

S. No. 4
Regular Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT SRINAGAR

WP (C) No. 286/2022

CM No. 607/2022

Ghulam Mohammad Bhat Alias Gull Bhat

...Appellant/Petitioner(s)

Through: Mr. Malik Mudasir Yousuf, Adv.

Vs.

UT of JK and Anr.

...Respondent(s)

Through: Illyas Laway, GA

Mr. Abdul Musavir, Adv. for Respondents 6 to 9.

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

18.04.2024

Oral

1. The petitioners herein have challenged order dated 17-01-2022 passed by the Joint Financial Commissioner (Revenue), Srinagar respondent 2 herein in a revision petition titled as "*Ghulam Mohammad Bhat Alias Gull Bhat vs. Ghulam Mohammad Rather Alias Muma Rather and Ors*".
2. Facts giving rise to the filing of the instant petition reveals that one Satar Rather owned and possessed landed estate covered under Khewat No. 23 and 24 situated at Imam Sahab, Shopian and after his death came to be survived by one daughter namely Mst. Azizi i.e. the predecessor-in-interest of the present petitioner and one son namely Ghulam Mohammad Rather

Alias Muma Rather i.e. the predecessor-in-interest of the private respondents herein. After the death of said Satar Rather, Mutation No. 538 dated 5th February, 2010, came to be attested qua his landed estate in favour of his above named son and the daughter in equal shares being the only legal heirs. The said Mutation No. 538 however, came to be called in question by Muma Rather his son i.e. the predecessor-in-interest of the present respondents before the Additional Deputy Commissioner, Shopian, the Respondent no. 4 herein being vested with powers of Agrarian Commissioner/Collector, Shopian, in an appeal filed on 6th May, 2010, on the ground that his father Satar Rather had died 50 years ago and Mst. Azizi have had been married as a ***Khana Berun Daughter*** in village Chotipora Manihal Shopian and, as such, the landed estate of Satar Rather have had to vest unto him and the said Azizi in the ratio of 2:1 under the Law of Inheritance of Muslims in terms of J&K Muslim Personal Law (Shariat) Application Act of 2007 (for short Act of 2007) and, as such, the impugned mutation could not have been attested in presence of the said Act, qua the estate of his father Satar Rather in equal shares.

3. During the pendency of the said appeal Mst. Azizi, the predecessor in interest of the present petitioners died and an application for bringing on record her legal heirs came to be filed on 9th May, 2026, which application came to be allowed

on 16th December, 2017, impleading the legal heirs of Mst. Azizi (petitioners herein) as party respondents in the appeal, where after the appellate forum after hearing the parties, in terms of the order dated 15-05-2018 set aside Mutation No. 538 holding that the said mutation had been attested after coming into being of the Act of 2007, as a consequence whereof, the appellate forum remanded the matter back to the Tehsildar for *de novo* enquiry and attestation of fresh mutation in accordance with law.

4. Aggrieved of order dated 15-05-2018, one of the legal heirs of Mst. Azizi, namely Gul Bhat petitioner No. 1 herein challenged the said order before the revisional forum respondent No. 2 herein on 7th June, 2018, which revision petition in terms of the impugned order dated 17th January, 2022, came to be dismissed holding the same to be devoid of any merit.
5. The petitioner in the revision petition, namely Gul Bhat as also the other legal heirs of Mst. Azizi have now challenged order dated 17th January, 2022, passed by the revisional forum in the instant petition, on multiple grounds, including on the ground that the impugned order is illegal, unwarranted, unjustified, cryptic and perverse having been passed without appreciating the fact that inheritance opens and devolution operates instantly on the death of the estate holder qua his legal heirs and that both the legal heirs of the original estate holder Satar Rather,

upon his death devolved upon his two legal heirs namely Mst. Aizizi as a *Khana Nisheen Daughter* and Muma Rather his son in equal shares, where after consequently Mutation No. 538 rightly came to be attested in respect of the above named legal heirs of Satar Rather and that the said right of Mst. Azizi however, could not have got extinguished by application of the Act of 2007 and that the said fact had been overlooked by the revisional forum. It is further stated in the petition that a civil suit has been filed by the petitioners herein before the Court of Sub Judge, Shopian titled as “*Abdul Razak Bhat & Ors. vs. Gh. Mustafa Rather & Ors*” seeking *inter alia* therein a decree of declaration for declaring them to be owners of the landed estate of Satar Rather to the extent of half share.

