

S. No. 68

Supplementary List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 3293/2023

1. **Shahzada Bano (Aged 50 years)** ...Petitioner(s)/Appellant(s)
D/O Haji Mohammad Ashraf Sumji
R/O Kartargarh, Alsafa Colony, Sopore
Tehsil Watergam, District Baramulla.
2. **Shahnaz (Aged 40 years)**
D/O Mohammad Ashraf
R/O Iqbal Nagar, Sopore
District Baramulla.
3. **Haji Mohammad Ashraf Sumji Age, 62 years**
S/O Haji Gh. Mohi-ud-Din Sumji
R/O Kartargarh, Alsafa Colony, Sopore
Tehsil Watergam, District Baramulla
4. **Mehraj-ud-Din Sumji, Age 45 years**
S/O Haji Ghulam Mohi-ud-Din Sumji
R/O Kartargarh, Alsafa Colony, Sopore
Tehsil Watergam, District Baramulla.
5. **Abdul Aziz Darzi, Age 75 years**
S/O Ghulam Mohammad Darzi
R/O Kartargarh, Alsafa Colony, Sopore
Tehsil Watergam, District Baramulla.

Through: Mr. G. A. Lone, Adv.

Vs.

1. **Deputy Commissioner (Collector) District Baramulla.** ...Respondent(s)
2. **Tehsildar, Watergam, District Baramulla.**
3. **Patwari Halqa/Village Kartargarh, District Baramulla.**

Through:

CORAM:HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

ORDER
18.12.2023

1. Petitioners through the medium of this petition under Article 226 of the Constitution of India seek following directions:

"a) Writ of Certiorari: for quashing the Order/communication issued by respondent no. 2-Tehsildar, Watergam District Baramulla bearing endorsement No. TWQ/OQ/2023-24/473-74 dated 29th August 2023:

b) Writ of Mandamus: commanding the respondents to attest the mutation in favour of

the petitioners on the basis of will executed by Darshan Lal Khanna on 21st Day of April, 2005 and transfer the land in the revenue records on the basis of said will in favour of the petitioners.

c) Any other writ, order, or direction which this Court may deem just and proper under the facts and circumstances of the case be passed in favour of the petitioner and against the respondents.”

2. It has been pleaded that the petitioners on the strength of a Will deed executed by one-Darshan Lal Khanna in favour of the petitioners had approached the Revenue officers for attestation of mutation with regard to the land, the subject matter of the Will, however, respondent-Tehsildar Watergam vide his communication No. TWQ/OQ/2023-24/473-74 dated 29th August 2023, which has been impugned in this petition, has informed Mr. Zubair Gulshan Advocate, learned counsel for the applicants/petitioners that the Will, being unregistered document, cannot be acted upon and advised to take further course of action at his end.
3. Learned counsel for the petitioners submit that instead of making communication to the counsel for the applicants, it was incumbent upon the Tehsildar to decide with regard to mutation by accepting the same or rejecting the same on merits of the case, and prayed that the respondents be directed to proceed further in the matter, in accordance with law. He has also argued that the document of Will is not compulsorily registerable, but, its registration is optional and even a Will Deed, without being registered is legally a valid document.
4. Heard.
5. Needless to say, the document of Will with regard to immovable property is not compulsorily registerable document in terms of the Transfer of Property Act or Section 17 of Registration Act. Section 18 of the Registration Act provides in clause (C) ‘**Wills**’ as documents whose registration is optional. Therefore a Will Deed, even if without registration, is a valid legal document, which can be acted upon.

6. In view of the pleadings and the submissions urged at the bar, this petition does not require to be retained on board, for further proceedings before this Court, and, it can be disposed of at this stage with a direction to the respondents in particular respondent Tehsildar Watergam, to pass the appropriate orders with regard to application of the petitioners for attestation of mutation on its own merits.
7. The petition is, accordingly, disposed of at this stage, and respondents are directed to take further legal action in the matter on the application moved by the petitioners with regard to attestation of the mutation.
8. ***Disposed of*** as above.

SRINAGAR
18.12.2023
Hilal Ahmad

(MA CHOWDHARY)
JUDGE

