

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****DIVISION BENCH****PRESENT****SHEEL NAGU & ANAND PATHAK, JJ.****(W.A.No. 535/2021)****Hariprasad Bairagi.****Versus****Radheshyam & Ors.**

Shri Santosh Agrawal, learned counsel for the appellant.

Whether approved for reporting : Yes**Law laid down:-**

(i) Rules 24 & 32 of Rules Regarding Record of Rights (under M.P. Land Revenue Code) do not contemplate adjudication of title by Tahsildar. It is meant for recording "Consequence of Adjudication" and "Transfer of Ownership" for mutation purpose. Summary proceedings as contemplated in Rule 32 are only for the purpose of recording of rights of parties;and

(ii) Revenue Authorities have no jurisdiction to test the correctness and genuineness of the Will;

{Relied and Referred:-Ramgopal Kanhaiyalal Vs. Chetu Batte, AIR 1976 MP (FB) 160 and Division Bench decision of this Court in the matter of Murari and Anr. Vs. State of M.P. &

Ors., 2020 (4) MPLJ 139 }.

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J U D G M E N T
(Delivered on this 31st Day of August, 2021)

Anand Pathak, J.

1. Appellant has filed this appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhinyam, 2005 being aggrieved by order dated 22/3/2021 passed in M.P.No. 4621/2019 passed by learned Writ Court; whereby, the petition filed by the appellant as petitioner has been dismissed.

2. Precisely stated facts of the case are that initially appellant filed an application for mutation of his name before Naib Tahsildar, Tahsil Sheopur on the strength of a "Will" allegedly executed by his father. Naib Tahsildar vide order dated 23/01/2016 rejected the said application for mutation. Taking exception to the said order, appellant preferred an appeal before the SDO, Sheopur, who in turn, vide order dated 6/11/2017 allowed the appeal and directed to mutate the name of appellant in the revenue records on the basis of said Will.

3. Order of SDO was challenged by respondents No. 1 and 2 before the Additional Commissioner, Chambal Division, Morena, who in turn allowed the appeal vide order dated 27/8/2019 and set aside the order of SDO. This order was put to challenge by the appellant before the learned writ Court mainly under Article 227

of the Constitution of India on the ground that Additional Commissioner committed material illegality while holding that the land in dispute is an ancestral land and the testator had no right to execute the Will.

4. Learned writ Court after considering the rival submissions, came to the conclusion that authenticity and correctness of the Will can only be tested in Civil Suit before competent Civil Court and not in proceedings under MPLRC before any revenue Court. After considering this aspect in detail, learned writ Court vide impugned order came to the conclusion that Additional Commissioner, Chambal Division rightly allowed the appeal of respondents No. 1 and 2 because petitioner has to file a Civil Suit, if advised so, for declaration of title on the basis of Will. Hence, appellant is before this Court.

5. It is the submission of learned counsel for appellant that learned writ Court erred in passing the impugned order ignoring the mutation rules known as Rules Regarding Record of Rights vide notification dated 10th June, 1965 published in M.P. Rajpatra dated 2/7/1965 and amended on 16/4/1968 in which Rule 24 and 32 govern the mutation proceedings. It is further submitted that reading of Rules 24 and 32 alongwith Section 31 of MPLRC makes it clear that Patwari is duty bound to maintain a register of mutation and Tahsildar is competent to decide any dispute arising out of such register on the basis of title and not possession. He also relied upon Section 164 and 165 of MPLRC to bring home the analogy that Bhumiswami can declare his successor by way

of Will and no restriction of transfer by way of Will exists in MPLRC.

6. Heard on admission and documents perused.

7. This is a case where appellant initially moved an application for mutation of his name on the basis of alleged Will. His claim was contested by other family members who are arrayed as respondents herein, on the ground that disputed property is ancestral property and it has devolved to deceased Banshidhar from his father Gopilal and Banshidhar survived with four sons and one daughter and therefore, Banshidhar never had any legal authority to execute a Will over an ancestral property.

8. Another objection of respondents was the fact that SDO caused illegality while relying upon the fact that deceased Banshidhar was only Manager of the land and on the basis of said entry in revenue records, he cannot be the owner of the property in isolation. Similarly, as per respondents, execution of Will of Banshidhar was doubtful because Banshidhar used to sign the documents out of which one document contained signature of Banshidhar and another document carried his thumb impression which makes the case doubtful. All these aspects have been considered by the Additional Commissioner, Chambal Division and found the disputed property ancestral in which Banshidhar had no right to execute the Will in favour of appellant.

