



In the Court of Additional Commissioner, Jammu  
(With the powers of Divisional Commissioner)  
(Rail Head Complex, Jammu)  
(0191-2478991, 2478999, Fax-2478997, e-mail:  
[divcomjammu@gmail.com](mailto:divcomjammu@gmail.com))

**File No**  
52/Revision 2014

**Date of Institution**  
29.10.2014

**Date of Decision**  
27.10.2022

Dr. Surat Singh S/o Late Sh. Sarwan Singh R/o Badheri Tehsil & District Samba  
.....Petitioner

Versus

1. Puran Singh S/o Paran Devi W/o Lala R/o Badheri Tehsil & District Samba
2. Surinder Kumar S/o Sh. Om Parkash R/o Samba.
3. Romesh Chander S/o Sanjhi Ram R/o Chhajwal Tehsil Samba.
4. Kaka Singh S/o Lala R/o Badheri Tehsil and District Samba.

.....Respondents

In the matter of :- Revision against the order of Additional Deputy Commissioner (Collector under Land Revenue Act), Samba dated 04.10.2014 whereby he has condoned the limitation period for setting aside the same.

### ORDER

The present revision petition has been filed against the order of Additional Deputy Commissioner (Collector under Land Revenue Act), Samba dated 04.10.2014 whereby he has condoned the limitation period and for setting aside the same.

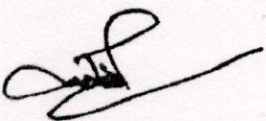
The main submissions made in the revision petition are as under:-

1. That the officer below has not appreciated the evidence produced by the petitioner herein who is a respondent in the appeal before the appellate authority. It is pertinent to mention here that the respondent No.1 was very much aware of the passing of the mutation No. 492 dated 20 07-1992 of village Badheri Tehsil and District Samba by the Tehsildar Samba with regard to land measuring 14 Kanal bearing Khasra No. 298 situated at Village Badheri Tehsil Samba. However, the officer below has not looked into the fact that the respondent was defendant in a suit titled Rattan Singh & Ors. V/s Kaka Singh & Ors which was instituted on 20-02-1992 and was decided by the Learned Sub-Judge, Samba on 28-02-2005. It is further stated that respondent being one of the defendants in the suit mentioned above filed written statement along with

other defendants on 12-02-1993 and in para No. 2 of the written statement which read as under:

*"That in reply to para No. 2 of the plaint, it is submitted that the possession of the land on spot is with defendant No. 5 by virtue of an agreement to sell dated 23-01-1992 prior to the institution of present suit by the plaintiffs. And entry to this effect has also been made by the Tehsildar, Samba. Moreover, mutation has been attested by the competent authority under the provision of law and hence, the suit of the plaintiff has thus become infructuous and is liable to be dismissed". It clearly shows that the respondent No. 1 was in knowledge of the mutation No. 492 dated 20-07-1992 attested by the Tehsildar, Samba at least at the time of filing of the written statement and it is very strange that the officer below has relied on the assertion of the respondent No. 1 who states that he came to know only from the concerned Patwari on 01-08-2011 contrary to the factual position which he has tried to suppress and has not approached the court with clean hands and as such the order impugned is required to be quashed."*

2. That the officer below has committed glaring illegality by simply relying on the assertions made by the respondent No.1 herein who was an appellant before the court below in an appeal for condonation of delay. It is needless to mention here that the petitioner is not only in possession of land in question from the year 1992 till date, but has also constructed his residential house over the land in question and is putting up there along with his family besides this he has also his dairy farm and bore wall for the irrigation of the land in question including dairy shed and store, which facts are in the knowledge of the respondent from the date these were constructed as he also belongs to the same village.
3. That the officer below has also transgressed his jurisdiction while deciding the application for condonation of delay as he has touched the merits of the case. It is to mention here that the land in question exclusively falls in the share of Kaka Singh S/o Lala and respondent No. 1 is the real brother of Kaka. Moreover, it is crystal clear from the exchange deed dated 09-06-1993 which was entered between Kaka Singh, S/o Lala and Puran Singh S / o Lala both residents of village Badheri Tehsil and District Samba wherein Puran Singh has admitted that the he has nothing to do with Khasra No. 298 as it falls in the share of Kaka by way of private partition between the brothers.



