

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
WRIT PETITION No. 5537 of 2025

KISHORE SINGH & ANR.

Versus

THE STATE OF MADHYA PRADESH & ORS.

Appearance:

Shri N.K. Gupta – learned senior counsel with Shri Y.P.S. Rathore- learned counsel for the petitioners.

Shri Jitesh Sharma – Government Advocate for the respondents No.1 to 3/State.

Shri S.S. Rajpoot – learned counsel for the respondent No.4.

Reserved on : 28.02.2025
Delivered on : 01.04.2025

ORDER

The present petition under Article 226 of the Constitution of India is directed against the order dated 05.12.2023 passed by the Additional Collector, District Vidisha (M.P.) in Revision No.36/2023-24 whereby revision filed by the petitioner against the order dated 11.05.2023 passed by the Sub-Divisional Officer, Basoda District Vidisha (M.P.) in appeal No.174/2021-22 was dismissed and the order of appeal was upheld and which resulted that Panji No.7 dated 20.04.2010 of partition as certified by the Tehsildar was upheld.

2. The aforesaid orders have been assailed on the ground that they are against the provisions of Section 178 of M.P. Land Revenue Code, 1959 as they are passed without following due procedure prescribed for mutation and partition and on the date, respondent

No.4 was not having any right and title/interest in the land. He was not the owner or co-owner and, therefore, no land could have been given in partition to him as he was a third party.

3. The short facts leading to controversy are that petitioner's father Late Shri Bheem Singh was exclusive owner of the land bearing survey No. 26, 35/2, 74, 85, 86 & 88/1 total area 14.601 hectare situated in Village Pathari, Basoda District Vidisha MP. The right title or interest which was left by Late Shri Bheem Singh on 05.05.1992 was succeeded by his widow Smt. Ballo Bai and two sons ie., Kishore and Vijay (petitioners) and as such in the mutation panji name of all three legal successor were recorded in place of Bheem Singh on the basis of succession and that was certified by the Tehsildar on 21.02.1993. Thereafter petitioner's mother Smt. Ballo Bai expired on 11.11.1993. The respondent no. 4 who was having no title or authority to get the land applied for partition and proceedings were initiated on 01.04.2010 and later on culminated into final order dated 20.04.2010 and got an order of partitioned. Respondent No.4- Mahendra Singh was not having any right title or interest in the land neither his name was recorded in the earlier revenue records under any capacity, no application under Section 178 of the M.P. Land Revenue Code was ever filed by him, no case was ever registered, no notice was ever issued to the co-owners but in collusion with the revenue authorities, behind the back of petitioners, he successfully got the land partitioned. Though Ballo Bai Wd/o Late Shri Bheem Singh and mother of present petitioners died on 11.11.1993, but in the said Panji, share was also given to the deceased which shows that how fraudulently the respondent no. 4 has got the land of the petitioners and when the petitioners got knowledge about the so

called wrong committed by respondents, in connivance with the revenue authorities, they applied for certified copy of the order and the proceedings but their application was returned with the endorsement that panji No. 7 publication is not part of the record. However, since wrong was already committed, therefore, an appeal was filed by the petitioners in the court of Sub Divisional Officer, Basoda, District Vidisha M.P. along with an application for condonation of delay. Learned SDO while allowing the application had condoned the delay. Against the said order of condoning the delay, a revision was preferred before the Board of Revenue which in the light of the amendment in Section 50 of the M.P. Land Revenue Code was transferred for decision to the Collector and the Additional Collector in revision no. 134/2019-20 dismissed it vide order dated 16.10.2019 while upholding the order of SDO. Against this order dated 16.10.2019 misc. petition no. 5854/2019 was filed by the respondent no. 4 which was allowed by order dated 08.12.2021, with a direction to the Sub Divisional Officer to conduct a fresh inquiry with regard to the condonation of delay and then pass fresh order and if in the inquiry, it is found that some fraud has been played in the matter, then the appeal be considered within limitation and if it is found that no fraud was played, then the appeal be considered beyond the period of limitation and be proceeded with in accordance with law. In the light of the aforesaid directions, Sub Divisional Officer initiated proceeding and a report was called from the Tehsildar which was submitted on 07.10.2022 mentioning that the partition panji is contrary to the provision of section 178 of the M.P. Land Revenue Code as by this partition, land has been given to a third person whose name was not recorded in the revenue records

and that person was neither owner nor having any right title or interest, but learned SDO vide order dated 11.05.2023 found that no fraud has been played upon the appellants, therefore, held the appeal to be beyond the period of limitation, dismissed the appeal on the said ground. Aggrieved by the said order, the petitioner preferred a revision before the Additional Collector which was numbered as Revision No.36/2023-24 which also received the same fate and the said appeal was dismissed upholding the order passed by the SDO.

