

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 133 of 2018
(PLA Filed on 17.3.2018)

Abdullah s/o Muhammad Hussain, caste
Minhas, r/o Gatian, Tehsil and District
Muzaffarabad.

.... APPELLANT

VERSUS

1. Board of Revenue, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
2. Member Board of Revenue, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
3. Settlement Commissioner, Muzaffarabad.
4. Assistant Collector, Tehsil Pattika, District Muzaffarabad.
5. Abdul Majeed (Husband),
6. Abdul Raqeeb,
7. Muhammad Rafique,
8. Muhammad Shafique, sons,
9. Nalofer d/o Mst. Qassim Noor (Late) d/o Amirrullah,
10. Muhammad Ayoub s/o Durya Muhammad,
11. Phullan, widow,
12. Muhammad Arif,
13. Abid,
14. Basharat,
15. Tariq, sons,
16. Bibi d/o Muhammad Yasin (deceased), caste Minhas, r/o Ghattian, Tehsil and District Muzaffarabad, legal heirs of Muhammad Yaseen s/o Muhammad Khan, caste Minhas r/o Ghattian, Tehsil and District Muzaffarabad. Respondents Nos.

14 and 15 are minors through real mother
Mst. Phullan.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated
18.1.2018 in Writ Petition No. 186 of 2008)

FOR THE APPELLANT: Mr. Muzaffar Hussain
Mughal, Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Hanif Khan
Minhas, Advocate.

Date of hearing: 6.2.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 18.1.2018 passed by the Azad Jammu & Kashmir High Court in writ petition No. 186 of 2008.

2. The precise facts forming the background of the captioned appeal are that one Amirullah, resident of village Gatian owner in *Khewet* No. 56 died in 1970 leaving behind two daughters and his estate was mutated vide mutation No. 23 in the name of his two daughters namely Mst. Qasim Noor and Shaib

Noor as well as in the name of the appellant, herein, and his sister accordingly. Abdul Majeed, respondent No.5, herein, filed a revision petition against mutation No. 23 before the Settlement Commissioner on 19.4.1998. The Settlement Commissioner without affording any opportunity of hearing to the appellant, accepted the revision petition and cancelled mutation No. 23. He issued a direction to the Revenue Officer to sanction the mutation afresh in the name of two daughters only. It was stated that the direction was complied with and mutation No. 35 was sanctioned in the name of his daughters on 9.3.2000. It is stated that the order passed by the Settlement Commissioner was challenged before the Board of Revenue through an appeal, which was dismissed on 6.8.2007. A revision was filed before the full Board of Revenue against the order dated 6.8.2007, which was also dismissed on 28.1.2008. The order dated 28.1.2008 was challenged through a writ petition before the Azad Jammu & Kashmir High

Court. The learned High Court after necessary proceedings, has dismissed the writ petition through the impugned judgment dated 18.1.2018.

3. Mr. Muzaffar Hussain Mughal, the learned Advocate appearing for the appellant argued that as mutation No. 23 was sanction in the name of the appellant and daughters of Amirullah in accordance with Sharia, hence, no illegality was committed, therefore, the revision was not competent before the Settlement Commissioner rather an appeal should have been filed before the District Collector. The learned Advocate argued that the appellant, herein, challenged the order of Settlement Commissioner on 19.4.1998 through an appeal before the Board of Revenue, which was illegally dismissed by the Board of Revenue. The learned Advocate argued that a revision was preferred before the full Board of Revenue but the same was dismissed without attending the factual as well as legal controversy between the parties.

The learned High Court, according to the learned Advocate, has also dismissed the writ petition without adhering to the legal points raised in the writ petition.

4. Mr. Muhammad Hanif Khan Minhas, the learned Advocate appearing for the respondents has controverted the arguments advanced on behalf of the appellant and submitted that revision petition was not competent before the Board of Revenue, hence, while dismissing the writ petition, the learned High Court has not committed any illegality. He argued that as the appellant's father was died in life time of Amirrullah, therefore, no mutation can be sanctioned in his favour. The learned Advocate argued that as the question of facts was involved in the case, therefore, the proper course for the appellant was to avail the remedy provided in civil law.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. A perusal of the record

reveals that mutation No. 23 pertaining to the estate of Amirrullah, deceased, was sanctioned by the Assistant Collector 2nd grade on 16.2.1998 in the name of his two sisters and Abdullah, appellant herein. He was one of the Collaterals (یکجی). A revision petition was filed against mutation No. 23 before the Settlement Commissioner on 19.4.1998, which was accepted by him vide judgment dated 26.6.1999. Resultantly, mutation No. 23 dated 16.2.1998 was cancelled. In view of the order of the Settlement Commissioner dated 26.6.1999, fresh mutation No. 35 was recorded on 9.3.2000 in the name of two daughters of Amirullah, deceased. The order dated 26.6.1999 passed by the Settlement Commissioner was challenged before the Member Board of Revenue by way of appeal on 10.1.2005. After hearing the parties, the same was dismissed vide judgment dated 6.8.2007. The Member Board of Revenue has dismissed the appeal mainly on the ground of limitation, which has been filed after a period of

5 years. He has also rejected the appeal on merits observing therein that Muhammad Hussain has died in the life time of Amirullah, deceased, hence, his legal heirs are not entitled to the inheritance of Amirullah, deceased. This judgment of the Member Board of Revenue was assailed through revision petition before the full Board of Revenue on 1.11.2007, which was dismissed on 28.1.2008. The revision petition was dismissed on the ground that the same was not competent because the learned Member Board of Revenue has confirmed the order of the Settlement Commissioner. Neither he has modified the same nor reversed. Thus, it was held that the revision petition was not competent under sub-section 2 of section 7 of the Azad Jammu & Kashmir Board of Revenue Act, 1993. In our view, the judgment recorded by the full Board was in accordance with law and the same has been maintained by the High Court. The writ jurisdiction can be availed only where it is shown that an order passed by a

special Tribunal is based on no evidence or arbitrary, perverse or has been passed in violation of some statutory provisions. None of the grounds is available to the appellant, herein, therefore, finding no force in this appeal, it is hereby dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad
7.2.2019.

