

**THE HIGH COURT OF MADHYA PRADESH**  
**MP-158-2020**

*(Chandra Shekhar Dubey and others Vs. Narendra and others)*

**Gwalior, Dated : 05/02/2020**

Shri Niraj Shrivastava, counsel for the petitioners.

This petition under Article 227 of the Constitution of India has been filed against the order dated 04.11.2019 passed by the Board of Revenue in Revision No. 1009-1/2008/Datia/LR, by which the revision filed by the respondent has been allowed and the matter has been remanded back after setting aside the order of partition.

The necessary facts for disposal of the present petition in short are that Premnarayan and one Jay Dayal were the co-owner and Bhumiswami of land bearing Survey No. 20, 74, 218/1, 423, 425/1, 435, 436, 437, 445/1, 447, 448, 449/3, 450, 884 and 889, total area 12.011 hectare situated in village Tharet, District Datia.

After the death of Jay Dayal, the names of his legal representatives, i.e., Narendra Kumar, Surendra Kumar and Smt. Ramshree were mutated along with Premnarayan. It is the case of the petitioner that since Jay Dayal and Premnarayan were living separately, therefore, in the year 1969-70, they mutually partitioned the land, however, no partition was done on the revenue record and since for the purpose of loan / KCC separate agricultural holding was required, therefore, Premnarayan filed an application under Section 178 of MPLRC for partition of the land. Respondents filed an application raising the question of title and, thereafter, a suit was also

filed which was dismissed in default and the appeal filed by them has also been dismissed by the Appellate Court. The case of Premnarayan is that in the partition proceedings, *Fard Batwara* was put up by Patwari in accordance with the land, which were in occupation of the respective parties. No objection was filed by the respondents no. 1 to 3 and after hearing both the parties, the Tahsildar passed an order of the partition. The order passed by the Tahsildar was challenged by the respondents no. 1 and 2 by filing an appeal before the SDO, Seondha which was registered as Appeal No. 15/Appeal/2005-06 and after hearing both the parties, the SDO, Seondha District dismissed the appeal by order dated 19.04.2006. The order passed by the SDO was challenged by the revisionist by filing second appeal before the Court of Additional Commissioner, Gwalior Division, Gwalior, which was registered as Appeal No. 389/Appeal/2005-06 and the Additional Commissioner by order dated 18.08.2008 has allowed the appeal and set aside the order of partition.

Being aggrieved by the order of the Additional Commissioner, Premnarayan filed a revision before the Board of Revenue, which was registered as Revision No.1009-1/2008/Datia/LR. During the pendency of the revision, Premnarayan also expired. The revision has also been dismissed by order dated 04.11.2019.

Challenging the order passed by the authorities below, it is submitted by the counsel for the petitioners that since Premnarayan had already expired during the pendency of the revision proceedings

and the said revision was allowed without substitution of the legal representatives of Premnarayan, therefore, the final order has been passed against a dead person. It is further submitted that Additional Commissioner committed a material illegality by holding that the *Fard Batwara* was not published thereby materially affecting the interest of the respondents. It is further submitted that since the civil suit filed by the respondents was also dismissed, therefore, merely because the Tahsildar had not stayed its proceedings under Section 178 of MPLRC, would not nullify the said proceedings.

Heard the learned counsel for the petitioner.

So far as the death during the pendency of the revision is concerned, except by mentioning that Premnarayan had expired during the pendency of the revision, the petitioners have neither filed the death certificate of Premnarayan on record nor have disclosed the date of death of Premnarayan. On the contrary, in paragraph 5.5 of the writ petition, it is mentioned that “During this proceeding Premnarayan met to unfortunate death. The petitioners (being sons, daughters & widow of deceased) who were taken on record”. Whereas in Ground – B of the petition, it has been alleged that the “Board of Revenue has passed the order impugned against a dead person (Premnarayan), which is not permissible in law”. Thus, it is clear that two self-contradictory submissions have been made in the writ petition. However, from the cause title of the impugned order dated 04.11.2019, it is clear that the petitioners were never brought on

record and the revisionist has been shown to be Premnarayan.

Under these circumstances, it was incumbent upon the petitioners to disclose the date of death of Premnarayan. If Premnarayan had expired after passing the order dated 04.11.2019 or in between hearing of the revision and delivery of the order, then the death of Premnarayan will not have any adverse effect on the matter and if Premnarayan had expired prior to conclusion of hearing of revision, then the revision would stand abated for not bringing the legal representatives of the revisionist on record. As the petitioners have failed to disclose the date of death of Premnarayan, therefore, this Court is not in a position to give a specific finding as to whether the revision filed before the Board of Revenue was abated or not.

