2005, passed by the Financial Commissioner, whereby orders recorded on ten separate mutations had been set aside. By virtue of the impugned judgment, the learned Writ Court has, while upholding the order of the Financial Commissioner, dismissed the writ petition.

2) According to the appellants, respondent No.2 had executed an oral gift in respect of various parcels of land situated at Village Kralpora in favour of the writ petitioner, regarding which ten separate mutations were attested. The details of these mutations are given as under:

1. Mutation No.3017 dated 04.06.1998 for land measuring 3 kanal 12 marlas covered by survey No.1904/1894/1855/1092;

2. Mutation No.3018 dated 04.06.1998 for land measuring 2 kanals under survey No.1089.

3. Mutation No.3019 dated 04.06.1998 for land measuring 1 kanals 16 marlas under survey Nos.1089-min(1 kanal 8 marlas) and 1901/1891/1090 (12 marlas).

4. Mutation No.3020 dated 04.06.1998 for the land measuring 2 kanals under survey Nos.1091/ 1891/ 1090(8 marlas) and 1904/1894/1855/1092 (1 kanal 12 marlas).

5. Mutation No.3080 dated 31.12.1998 for land measuring 2 kanals 12 marlas covered by survey No.1091.

6. Mutation No.3081 dated 04.01.1999 for land measuring 2 kanals 15 marlas under survey No.1091.

7. Mutation No.3083 dated 04.01.1999 for the land measuring 1 kanal 9 marlas under survey No.1125(10 marlas) and 1132(19 marlas).

8. Mutation No.3078 dated 6.1.1999 for the land measuring 2 kanals 14 marlas falling under survey No.1124.

9. Mutation No.3079 dated 6.1.1999 for the land measuring 3 kanals 17 marlas covered by survey No.1130(1 kanal 12 marlas) and 1131 (2 kanals 5 marlas).

10. Mutation No.3082 dated 6.1.1999 for the land measuring 2 kanals 9 marlas under survey No.1123(2 kanal 5 marlas).

3) Respondent No.2 challenged the aforesaid mutations by filing a petition before respondent No.1-Financial Commissioner, on the ground that these mutations are fictitious in nature. An enquiry into the matter was directed by respondent No.1 and Assistant Settlement Officer, Kashmir, after holding the enquiry, submitted his report. As per the said report, ten mutations attested in favour of the writ petitioner on different dates bear the signatures of same set of witnesses in similar ink. It was further reported that the signatures of the witnesses and respondent No.2 were obtained on blank forms and the procedure prescribed under Standing Order 23-A was not followed. Acting on the aforesaid report, the Financial Commissioner vide order dated 28th March, 2005, set aside all the ten mutations. This order was challenged by the predecessor-in-interest of the appellant before the learned Writ Court.

4) Vide the impugned judgment, it has been observed by the learned Writ Court that the Financial Commissioner has appreciated the matter in its correct perspective. The Writ Court further held that the mutations have been attested in derogation of the procedure prescribed under Standing Order 23-A, as such, the same are not sustainable. Accordingly, while upholding the order of the Financial Commissioner, the writ petition has been dismissed.

5) The appellants, who happen to be the successors-in-interest of the writ petitioner, have challenged the judgment of the Writ Court on the ground that the writ petitioner had, in fact, paid the sale consideration in respect of the land in question to respondent No.2 though the mode of transfer was nomenclatured as oral gift, as the same was considered as one of the safest modes of transfer of ownership of the land. It has been further contended that after receiving the amount of sale consideration, the possession of the land was handed over by respondent No.2 to the writ petitioner and the mutation was attested in his favour vide ten different mutation orders. It has been contended that a portion of the land in question was mortgaged to J&K Cooperative Central Land Development Bank, Srinagar, and it was the writ petitioner who, paid the loan amount to respondent No.2 for redeeming the mortgage.

6) It has been contended that because there is a civil suit pending between the parties which relates to the land in question, as such, it was not open to the Writ Court to uphold the order of the Financial Commissioner whereby the mutations attested in favour of the writ petitioner were set aside as the controversy could be decided only by the civil court only. It has been further contended that as per Standing Order 23-A, the gift is a recognized form of attestation of a mutation, as such, the observation of the Writ Court that the mutations were attested in violation of the Standing Order 23-A is not in accordance with law. It has also been contended that it is not the requirement of law that there should be different sets of persons to witness the attestation of mutations and merely because same set of persons were cited as witnesses in all the mutations in question would not render these mutations illegal. It has further been contended that the observation of the Writ Court and the Financial Commissioner that the predecessor-in-interest of the appellants has played a fraud upon respondent No.2 while procuring mutations in respect of the land in question in his favour, is uncalled for as the same would prejudice the case of the appellants before the civil court. It has also been contended that the challenge laid by respondent No.2 to the mutation orders in question before the Financial Commissioner is belated but this aspect of the matter has not been considered by the learned Writ Court.

7) We have heard learned counsel for the parties and perused the record of the Writ Court, the grounds of appeal and the impugned judgment.

