

The present miscellaneous petition has been preferred under Article 227 of the Constitution of India, challenging the order dated 31.03.2021 passed by Tahsildar, Kolaras, District Shivpuri in Case No.0033/A-27/20-21, whereby the Tahsildar exercising the power under Section 178 of MP Land Revenue Code, 1959 (for brevity, the 'Code') partitioned the holding in favour of respondent No.6-Gopal Dutt Dholakhandi.

2. The facts of the case in nutshell are that the land bearing Survey No. 566 admeasuring 3.990 hectares situated in village Dodiya, Tahsil Kolaras, District Shivpuri was of the ownership of Late Keshav Dutt Dholakhandi. After death of Keshav Dutt Dholakhandi, the land came in heritage to Gopal Dutt (respondent No.6 herein), deceased Hem Dutt (husband of petitioner No.1 and father of petitioners No.2 and 3), Ram Dutt , Smt. Kamla Sharma and Smt. Mohini (daughters of Late Keshav Dutt). Respondents No.4 and 5 – Smt. Kamla Sharma and Smt. Mohini moved an application for partition in respect of land bearing survey No. 566/1 area 3.990 hectares. In the said proceeding, respondent

No.7 to 9, namely, Brajendra Singh Raghuvanshi, Kuldeep Raghuvanshi and Bharat Singh Raghuvanshi, appeared and submitted an application along with copy of the order dated 16.02.2020, passed by Sub-Divisional Officer, Division Kolaras, District Shivpuri, stating that the names of respondents No.4 & 5 have been deleted. The respondents No.4 & 5 also prayed for partition in the same proceeding. The Tahsildar on the basis of order dated 16.2.2020 allowed the application of respondents No. 7 to 9, deleted the names of respondents No.4 and 5 and substituted the names of respondent No.6 and Hem Dutt, husband of petitioner No.1. Thereafter, on account of death of husband of petitioner No.1, the petitioners filed an application for substituting their names as legal representatives of deceased Hem Dutt, and also filed objection to the encroachment made by respondents No.7 to 9 on the land in dispute. The Tahsildar allowed the objections submitted by the petitioners and constituted six members team for submitting Partition Fard, which was submitted on 25.3.2021, but thereafter stating that since no objections are received, allowed the partition only on the basis of possession vide impugned

order, Annexure P/1. Hence, this misc. petition is preferred by the petitioners.

3. Learned counsel for the petitioners has submitted that the Tahsildar conducted the proceeding and passed the impugned order in utter disregard to the provisions of law. The partition is done only on the basis of sale deed and possession, which could not have been done. The Tahsildar while passing the impugned order has utterly failed to consider that respondent No.6 sold his undivided unpartitioned specified share vide registered sale deed dated 19.10.2020 whereas it is settled law that if a sale deed is being executed, possession could not be handed over unless Civil Court decreed the suit of partition. It has also been submitted that the property in dispute is also subject matter of a civil suit bearing Civil Suit No. 249A/2020, which is pending before concerning Additional District Judge, Gwalior against respondent No.6, wherein status quo order has been passed on 10.8.2020 and further on 5.10.2020. Despite that, the respondent No.6 alienated his specified share and the Tahsildar has failed to consider this aspect. It is also submitted that the

Tahsildar has failed to follow the mandatory procedure as no proclamation has been issued in terms of Rule 2 of the Rules made under Section 178 of the Code regarding partition of holding. The Tahsildar has further erred in not considering that a title dispute is pending before the Civil Court and the Tahsildar did not even wait for a period of three months as per mandate of the proviso to Sub-Section (1) of Section 178 and sub-Section (1-A) of Section 178 of the Code, and proceeded to pass final order. Hence, prayed for allowing the present petition. In support of submissions, learned counsel for the petitioner has placed reliance on the judgments in cases of **Amar Singh and another vs. Ahibaran [1992 RN 4]; Antarsingh v. Ram Singh and others [1992 RN 98]; Shyamlal v. Ramlal and others [1994 RN 265]; and,**

4. Per contra, learned Panel Lawyer for the respondent/State has opposed the submissions and prayed for dismissal of the present petition.

5. Heard learned counsel for the parties and perused the available record.

6. On perusal of record it is apparent that the disputed property is the Hindu Undivided Family

property and it is also an admitted position that one civil suit between the parties is pending before the Civil Court.

7. It is settled position of law that the partition suit cannot be decided by Revenue Authorities. If any dispute exists between the parties regarding partition, the whole jurisdiction vests with the Civil Court.

8. It is often seen that lots of litigation are pending under Section 178 of the Code despite the fact that in many of the cases question of title is involved and such type of cases remain pending for a long period. This is one of the main causes of multiplication of litigation and is also one of the root causes of culminating civil/criminal litigation in rural areas. Recently, digitization of revenue records is very well done, which reflects the actual status of lands. In the light of aforesaid backdrop, it is expected that whenever any litigation is filed under Section 178 of the Code, party/parties be directed to file petition supported with affidavit stating that no dispute relating to title of land is in existence. The Revenue Authorities are hereby expected that also in the pending litigation under Section 178 of the Code the

parties be directed to submit their affidavits within one month of this order stating therein that no title dispute is pending or question of title is not involved relating to the land in question.

9. In pending cases, the Revenue Authorities are hereby directed to undertake the aforesaid exercise within one month of this order. If it is found that the title is involved in any manner directly or indirectly, the Revenue Authorities shall immediately stop the proceeding as per provision of the MP Land Revenue Code and shall also direct the parties to approach before the Civil Court having jurisdiction in accordance with law.

10. In the light of aforesaid discussion and considering the aforesaid admitted position, this petition is hereby allowed. The order impugned dated 31.3.2021 passed in exercise of power conferred under Section 178 of MP Land Revenue Code, by Tahsildar, Kolaras, District Shivpuri in Case No. 0033/A-27/20-21 is hereby set aside. The rights of the parties shall be decided in the civil suit pending before the Civil Court.

(yog)

(Rajeev Kumar Shrivastava)
Judge.