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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

ON THE 13th OF MARCH, 2024

MISC. PETITION No. 2833 of 2021

BETWEEN:-

1. **JAI SHARMA S/O RAMAVTAR SHARMA, AGED ABOUT 24 YEARS, OCCUPATION: BUSINESS, R/O WARD NO. 7, VEERENDRA NAGAR, BHIND (MADHYA PRADESH)**
2. **ABHISHEK SHARMA S/O RAMAVTAR SHARMA, AGED ABOUT 21 YEARS, OCCUPATION: STUDY, R/O WARD NO. 7, VEERENDRA NAGAR, BHIND (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI P.C. CHANDIL - ADVOCATE)

AND

1. **KAILASH NARAYAN S/O PRAGNARAYAN, AGED ABOUT 72 YEARS, OCCUPATION NILL, R/O UDOTGARH, THASIL ATER, PRESENTLY RESIDED ETHAR, DISRICT BHIND (MADHYA PRADESH)**
2. **RAMJI LAL S/O PRAGNARAYAN SHARMA, AGED ABOUT 78 YEARS, OCCUPATION: NILL, R/O UDOTGARH, TEHSIL ATER, DISTRICT BHIND (MADHYA PRADESH)**
3. **RADHESHYAM S/O PRAGNARAYAN SHARMA, AGED 58 YEARS, OCCUPATION: AGRICULTURIST, R/O UDOTGARH, TEHSIL ATER, DISTRICT BHIND (MADHYA PRADESH)**
4. **CHANDRA PRAKASH S/O LATE SHRI RAMKISHOR, AGED ABOUT 31 YEARS, R/O UDOTGARH, TEHSIL ATER, DISTRICT BHIND (MADHYA PRADESH)**
5. **ANSHUL S/O LATE SHRI RAMKISHOR, AGED ABOUT 24 YEARS, OCCUPATION: AGRICULTURE, R/O UDOTGARH, TEHSIL ATER, DISTRICT BHIND**

(MADHYA PRADESH)

6. **RAM AVTAR S/O PRAGNARAYAN SHARMA, AGED ABOUT 52 YEARS, OCCUPATION: AGRICULTURE, R/O WARD NO. 7, VEERENDRA NAGAR, BHIND (MADHYA PRADESH)**

.....RESPONDENTS

(NONE FOR THE RESPONDENTS EVEN IN REVISED CALL)

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This petition coming on for admission this day, the court passed the following:

ORDER

None is present on behalf of the respondents even in revised call.

2. Heard Shri P.C. Chandil, learned counsel for the petitioners.

3. Challenge is made to order dated 24.8.2021 passed by Additional Commissioner, Chambal Division, Morena in Case No.0116/2020-21/Appeal titled as Jai Sharma and another vs. Kailash Narayan and others and order dated 15.1.2021 passed by Sub Divisional Officer (Revenue) Ater, District Bhind in Case No.31/2020-21/अ०मा० titled as Kailash Narayan vs. Jai and another.

4. Brief facts of the case are that property was recorded in the name of one Ramnaresh @ Naresh Sharma. During his lifetime, he is alleged to have executed a Will deed in favour of Jai and Abhishek. Tehsildar on the basis of Will recorded the name of Jai and Abhishek in place of deceased Ramnaresh @ Naresh Sharma. Being aggrieved with the order of Tehsildar, respondents/appellants filed an appeal before the SDO, Ater, District Bhind who allowed the appeal, set aside the order of Tehsildar dated 24.9.2020 and allowed the mutation in favour of heirs of deceased. There against, petitioners filed an Appeal No.116/2020-21/Appeal before Commissioner, Chambal Division, Morena which came to be heard and decided by Additional Commissioner, Chambal Division, Morena vide order dated 24.8.2021

dismissing the appeal making some observation. Orders of SDO and Additional Commissioner, Chambal Division, Morena are impugned in the present petition.

5. Admittedly, the land in question was recorded in the name of Ramnaresh @ Naresh Sharma who is alleged to have executed a Will deed in favour of the petitioners. Petitioners have filed a civil suit for declaration of their right.

6. Learned counsel for the petitioners submits that order of Tehsildar and Additional Commissioner, Chambal Division, Morena is beyond jurisdiction. They have no right to make any comment upon the execution of Will. Learned counsel for the petitioners concedes that it is only the Civil Court and not the Revenue Authorities to examine the validity of Will and petitioners are in cultivate possession over the property in dispute. They have filed a civil suit for declaration of their rights.

7. The moot question for consideration is as to whether the revenue authorities have jurisdiction to mutate the name of a beneficiary on the basis of Will or not?

8. The question is no more res integra.

9. The Supreme Court in the case of Jitendra Singh v. State of Madhya Pradesh by order dated 06.09.2021 passed in SLP (civil) No.13146/2021 has held as under:

“6. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar

view has been expressed in the series of decisions thereafter. 6.1 In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqrudin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.”

10. Thus, it is clear that if the beneficiary wants to take advantage of a Will, then he has to seek a declaration from the Civil Court of competent jurisdiction and the revenue authorities have no jurisdiction to mutate the name on the basis of Will.

11. Petition is **disposed of** with the direction that name of the legal heirs of the deceased Ram Naresh shall be subject to decision of Civil suit which has already been filed by the petitioners. Since the Revenue Authorities have no jurisdiction to mutate the name of a beneficiary on the basis of Will, therefore any observation made by the Revenue Authorities shall not prejudice or influence the mind of Civil Court while deciding the case on merit.

12. Both parties shall not create any third party right over the land in dispute for a period of one month.

13. Petitioners shall be at liberty to seek injunction from Civil Court in the meantime.

14. Impugned orders stand modified to that extent.

**(RAJENDRA KUMAR-IV)
JUDGE**

(alok)