8) So far as the first contention of the appellants that a civil suit between the parties relating to the land in question is pending before the civil court and, as such, it was not open to the Writ Court to record a finding as regards the validity of the mutations in question is concerned, the same is without any merit. It is a settled law that mutation entries are only fiscal in nature and these do not confer any title in respect of the property to which they relate nor do these entries extinguish right of a party in respect of the said property. The title to an immovable property is to be established by the disputants before a civil court and not in mutation proceedings. The mutation is attested only in order to enable the Government to recover revenue from the person in whose favour the same is attested. These entries are always subject to the decree of a civil court of competent jurisdiction. Therefore, decision of the Writ Court or the Financial Commissioner on the validity of the mutations will not have any bearing on the suit, which is stated to be pending before the civil court. The Writ Court was, therefore, well within its jurisdiction to test the validity of the mutations attested in favour of predecessor-in-interest of the appellants that were set aside by the Financial Commissioner, as the scope of these proceedings is entirely different from the scope of the proceedings pending before the civil court.

9) It has been next contended by the appellants that nothing in Standing Order 23-A prohibits attestation of mutation on the basis of an oral gift, which is a recognized mode of transfer of property in the case of Muslims. It is true that in terms of the provisions contained in Standing Order 23-A, mutation can be attested on the basis of a gift which may include even an oral gift but in the instant case, it is the claim of the appellants that the writ petitioner had purchased the land by paying sale consideration to respondent No.2 and the oral gift was made by respondent No.2 only as a cloak. In other words, the appellants admit that it was a transaction of sale and not an oral gift. Transfer of immovable property by any mode other than the one recognized by Transfer of Property Act cannot be termed as legal. As per Section 54 of the Transfer of Property Act, transfer of immovable property by sale can be effected only by execution of a registered instrument. In the instant case, admittedly, respondent No.2 has not executed any sale deed in favour of the writ petitioner. Thus, the claim of the writ petitioner that he had purchased the land in question has no sanction of law. Therefore, the mutations attested in favour of the writ petitioner are in violation of Para 104 of Standing Order 23-A. It is for this reason that the learned Writ Court has observed that the alienation of land in the manner claimed by the writ petitioner is not permissible in law.

10) It is been contended that there is no requirement of law that different sets of witnesses should be there for attesting different mutations and, as such, the mutations in question attested in favour of the writ petitioner were in accordance with law.

11) It is true that it may not be a requirement of law that same persons should not be witnesses to different mutations but then in the instant case, the mutations have been attested over a period ranging from June, 1998 to January, 1999 i.e., about six months. Ten different mutations have been attested and in all these mutations, same persons have been cited as witnesses. As per the enquiry report, the ink used by these witnesses is similar in all mutations and even the ink in which respondent No.2 is purported to have signed on the mutations is also of the same nature. All this raises a genuine suspicion relating to the matter in which the mutations have been attested. Therefore, the doubt about the authenticity of the mutations attested in favour of the writ petitioner expressed by the Financial Commissioner as well as by the Writ Court is well-founded.

12) It has been next contended by the appellants that the observations that the writ petitioner has played a fraud while getting the mutations attested in his favour would prejudice the case of the appellants before the civil court. It is true that the Financial Commissioner has made these observations in his order dated 28th March, 2005, but the learned Writ Court has made it clear in the impugned judgment that the question whether there has been a fraud or not cannot be commented upon. So far as the observation of the Financial Commissioner in this regard is concerned, it is made clear that the said observations would not prejudice the case of the appellants before the civil court.

13) Lastly, it has been contended by learned counsel for the appellants that respondent No.2 has belatedly challenged the mutations before the Financial Commissioner and this aspect of the matter has not been considered by the Financial Commissioner while passing order dated 28th March, 2005.

14) If we have a look at the mutations in question, the first one has been attested on 4th June, 1998 and the last one has been attested on 6th January, 1999. The record shows that respondent No.2, after making a complaint before the Financial Commissioner, was informed by Special Assistant to the Financial Commissioner vide his communication dated 17.08.1999 that he should file an appeal/revision against these mutations. In the meantime, respondent No.2 filed revision petitions before the Financial Commissioner on 2nd August, 1999. It appears that prior to filing of the revision petitions, on the basis of complaint of respondent No.2, an enquiry was directed by the Financial Commissioner in terms of his communication dated 22nd June, 1999, and a report of enquiry was submitted by Assistant Settlement Officer, Kashmir, on 16th July, 1999, meaning thereby that respondent No.2 had approached the Financial Commissioner immediately after passing of the mutation orders.

15) It is pertinent to note here that in the enquiry report dated 16.07.1999, the Assistant Settlement Officer, Kashmir, has reported that signatures of witnesses and respondent No.2 have been obtained on blank forms and the provisions of the Standing Order No.23-A have not been adhered to by the attesting officer. It has also been reported that the attesting officer has failed to appreciate and take cognizance of the fraud, prima facie, engineered by the Patwari. In these circumstances, respondent No.2 could approach the revisional forum only upon coming to know about the alleged fraud, which he did with promptitude. Thus, there has been no delay in filing of revision petitions by respondent No.2.

16) Apart from the above, a perusal of the grounds projected in the writ petition would show that the writ petitioner has not raised the plea of delay in filing revision petition before the Writ Court. Obviously, the learned Writ Court had no occasion to deal with the said plea. The appellants cannot raise this plea for the first time before this Court.

17) For the foregoing reasons, we do not find any ground to interfere in the impugned judgment passed by the learned Writ Court. The same deserves to be upheld. Accordingly, the appeal is dismissed being without any merit.