

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

LPA 212/2019 in[OWP 770/2013]

WALI MOHAMMAD BHAT
S/O Sadiq Bhat
R/o Braripora Handwara
District Kupwara

...Petitioner/Appellant(s)

Through: Mr. I. Sofi, Advocate.

Vs.

1. **Shamima D/O Fazi (deceased)** ...Respondent(s)
2. **Mohd Ashraf Bhat**
3. **Shabir Ahmad Bhat**
4. **Javid Ahmad Bhat, respondents 2 to 4 sons of deceased Fazi.**
5. **Mst Shahmali**
6. **Mst Raja**
7. **Mst Hajra**
All daughters of late Sadiq Bhat
All residents of Braripora Handwara District Kupwara
8. **Joint Financial Commissioner (R) Tankipora Srinagar**
9. **Addl Commissioner Kashmir Srinagar**
10. **Assistant Commissioner (Revenue) Handwara District Kupwara**
11. **Tehsildar Handwara District Kupwara**

Through: Mr. I. A. Parray, Advocate for R-1 to 7.
Mr. Waseem Gul, GA for R-8 to 11.

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER
14.07.2025

(Oral):

1. This intra court appeal by the appellant-Wali Mohammad Bhat is directed against an order and judgment dated 24.07.2019 passed by the

learned single Judge of this Court (the ‘writ court’) in OWP No. 770/2013 titled ‘Wali Mohammad Bhat v. State and Ors’, whereby the writ court has dismissed the writ petition filed by the appellant challenging an order of the Financial Commissioner dated 09.05.2013.

2. Before we proceed to consider the grounds of challenge urged by the learned counsel for the appellant, we deem it appropriate to jot down a few facts which are germane to the disposal of the controversy raised in this appeal.
3. Vide mutation No. 885 dated 18.04.2006 attested by Naib Tehsildar Handwara, the estate of deceased Sadiq Bhat, a resident of Braripora Handwara was mutated in favour of the appellant (Son) to the exclusion of respondents No.1 to 4 (legal heirs of one of the deceased daughters of Sadiq Bhat) and respondents No. 5 to 7 (daughters of Sadiq Bhat). The mutation was called in question by respondents No. 1 to 4 by way of an appeal before the Assistant Commissioner, Revenue, Handwara.
4. The appeal was filed on 07.07.2004 and was, thus, obviously beyond the period of limitation of sixty days as provided under Section 12 of the land Revenue Act, Samvat 1996 (the Act).
5. The appeal was contested by the appellant herein and the same was decided by the Assistant Commissioner Revenue, Handwara, vide its order dated 23.02.2011. The mutation attested by Naib Tehsildar was set aside on the ground that the Naib Tehsildar had not adopted the procedure laid down for attestation of mutations and had committed grave error by excluding the other legal/biological heirs of the estate-holder, late Sadiq Bhat.

6. Feeling aggrieved, the appellant herein filed a revision petition before the Divisional Commissioner Kashmir, which upon transfer, came to be considered by the Additional Commissioner Kashmir exercising the powers of the Divisional Commissioner.
7. Vide Order dated 10.03.2012, the Additional Commissioner Kashmir dismissed the revision petition and concurred with the view taken by the Assistant Commissioner Revenue Handwara. No additional reasons were provided by the Additional Commissioner. The matter, thus landed before the Financial Commissioner Revenue, Kashmir, and this time by way of a revision petition filed by the appellant against the concurrent judgments/orders passed by the Assistant Commissioner Revenue and the Additional Commissioner Kashmir. The revision petition upon transfer, came to be considered by Joint Financial Commissioner. The revision petition was dismissed by the Joint Financial Commissioner Revenue vide its order dated 09.05.2013.
8. The appellant having lost consecutively in three forums did not relent and approached this Court by way of OWP No. 770/2013. The writ court, having heard both the sides and gone through the entire material on record, came to the conclusion that the appellant herein (the writ petitioner) had miserably failed to establish his right to seek inheritance of the entire ancestral property to the exclusion of respondents No.1 to 4 (legal heirs of one of the deceased sisters) and respondents No. 5 to 7 (sisters).
9. The writ court declined to disturb the concurrent finding of fact returned by three forums below. While deciding the writ petition in

terms of its order dated 24.07.2019, the writ court also dealt with and rejected a new plea raised by the appellant that Assistant Commissioner, Revenue had no authority to entertain an appeal against the mutation attested by Naib Tehsildar, Handwara, in his capacity as Assistant Collector, Class II.

10. The appellant is dissatisfied with the judgment of the writ court, and is therefore, before us, raising similar pleas which already stand rejected by the writ court. The impugned judgment is challenged by the learned counsel for the appellant primarily on the ground that the writ court has not appreciated the distinction between power to entertain and power to hear appeal. He submits that in terms of Section 11 (1), an appeal against an order/judgment of Assistant Collector of Class I and Class II lies only before the Collector, though, the Government by notification may empower any Assistant Collector of Class I to hear appeals against the orders passed by Assistant Collector of Class II. He would also argue that all the forums below including the writ court have failed to appreciate that all the sisters except Mst. Hajira, were present at the time of attestation of mutation and, therefore, cannot be said to have been condemned unheard. He would argue that all the revenue forums, as also the writ court, have proceeded on the assumption that the respondents No.1 to 4 (legal heirs of one of the deceased daughters of Sadiq Bhat) and respondents No. 5 to 7 (daughters of Sadiq Bhat) were excluded from inheriting the property of their father without affording them an adequate opportunity of being heard.

