

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Case No. LPAOW No. 26/2016

Reserved on: 06.11.2025
Pronounced on: 13.11.2025
Uploaded on: 13.11.2025

***Whether the operative part or full
judgment is pronounced? Full***

1. Abdul Aziz Hafiz, Age 60 Years **....Appellant(s)**
S/o Wali Mohammad Hafiz
R/o Natipora, Tehsil and District, Srinagar (South)
2. Abdul Rashid Hafiz, Age 57 Years
S/o Wali Mohammad Hafiz
R/o Natipora, Tehsil and District Srinagar (South)
3. Mohammad Shafi Hafiz, Age 50 Years
S/o Wali Mohammad Hafiz
R/o Natipora, Tehsil and District Srinagar (South)
4. Mohammad Lateef Hafiz, Age 45 Years
S/o Wali Mohammad Hafiz
R/o Natipora, Tehsil and District Srinagar (South)

Through: Mr. A. Andrabi, Advocate

V/s

1. State of J&K through Secretary to Govt., Revenue **.....Respondent(s)**
Department, Civil Secretariat, Srinagar
2. Financial Commissioner,
J&K, Government, Srinagar
3. Tehsildar South, Srinagar
4. Mst. Fazi D/o Wali Mohammad Hafiz
R/o Lasjan Tehsil, Chadoora.

Through: Mr M. Younis, GA with
Ms Naubahar Khan, AC

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

J U D G M E N T

(Per: Sanjay Parihar-J)

1. The present Letters Patent Appeal is directed against the judgment of the writ court rendered in *OWP No. 507/2014*, whereby the writ petition filed by the appellants, seeking a writ of certiorari for quashing the order dated 05.04.2014 passed by the Financial Commissioner, J&K, Srinagar, came to be dismissed. Aggrieved thereof, the appellants have preferred the instant appeal.

2. The grievance projected by the appellants is that the Id. Single Judge failed to exercise the jurisdiction vested in the writ court and erred in dismissing the writ petition without properly appreciating the controversy in its entirety. It is contended that it overlooked the illegality committed by the Revenue Court. According to the appellants, respondent No. 4 was present at the time of attestation of the mutation dated 27.06.2000 and had consented to the recording of inheritance in favour of the appellants. It is further urged that after the attestation of the said mutation, respondent No. 4 even parted with her share by way of sale. The revisional jurisdiction, availed before the Financial Commissioner after a considerable lapse of time, itself suggests that respondent No. 4 had accepted and acquiesced to the

mutation order, and therefore, the writ court erred in dismissing the petition on untenable grounds.

3. Briefly stated, the facts giving rise to the present appeal are that the appellants are successors-in-interest of one Wali Mohammad Hafiz through his second wife, *Mst. Fazi*, whereas respondent No. 4, along with her brother *Late Ali Mohammad* and sister *Mst. Azizi*, are the descendants of Wali Mohammad Hafiz through his first wife, *Mst. Rahti*. It is an admitted position that upon the demise of *Mst. Rahti*, her estate was mutated vide Mutation Order No. 982 of 1950 in favour of respondent No. 4 and her two siblings. Upon the subsequent demise of *Mst. Azizi*, her estate was mutated in favour of her brother *Ali Mohammad*.

Respondent No. 4 thereafter claimed that while attesting the mutation, she had been illegally excluded from inheritance. Upon the death of *Ali Mohammad*, who died issueless, his estate was mutated vide order dated 27.06.2000 in favour of the appellants as well as respondent No. 4.

4. Aggrieved by the said mutation, respondent No. 4 preferred an appeal before the Additional Deputy Commissioner, Budgam, which was dismissed on 29.04. 2006. Respondent No. 4 then filed three revision petitions before the Settlement Commissioner, Kashmir, challenging Mutation Orders No. 1239 of 1958 and 1738 of 1958. The

Settlement Commissioner referred to the Financial Commissioner, recommending the setting aside of Mutations dated 27.05.1958, 07.10.1958, and 27.06.2000, as well as the order dated 29.04.2006 of the Additional Deputy Commissioner, Budgam. Acting upon the reference, the Financial Commissioner, vide order dated 05.04.2014, set aside all the said orders and remanded the matter to the concerned Tehsildar for attestation of a fresh mutation strictly in accordance with Muslim Personal Law, governing the estates of deceased *Mst. Rahti*, *Ali Mohammad*, and *Mst. Azizi*. It is this order which formed the subject matter of challenge before the writ court and, consequently, before this appellate forum.