4. That the officer below has not given consideration to the judgment of the Learned Sub-Judge, Samba dated 28-02 2005 by which he has dismissed the suit of Rattan Singh & Ors in case titled Rattan Singh & Ors. V/s Kaka Singh & Ors and has condoned the delay on flimsy grounds.
5. That the impugned order is against law and all cannons of justice, equity and good conscience and is thus liable to be dismissed.

Summons were issued for service of the respondents. Ld. Counsel for the respondent No. 1 appeared, however rest of the respondents despite service have not caused their appearance in the court and have been set ex parte and the arguments were heard from the Ld. Counsel of the petitioner and Ld. Counsel for the respondent No. 1. Ld. Counsel for the petitioner reiterated the points highlighted in the memorandum of the petition and submitted that the order passed by the court below is against all cannons of justice as it was obligatory on the part of the petitioner in the court below (respondent No. 1 herein) to explain the day-to-day delay in filing the appeal before the court of Additional Deputy Commissioner, Samba. He also stated that this fact has been held in number of judgements of the Hon'ble Courts that while condoning delay the courts shall exercise discretion after observing that the day-to-day delay in filing the appeal has been explained judiciously. He further submitted that the order of the court below be set aside in the interest of justice as the appellant and the respondents were having the knowledge of possession and Lease Deed in favour of Dr. Surat Singh much before the filing of the appeal in the court below.

The Ld. Counsel for the respondent No. 1 (appellant in the court below) stated that the share of the respondent No. 1 (appellant in the court below) was looked after by the Kaku alias Kaka Singh real brother of the appellant who without consent and knowledge of the appellant leased out his share and thereafter got the entry made in the name of Dr. Surat Singh. In the year 2011 when the appellant asked Kaka Singh that he now wants to cultivate his share of land personally so, the share of the land be handed over to him. Kaka Singh remained putting off his brother time and again. The appellant constrained by the indifferent behavior of Kaka Singh, approached the Patwari concerned who told him that his share of the land out of Kh. No. 298 min, (14-0) 205 Min (3-1) was leased out by Kaka Singh through a registered deed dated 07.01.1981 and there after Kh. No. 298 (14-0) has been rectified in the name of Dr. Surat Singh in the year 1992 on 20.07.92 through this impugned mutation. On hearing this the appellant rushed to the Tehsil and got




copy of the impugned mutation on 04.08.11, then he approached to the counsel who directed him to make available the copy of the lease deed which he could not get till 30.09.2010, only on 01.10.11 he could get a copy and handed it over to his counsel and hence this appeal.

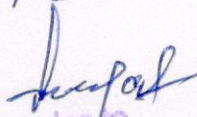
I have gone through the record placed on the file, perused the record of court below and heard the oral submissions of both the counsels. The perusal of the record reveals that the respondent No. 1 (petitioner in the court below) was having knowledge since the filing of suit in the court of Ld. Sub Judge, Samba which was instituted in the year 20.02.1992 and decided by the Ld. Court of Sub Judge, Samba on 28.02.2005 thereby negating the contentions of the respondent No. 1 (petitioner in the court below) that he came to have knowledge about the mutation No. 492 on 04.08.2011 from the Patwari concerned.

In view of fact that the respondents were having the knowledge of the possession of petitioner over the land in question since long, the court below have erred in recording the finding in condoning the delay in filing the appeal by the private party. The court below has not exercised its discretion judiciously to condone such a huge delay. It has been held in a number of judgements of Hon'ble Courts that such discretion shall be exercised judiciously. As such the revision is accepted and the order dated 04.10.2014 of the court below is hereby set aside. Interim direction, if any, issued by this court stand vacated. It is, however, clarified that in case of violation of any of the provisions of the existing revenue laws, the Tehsildar concerned can take appropriate action strictly in terms of law governing the subject. This order is subject to confirmation by the Ld. Financial Commissioner, Revenue, J&K. The case file in original along with record file of the court below is submitted to Ld. Financial Commissioner, Revenue, J&K for kind consideration. Parties are directed to appear before the court of Ld. Financial Commissioner, Revenue, J&K on 15.11.2022.

**Announced**  
**27.10.2022**

  
(Pawan Kumar Sharma) KAS  
Additional Commissioner, Jammu  
[with the powers of Divisional Commissioner]

*to website*

  
Reader to  
Additional Commissioner  
Jammu