4. Later on, land bearing survey no. 26 & 35/2 area 6.846 hectare which was shown to have been given to Ballo Bai Wd/o Bheem Singh, Kishore Singh and Vyay Singh S/o Bheem Singh was mutated in the name of brother of respondent no. 4 i.e. Ajay Singh, Narendra Singh and Mahipal Singh S/o Daulat Singh in panji no. 19 vide order dated 23.07.2011 whereas on the date when this panji was started i.e. on 10.07.2011 Ajay Singh, Narendra Singh and Mahipal Singh were neither owners nor were having any right, title or interest in the land for mutating their names in the revenue records. Neither they had moved an application for mutating their names in the revenue records nor notices were issued and published, but the mutation was done vide Namantran Panji No.19 which was certified by the authorities and when the petitioners got the knowledge about the said wrong mutation, they preferred an appeal no. 119/2016-17 against the said namantran panji No.19 with an application for condonation of delay and the appellate authority while allowing the application for condonation of delay vide order dated 19.09.2017, later on allowed the appeal on 05.01.2018 and it was held that the respondents were neither owner nor they were having any right title or interest in the land and there cannot be any relinquishment of the

right. The said order was challenged before the higher forum in second appeal which was dismissed vide order dated 07.05.2018. Against the said order a revision was preferred by Ajay Singh, Narendra Singh and Mahipal Singh before the Board of Revenue bearing revision No.3278/2018 which is still pending. This fact shows that anyhow respondent No.4 wanted to grab the land of petitioner.

5. Apart from the aforesaid fact, another fact relevant for adjudication of controversy before this Court was the fact of passing of judgment and decree dated 03.05.1972 passed in civil suit No.133A/1972 by Civil Judge Class II Basoda whereby father of Bheem Singh was declared as Bhumiswami of the disputed survey numbers and thereafter the name of successors of Bheem Singh were recorded in the revenue records. Thus, assailing order impugned to be contrary to the provisions of Section 178 of Madhya Pradesh Land Revenue Code, 1959, the present petition has been filed.

6. Learned senior counsel for the petitioner has vehemently argued that as provided under Section 178 of the M.P. Land Revenue Code, the order of partition can be passed on the basis of initiation of proceedings for that an application is required to be filed by a co-owner and after publication and calling the report from the Patwari, order of partition can be passed between the co-owners. Section 178 of the M.P. Land Revenue Code does not provide any authority to the revenue court to pass an order of partition in favour of third person and if a land is transferred in favour of third person then it cannot be by way of partition as it would amount to transfer of title for which a registered document is required to be executed but just to by-pass the said procedure and to save stamp duty, thus method

had been adopted which amounts to fraud, which appears to have been played upon both the petitioner as well as State exchequer which makes the orders vulnerable and liable to be quashed.

7. It was further argued that in the partition proceedings, publication is required to be made and notices are required to be issued to the all co-owners, but in the case in hand, there was no application, no notice was ever issued to the interested parties, no publication was made and the order of partition was passed alleging that there was consent of the petitioners which in the light of the aforesaid arguments amounts to transfer of title, thus, could not have been effected under the proceedings of Section 178 of the M.P. Land Revenue Code.

8. It was further argued that the Sub Divisional Officer had called the report from the Tehsildar and the Tehsildar in its report dated 07.10.2022 specifically mentioned that mutation has been made in favour of third person which is contrary to law, but ignoring the said report, the order was passed by the Sub-Divisional Office which is *per se* illegal.

9. While referring to Panji No.7, it was argued by learned senior counsel that Ballo Bai had died on 11.11.1993, but in mutation Panji no. 7, a share was also given to Ballo Bai which itself implies that the proceedings of partition were closed in haste and in perpetuation of fraud, which had made the Authority to pass an order in favour of a dead person which makes the said Panji to be *per se* illegal and not sustainable.

10. It was lastly argued that delay in preferring the appeal was explained by plausible reasons but the Sub-Divisional Officer taking a hyper-technical approach had rejected the said application which is

per se arbitrary and illegal, therefore, deserves to be quashed. Likewise, this fact has not been considered by the Revisional Authority and had dismissed the revision, which also needs to be quashed.

11. On the other hand, learned counsel for the respondent No.4 has argued before this Court that no illegality has been committed by learned courts below and the directions as issued by this Court in M.P. No.5854/2019 were duly complied with and after a detailed inquiry, it was found that no fraud was played upon the appellant by the other side and as the said order of partition was passed in presence of present petitioners with their consent and they even had sworn in their notarized affidavits on a stamp of Rs.50/- and also their photographs were affixed on the said affidavits, now alleging that a fraud has been played upon them and no opportunity was granted to them at the time of partition proceedings could be said to be genuine and thus, had the application for condonation of delay was rightly rejected by SDO and had accordingly, had dismissed the appeal.