5. The writ court, upon consideration, held that the estate of *Mst. Rahti* devolved upon her three children, respondent No. 4, her brother *Ali Mohammad*, and her sister *Mst. Azizi*. Since the latter two died issueless, respondent No. 4, being the sole surviving heir of *Mst. Rahti* became entitled to succeed to her estate. The appellants, being the offspring of the deceased through his second wife, *Mst. Fazi* had no right or interest in the property of *Mst. Rahti*. It further observed that a mutation proceeding is essentially fiscal in nature, meant only for recording succession, and does not itself confer or extinguish ownership rights. Any mutation purporting to divest a lawful heir of her inheritance would be void *ab initio*. Therefore, the Financial Commissioner rightly exercised supervisory powers to rectify an

illegal mutation order. The plea of limitation, it was held, could not defeat an heir's substantive right to her lawful share in immovable property.

6. Ld. counsel for the appellants reiterated before this Court that the mutation dated 27.06.2000 was like a compromise, which, according to him, attained finality akin to a consent decree, attracting the bar under **Section 96(3) CPC**. It was contended that the dispute had been amicably settled between the parties. Once the Revenue Authority had authenticated such a compromise through mutation, it could not have been nullified by the superior Revenue Authority. It was further argued that respondent No. 4, having acted upon the mutation and alienated part of the property, was estopped from later challenging the same

7. ***Per contra***, learned counsel for the respondents, while supporting the judgment of the Writ Court, submitted that the revisional authority possessed full jurisdiction to rectify errors committed by subordinate agencies. He contended that in view of the settled legal position, the estate of *Mst. Rahti* had rightly devolved upon her three successors, respondent No. 4 and her two siblings. Since both the siblings died issueless, the entire estate of the deceased *Mst. Rahti* lawfully devolved upon respondent No. 4 alone. It was further argued that though the mutation order dated 27.06.2000 mentions the presence of

respondent No. 4, there is not even a whisper in the order that she had consented to the inheritance of the estates of deceased *Ali Mohammad* and *Mst. Azizi* was being recorded in favour of the appellants, who admittedly had no legal right thereto.

8. We have given our thoughtful consideration to the submissions advanced at the Bar. The parties are governed by Muslim Personal Law, and in terms of the *Sri Pratap J&K Laws Consolidation Act, 1977 Svt.*, all questions relating to succession and inheritance are to be determined by the personal law applicable to the parties. Subsequently, the *J&K Muslim Personal Law (Shariat) Applicability Act, 2007*, under Section 2 expressly provided that in matters of inheritance, the Muslim Personal Law (Shariat) shall apply, and no presumption can be drawn in favour of any custom to the contrary. Therefore, after the enforcement of the 2007 Act, the rights of the parties concerning immovable property are to be governed strictly in accordance with Muslim Personal Law (Shariat).

9. The appellants have never questioned the estate of deceased *Mst. Rahti*, which she inherited from her late husband, *Wali Mohammad Hafiz*. Upon her demise, the estate was mutated vide Mutation Order No. 982 of 1950 in favour of respondent No. 4, her sister *Mst. Azizi* and her brother, *Ali Mohammad*. Once this position is admitted, succession to the estate of *Mst. Rahti* must necessarily be governed by

Muslim Personal Law. On the death of *Mst. Azizi*, her share devolved upon her surviving siblings, i.e., *Ali Mohammad* and respondent No. 4.

10. Admittedly, upon the demise of *Mst. Azizi*, the entire estate of *Mst. Rahti* was attested vide Mutation Order No. 1738 dated 07.10.1958 in favour of *Ali Mohammad*. This mutation was questioned by respondent No. 4 for the first time through revision proceedings before the Settlement Commissioner, Kashmir.

11. Be that as it may, the core issue for determination is whether the Id. The Writ Court erred in dismissing the writ petition. Upon examination, we find that the Writ Court has dealt comprehensively with the rights of the parties and has rightly concluded that upon the death of *Mst. Rahti*, her estate devolved upon respondent No. 4, *Mst. Azizi*, and *Ali Mohammad*, and on the subsequent demise of the latter two, the estate would vest exclusively in respondent No. 4. The Financial Commissioner, considering the nature of the controversy, correctly observed that once a Muslim dies, his or her property immediately devolves upon the legal heirs, as their shares are predetermined under Muslim Law and require no formal announcement or ritual. The role of the mutation officer is merely fiscal to record such devolution and attest the inheritance accordingly.