Accordingly, the ground of death of Premnarayan raised by the petitioners is rejected for want of basic averments.

So far as the merits of the present case are concerned, the Board of Revenue has specifically stated that the *Fard Batwara* which was produced in the partition proceedings did not contain the signatures of the respondents and even the *Fard Batwara* was not got published. The respondents had raised an objection that since a civil suit has been filed, therefore, the Tahsildar must stay the proceedings but the said objection was not taken into consideration.

Section 178 of the MPLRC reads as under:-

"178. Partition of holding.-- (1) If in any holding, which has been assessed for purpose of agriculture under Section 59, there are more than one Bhumiswami any such Bhumiswami may apply to a

Tahsildar for a partition of his share in the holding :

Provided that if any question of title is raised the Tahsildar shall stay the proceeding before him for a period of three months to facilitate the institution of a civil suit for determination of the question of title.

(1-A) If a civil suit is filed within the period specified in the proviso to sub-section (1), and stay order is obtained from the Civil Court, the Tahsildar shall stay his proceedings pending the decision of the civil court. If no civil suit is filed within the said period, he shall vacate the stay order and proceed to partition the holding in accordance with the entries in the record of rights.

2) The Tahsildar, may, after hearing the co-tenure holders, divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code.

[(3) x x x]

[(4) x x x]

[(5) x x x]

*Explanation I.*-For purposes of this section any co-sharer of the holding of a bhumiswami who has obtained a declaration of his title in such holding from a competent Civil Court shall be deemed to be a co-tenure holder of such holding.”

From the plain reading of proviso to Section 178(1) of MPLRC, it is clear that if any question of title is raised, the Tahsildar shall stay the proceeding before him for a period of three months to facilitate the institution of civil suit for determination of the question of title and if the Tahsildar fails to stay the proceedings, then, it would be violative of mandatory provision of proviso to Section 178(2) of MPLRC. Furthermore, the Tribunal below have come to a specific finding that *Fard Batwara* was neither published nor it contains the signatures of the respondents, thus, it is clear that the order of partition was illegally passed by the Tahsildar.

Under these circumstances, this Court is of the considered

opinion that the Tribunal below did not commit any mistake in holding that the proceedings before the Tahsildar were not in accordance with law.

So far as the question of remanding the case back to the Tahsildar is concerned, it is submitted by the counsel for the petitioners that in view of Section 49 of the MPLRC, the Appellate Authorities should not have remanded the matter back to the Tahsildar.

Heard the learned counsel for the petitioners.

Section 49 Sub-Section 3 of the MPLRC reads as under:-

**“49. Power of appellate authority.** - (1) The appellate authority may either admit the appeal or, after calling for the record and giving the appellant an opportunity to be heard, may summarily reject it :

Provided that the appellate authority shall not be bound to call for the record where the appeal is time-barred or does not lie.

(2) If the appeal is admitted date shall be fixed for hearing and notice shall be served on the respondent.

(3) After hearing the parties, the appellate authority may confirm, vary or reverse the order appealed against, or may take such additional evidence as it may consider necessary for passing its order:

[Provided that the appellate authority shall not ordinarily remand the case for disposal to any Revenue Officer subordinate to it;]”

Provided further that all such cases which have been remanded to the sub-ordinate Revenue Officers by the Appellate or Revisional Authorities before the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2011 shall be heard and decided by such Revenue Officer.”

From the plain reading of first proviso to Section 49(3) of MPLRC, it is clear that the Appellate Authority shall not

**“ordinarily”** remand the case for disposal to any Revenue Officer subordinate to it. The use of word “ordinarily” clearly indicates that there is no absolute bar of remand of the case by the Appellate Court. However, the use of word “ordinarily” clearly lays down that unless and until exceptional circumstances are there, the Appellate Authority shall not “ordinarily” remand the case. If the facts of the present case are considered, then it is clear that the Additional Commissioner as well the Board of Revenue have already come to a conclusion that the proceedings before the Tahsildar were defective and were not in accordance with law. If the contention of the counsel for the petitioner that the matter should not have been remanded back to the Tahsildar is accepted, then the only option which was left to the Appellate Authority was to quash the entire proceedings, whereas in order to do complete justice, if the authorities have decided not to quash the proceedings in *toto* but to remand the matter back to the revenue authorities, then in the considered opinion of this Court, the order of remand is in fact in favour of the petitioners.

Accordingly, it is held that no perversity could be pointed out by the counsel for the petitioners.

The petition fails and is hereby **dismissed**.

Abhi

**(G.S. Ahluwalia)**  
**Judge**