9. Appellant has raised the ground of application of Chapter IV (Mutations in the Khasra) of Rules Regarding Record of Rights framed under the provisions of MPLRC in which he

placed reliance over Rule 24 and 32. Relevant rules are reproduced hereinbelow for ready reference:-

“24. The Patwari shall maintain a register in Form E in which he shall enter villagewise every change in ownership of land due to transfers by registered deeds, inheritance, survivorship, bequest or lease reported to him under Section 109 or which come to his notice from intimations received from Gram Panchayat or from any other source.

32. Disputes shall be decided summarily by the Tahsildar on the basis of title and not possession. Any transfer by a person whose name is not recorded in the Khasra shall not be admitted in mutation by the Tahsildar. The order shall contain the names of the parties and witnesses and a brief summary of the evidence produced by either side together with the Tahsildar findings thereon.”

These rules are provided in Chapter IV of said Rules which deals regarding **Mutations in the Khasra**. On close scrutiny, it appears that it does not deal in respect of ouster of jurisdiction of Civil Courts from adjudication of Title. It only talks about maintenance of register by Patwari in which every change in ownership of land due to various modes of Transfers gets recorded and other rules indicate the mechanism for Recording such Rights.

10. So far as Rule 32 is concerned, it does not talk about

disputes arising out of respective rights of parties but it contemplates disputes in respect of recording entries in Khasra while undertaking mutation proceedings. Therefore, summary enquiry by Tahsildar is being envisaged.

11. Rules 24 & 32 of Rules Regarding Record of Rights (under M.P. Land Revenue Code) do not contemplate adjudication of title by Tahsildar. It is meant for recording “Consequence of Adjudication” and “Transfer of Ownership” for mutation purpose. Summary proceedings as contemplated in Rule 32 are only for the purpose of recording of rights of parties. It nowhere, gives authority to Tahsildar to go into the question of title and decide the title by leading evidence in the proceedings. Tahsildar on his own accord cannot record evidence and decide the title arising out of Will. It is the domain of Civil Courts only and understandably so because Civil Court has all necessary tools of adjudication like proper pleadings, summoning of witnesses, recording of evidence, marshaling and appreciation of evidence and other ancillary mechanism alongwith trained judicial minds. Full Bench of this Court in the case of **Ramgopal Kanhaiyalal Vs. Chetu Batte, AIR 1976 MP 160** categorically held in somewhat similarly pleaded facts as under:-

“Determination of the question of title is the province of the Civil Court and unless there is any express provision to the contrary, exclusion of the jurisdiction of the Civil Court cannot be assumed or implied. The scheme of the Code consistently

preserves the jurisdiction of the Civil Court to decide questions of title and that jurisdiction is not excluded.”

The Full Bench of this Court taken into account Sections 250 and 257 of MPLRC while considering this aspect. Decision of Full Bench of this Court is found to be a good law by Hon'ble Apex Court in the case of **Rohini Prasad and Ors. Vs. Kasturchand and Anr., AIR 2000 SC 1283.**

12. Recently, in the case of **Murari and Anr. Vs. State of M.P. & Ors., 2020 (4) MPLJ 139** coordinate Division Bench of this Court held that revenue authorities have no jurisdiction to test the correctness and genuineness of the Will, therefore, the names of the parties cannot be mutated on the basis of Will if one party approaches to it because they have a remedy to approach the Civil Court for declaration of their title.

13. Similarly, learned writ Court does not falter when it mandates that any proceedings between the parties as contemplated under Section 31 of MPLRC does not take into its ambit the question of adjudication of title of parties on the basis of a Will. It contemplates a situation where application for mutation is a proceeding where all legal heirs are brought on record after the death of owner of the agriculture holding. It does not contemplate adjudication of title. Therefore, on this count also, learned writ Court is right in its approach while relegating the parties to the civil Court, if they desire so, to get the Will tested on the altar of evidence to be led in civil suit before

competent civil Court.

14. Case sans merits on all counts and dismissed accordingly. Admission declined. Impugned order dated 22/3/2021 passed by learned writ Court stands affirmed.

(Sheel Nagu)
Judge

(Anand Pathak)
Judge

jps/-