12. Even before the enactment of the 2007 Shariat Act, the *Sri Pratap J&K Laws Consolidation Act, 1977 Svt.* was in force, which, under Section 4, mandated that matters of succession and inheritance be determined according to the personal law of the parties, Hindu Law for Hindus and Muslim Personal Law for Muslims. The 2007 Act merely codified and reinforced this position by making Muslim Personal Law the rule of decision where parties are Muslims. Accordingly, on the demise of *Mst. Rahti*, all her successors inherited her property as tenants-in-common. Being agnates and cognates, they succeeded to her estate, and only in the absence of such heirs would the residuary succeed. In the present case, the appellants are residuary, being the sons and daughters of *Wali Mohammad Hafiz* from his second wife, and, therefore, their claim arises only through their mother and not through *Mst. Rahti*, who held the estate independently.

13. Considerable stress was laid on the contention that respondent No. 4 was present at the time of attestation of the mutation dated 27.06.2000. This aspect stands duly considered by the Financial Commissioner in paragraph 10 of the order dated 04.03.2014, which reads as under:

“Coming now to the issue of consent before a Revenue Officer in mutation proceedings, it is held that the same does not amount to consent and cannot be called a consent order. An illiterate lady, who is not well-versed with quasi-judicial proceedings, cannot be expected to give away her rights through any so-called consent before a Tehsildar or Naib-

Tehsildar, who do not hold formal judicial proceedings. The orders passed in mutation proceedings are solely for fiscal purposes; they do not confer title, and consequently, no rights in property can be transferred or relinquished through mutations alone without a registered deed. To that extent, the argument of the respondent fails that the orders were consented.”

14. We find no legal infirmity in the findings recorded by the Financial Commissioner, which have been rightly endorsed by the learned Writ Court. A bare perusal of the mutation dated 27.06.2000 shows no indication whatsoever that respondent No. 4 had voluntarily consented to the estate of her brother *Ali Mohammad* being recorded in favour of the appellants. Respondent No. 4, evidently an illiterate lady whose thumb impression appears on the document, could not have lawfully relinquished her rights without executing a registered instrument. In terms of Rule 46 of Record of Mutations Standing Order 23-A, the attesting authority is required to consider both possession and right in cases of succession and facts regarding possession be shown in the Kasht column. Similarly, under Rule 104, mutations of inheritance against statutory laws are void and cannot be enforced, even mutation cannot be carried out of a transaction which contravenes any express provision of a statute. In that view of the matter, even if there had been any compromise interse parties that could not be given effect, as the same would be defeating the very right of respondent no.4.

15. The appellants' plea that the revision petition was barred by delay is equally untenable. Under the *J&K Land Revenue Act*, the Financial Commissioner may call for the record of any case pending before a subordinate Revenue Officer and, after due examination, may pass such order as he thinks fit. The expression "**as he thinks fit**" used in sub-section (4) of Section 15 confers wide amplitude upon the revisional authority. A similar provision under Section 30(4) of the *J&K State Evacuees (Administration of Property) Act, 2006* Svt. came up for interpretation before the Hon'ble Supreme Court in *Ghulam Qadir v. Special Tribunal*, (2002) 1 SCC 33. The Court, while interpreting similar phraseology, held that the revisional authority has plenary powers to correct errors of law or fact where the rights of a party are jeopardised due to misrepresentation or suppression of material facts. The Court observed that the words "as he thinks fit" cannot be given a narrow interpretation to defeat the very purpose of vesting such powers in a superior authority.

16. Applying the aforesaid proposition of law, we hold that the revisional powers conferred upon the Financial Commissioner under Section 15(4) of the *J&K Land Revenue Act* are similarly wide and unrestricted, enabling him to correct any illegal, unjust, or untenable order passed by a subordinate Revenue Officer.

17. The Writ Court has rightly observed that the law of limitation does not divest the supervisory authority of its power to rectify fundamental defects or illegality in the record. The issue of limitation is not jurisdictional but procedural, and it cannot override substantive rights in immovable property. We fully concur with the findings and reasoning recorded by the Writ Court. The impugned judgment does not suffer from any legal infirmity warranting interference by this Court. Accordingly, the appeal is found to be devoid of merit and is hereby dismissed. The record is consigned to the files.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR
13.11.2025
"Mohammad Yasin Dar"

Whether the order is speaking: Yes
Whether the order is reportable: Yes