11. *Per contra*, Mr. I. A. Parray, learned counsel appearing for the

respondents No. 1 to 7 supports the judgment of the writ court on all fours. He would argue that since the attesting officer i.e., Naib Tehsildar was not competent to attest a mutation of inheritance, particularly, where some of the legal heirs were to be divested of their right, as such, the order passed on mutation was nullity in the eye of law. He submits that no limitation is provided to challenge the orders which are nullity. He would further submit that the writ court has rightly not interfered with the concurrent findings of fact returned by the three forums below to the extent that the respondents No.1 to 4 (legal heirs of one of the deceased daughters of Sadiq Bhat) and respondents No. 5 to 7 (daughters of Sadiq Bhat) had not been given proper hearing.

12. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the appeal preferred by respondents No. 1 to 4 before the Assistant Commissioner Revenue, Handwara has not been correctly decided and, therefore, ought to have been interfered with by the Divisional Commissioner/Additional Commissioner and Financial Commissioner/Joint Financial Commissioner, Revenue, when the matter landed before them in two different revision petitions.

13. The judgment passed by the Assistant Commissioner, Revenue Handwara, is not sustainable for the following reasons:

- (i) That the Assistant Commissioner, Revenue, has not taken note of the fact that the appeal, on the face of it, was barred by limitation prescribed under Section 12 of the Act. Indisputably the

impugned order of mutation dated 18.04.2003 passed by Naib Tehsildar was appealed before the Assistant Commissioner Revenue on 07.07.2004 that is much beyond the period of 60 days prescribed for filing such appeal under Section 12 of the Act. From a plain reading of order dated 23.02.2011 passed by Assistant Commissioner Revenue, Handwara, it clearly transpires that the issue of limitation has neither been adverted to nor decided by the Assistant Commissioner Revenue.

- (ii) That the order dated 23.02.2011, passed by Assistant Commissioner Revenue, Handwara is non-speaking and does not spell out any reasons for setting aside the mutation. The Assistant Commissioner, Revenue has set aside the mutation on the ground that the attesting officer had not followed the procedure laid down for attesting of mutations without indicating which procedural rule had been infringed. The issue raised by the appellant that the respondents No.1 to 4 (legal heirs of one of the deceased daughters of Sadiq Bhat) and respondents No. 5 to 7 (daughters of Sadiq Bhat) had voluntarily relinquished their right in the ancestral property in favour of the appellant, too, was not considered.

14. Aforementioned illegalities in the Order dated 23.02.2011 have not been noticed either by the Divisional Commissioner Kashmir or the Financial Commissioner Revenue. They have just endorsed the order passed by the Assistant Commissioner Revenue, without saying anything more. The writ court too has fallen in the same

error and has dismissed the petition on the ground that there was no material to interfere with the concurrent findings of fact returned by the three forums without examining the findings of fact which were not supported by any material on record.

15. For all these reasons, we are persuaded to set aside all the orders i.e. order of the writ court impugned in this appeal, order of the Financial Commissioner/Joint Financial Commissioner dated 09.05.2013, order of the Additional Commissioner Kashmir dated 10.03.2012 and order of the Assistant Commissioner Revenue dated 23.02.2011 and remand the appeal to the Additional Deputy Commissioner Handwara (Collector) for considering the appeal *de novo*.

16. Since, we are remanding the matter back to the Collector, therefore, there is hardly any need to consider the arguments raised by Mr. I. Sofi, learned counsel for the appellant with regard to the competence of Assistant Commissioner Revenue, Handwara, to entertain and hear an appeal against the order of Naib Tehsildar, Handwara.

17. In the premises, the appeal to the extent aforementioned is allowed. The order of the writ court impugned in this appeal, the order of the Financial Commissioner/Joint Financial Commissioner dated 09.05.2013, order of the Additional Commissioner Kashmir dated 10.03.2012 and the order of the Assistant Commissioner Revenue dated 23.02.2011, are set aside. The appeal is remanded back to the Additional Deputy Commissioner (Collector) Handwara, for *de novo* consideration. The respondents No.1 to 4 (legal heirs of one of the

deceased daughters of Sadiq Bhat) and respondents No. 5 to 7 (daughters of Sadiq Bhat) shall be entitled to file an application/supplementary affidavit to explain the delay in filing the appeal and the same, after inviting objections from and hearing the appellant, shall be considered and decided on merits.

18. It is only upon disposal of the application for condonation, the main appeal shall be taken up for consideration on merits.

19. Disposed of.

SRINAGAR
14.07.2025
“Hilal”

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Whether the order is speaking/reportable?

Yes/No.