12. It was further argued that the revisional authority had also considered the aforesaid aspect in proper prospective and had come to a conclusion that the order of partition was passed with the consent of petitioners, therefore, rejection of application under section 5 of Limitation Act by the SDO was proper and thus rightly dismissed the revision. It was thus prayed that the present petition being devoid of merits be dismissed.

13. Heard counsel for the parties and perused the record.

14. From perusal of record, it appears that the lands in question were declared to be of Bhumiswami rights of the father of

present petitioner i.e. Bheem Singh vide judgment and decree dated 03.05.1972 passed in civil suit No.133A/1972 by Civil Judge Class II Basoda. The said suit was filed by Bheem Singh against Daulat Singh - father of present respondent No.4 and his uncle Madhav Singh. Thus, a right which accrued in favour of father of present petitioners was by judgment and decree dated 03.05.1972 passed in Civil Suit No.133A/1972. Admittedly, the respondent No.4 was neither co-sharer nor tenure-holder or co-owner of the said property and so far as lands in question i.e. survey Nos. 26, 35/2, 74, 85, 86, 88/1 admeasuring 14.601 hectare were concerned, they were of the ownership of the father of present petitioners and so far as respondent No.4 is concerned, he would be a third party.

15. From the record, it is also revealed that respondent No.4 alongwith his brothers Ajay Singh, Narendra Singh and Mahipal Singh had filed a suit for declaration and injunction, for declaring judgment and decree dated 03.05.1972 to be null and void which was dismissed vide judgment and decree dated 27.07.2024 which implies that as on date, respondent No.4 is having no right and title over the property in question and he in-actuality is a third party to the said survey numbers.

16. It is trite law that any transfer of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument as provided under Section 54 of The Transfer of Property Act, 1882 and any transfer by any other mode in favour of a third party whereby there is a transfer of title of an immovable property is impermissible.

17. In the present case, the Authorities have went on to hold the partition to be good on the basis of a consent given by the

petitioners on affidavit but as the law with regard to transfer of tangible immovable property is settled, even said consent would have no meaning and the transfer of land in favour of present respondent No.4 could only have been effected by means of a sale-deed, but herein-case by way of partition, lands have been transferred in favour of respondent No.4 which appears to be highly improper.

18. Another fact which is required to be seen is that in similar proceedings wherein against mutation done of the names of brothers of respondent No.4 in records with regard to survey numbers 26 and 35/2 admeasuring 6.846 hectares, the Appellate Authority had condoned the same period of delay which has been affirmed by the Second Appellate Authority, but herein-case the First Appellate Authority itself has rejected the application for condonation of delay which appears to this Court to be not proper and indicates that some fraud was played at the time of preparation of Panji No.7 and admittedly, the said partition could not have been effected.

19. Law is well settled that whenever any action of the authority is in violation of the provisions of the statute or the action is constitutionally illegal, it cannot be allowed to sustain in law. Wherever the statutory provision is ignored by the authority, the Court cannot become a silent spectator to such an illegality and it becomes the solemn duty of the Court to deal with the person(s) violating the law with heavy hands. (See: **R.N. Nanjundappa Vs. T. Thimmaiah AIR 1972 SC 1967, Sultan Sadik Vs. Sanjay Raj Subba & Ors. AIR 2004 SC 1377**)

20. Further the Apex Court has held that whenever any wrong is done to a citizen, the Court cannot become a silent

spectator to such illegality and it becomes the solemn duty of the Court to see that the affected person must get justice. (See : **Shivajirao Nilangekar Patil Vs. Dr. Mahesh Madhav Gosavi & Ors, AIR 1987 SC 294**).

21. In the light of the aforesaid discussion, this Court comes to a conclusion that Panji No.7 whereby partition has been recorded between the petitioner and respondent No.4, was not permissible in law as respondent No.4 was neither co-owner nor tenure-holder or co- parcener of the property and no partition, thus, could have been effected. This Court instead of remitting the matter back for reconsideration, deems it appropriate to quash Panji No.7. Accordingly, order dated 20.04.2010 passed by Tehsildar, Tehsil Basoda District Vidisha and order dated 11.05.2023 passed by SDO, Basoda District Vidisha and order dated 05.12.2023 passed by Additional Collector District Vidisha are also hereby quashed.

22. With the aforesaid, this petition stands **allowed and disposed of**.

(MILIND RAMESH PHADKE)
JUDGE