6. **Objections** to the petition have been filed by the respondents wherein it is being admitted that the original estate holder Satar Rather owned and possessed landed estate falling under Khewat no. 23 and 24 situated in village Hillav Gund Mureed Shopian and after his death, said Satar Rather came to be survived by son Muma Rather and daughter Mst. Azizi. It is also been admitted that upon coming to know about the Mutation No. 538 attested qua the landed estate of the said Satar Rather, same came to be challenged by his son Muma Rather in an appeal before the appellate forum respondent no. 4 herein on the ground that the said mutation have had been attested illegally

after coming into operation of the Act of 2007 as also that Mst. Azizi his sister had been married as a *Khana Berun Daughter* and, as such, the estate of Satar Rather would devolve upon his legal heirs namely Muma Rather and Mst. Azizi in the ratio of 2:1 in terms of the Act of 2007. It is being further stated in the objections that the Mutation No. 538 came to be rightly set aside by the appellate forum in terms of order dated 15-05-2018 and that the revisional forum respondent No. 2 herein as well rightly dismissed the revision petition in terms of impugned order dated 17th January, 2022, filed against order of the appellate forum dated 15-05-2024.

Heard learned counsel for the parties and perused the record.

7. Perusal of the record reveals that indisputably Mutation No. 538 came to be attested on 5th February, 2010, after coming into being of the Act of 2007, which Act in Section 2 provides as under:

“2. Application of personal law to Muslims.— Notwithstanding any customs or usages to the contrary, in all questions regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lain, khula and mubarrat, dower, guardianship, gifts, trusts and trust properties, the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).”

A plain reading of the aforesaid Section 2 manifestly postulate that the Act of 2007 is enjoined upon to apply the Muslim Personal Law in all cases relating to the matters specified therein notwithstanding any customs or usages to the contrary, thus clearly signifying that the same shall stand made applicable to all the matter pertaining to the questions regarding inter-state succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lain, khula and Mubarrat, dower, guardianship, gifts, trusts and trust properties.

8. Having regard to the aforesaid provisions of the Act supra and reverting back to the case in hand, although the matter of inheritance qua the landed estate of the original estate holder Satar Rather have had opened immediately upon his death yet the devolution of such inheritance inasmuch as the shares therein have had to devolve upon his legal heirs under the law of inheritance of Muslims. The plea of the Mst. Azizi that she inherited her father Satar Rather as a *Khana Nisheen Daughter* have had been seriously disputed by her brother Muma Rather on the ground that Mst. Azizi was never married as a Khana Nisheen daughter but have had been married as a *Khana Berun Daughter*.

9. Be that as it may, the fact remains that the Mutation No. 538 came to be attested on 5th February, 2010, qua the landed estate of Satar Rather in two equal shares between Muma Rather his son and Mst. Azizi his daughter. The issue pertaining to the claim of Mst. Azizi that she was a ***Khana Nisheen Daughter*** of Satar Rather and would inherit the estate of Satar Rather as a son is stated to be subject matter of the suit stated to have been filed by the legal heirs of Mst. Azizi the present petitioners before the Court of Sub Judge, Shopian which suit is stated to be pending between the parties, as such, in presence of the pendency of the said suit, this court refrains from making any observation or record any finding qua the claim of Mst. Azizi to be as ***Khana Nisheen Daughter*** of Satar Rather and to inherit, as such, as a son, the estate of the Satar Rather. In view of the aforesaid position, Mutation 538 could not have been attested, more so after coming into being of the Act of 2007.

10. Having held that the Mutation No. 538 dated 5th February, 2010, could not have been attested upon coming into being of the Act of 2007, both the appellate forum as well as the revisional forum cannot be said to have faulted in drawing the same conclusion while setting aside the said mutation and directing holding of a *de novo* enquiry in the matter by the concerned attestation officer and attestation of fresh mutation in

accordance with law, leaving it open to the parties to establish their respective claims qua the estate of their father.

11. Viewed thus, the petition is found to be without any merit, and as such, exercise of discretion under Article 226 of the Constitution is being declined, more so in view of the concurrent findings recorded by the forums below.

12. Dismissed along with all connected applications.

SRINAGAR
18.04.2024
Sakeena

