

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

**ON THE 21st OF SEPTEMBER, 2023
MISC. PETITION No. 4262 of 2019**

BETWEEN :-

**SMT. SHEELA W/O SHRI RAJENDRA SINGH LODHI, AGED ABOUT 60
YEARS, OCCUPATION: AGRICULTURIST R/O WARD NO. 1, PATERA
ROAD, NAGAR KE PASS, VILLAGE HINDORIYA, TAH. AND DISTT.
DAMOH (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI G. S. BAGHEL - ADVOCATE WITH SHRI KAMLESH KUMAR
RAIDAS - ADVOCATE)***

AND

- 1. THE STATE OF MADHYA PRADESH THR.
THE COLLECTOR, DISTRICT DAMOH
(MADHYA PRADESH)**
- 2. THE REVENUE BOARD GWALIOR,
DISTRICT GWALIOR (MADHYA PRADESH)**
- 3. THE REVENUE BOARD GWALIOR,
DISTRICT GWALIOR (MADHYA PRADESH)**
- 4. THE SUB DIVISIONAL OFFICER HATA,
DISTT. DAMOH (MADHYA PRADESH)**
- 5. THE NAIB TAHSILDAR, MANDAL LOHARI,
DISTT. DAMOH (MADHYA PRADESH)**

6. **BHAGWAT PRASAD S/O UMA PRASAD R/O BHATIYA, TAHSIL PATERA, DISTT. DAMOH (MADHYA PRADESH)**
7. **ASHARAM S/O GAYA PRASAD SAHU R/O BHATIYA, TAHSIL PATERA, DISTT. DAMOH (MADHYA PRADESH)**
8. **GOVIND SINGH S/O SHANKAR SINGH LODHI R/O DISTRICT DAMOH (MADHYA PRADESH)**
9. **GAYA PRASAD S/O RAGHUNANDAN PRASAD BRAMHAN R/O DISTRICT DAMOH (MADHYA PRADESH)**
10. **SARPANCH, VILLAGE PANCHAYAT BHATIYA, THROUGH UDAY SINGH LODHI, DISTRICT DAMOH (MADHYA PRADESH)**

.....RESPONDENTS

(MS. SUPRIYA SINGH - PANEL LAWYER FOR THE STATE, SHRI PRAVEEN CHOUBEY - ADVOCATE FOR RESPONDENT NO.6)

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

ORDER

This petition under Article 227 of the Constitution of India has been filed against the order dated 21/12/2018 passed by Board of Revenue in Revision No.304-Teen/2016, order dated 12/11/2013 passed by Additional Commissioner, Sagar Division Sagar in File No. 539-A-25/07-08, order dated 28/09/2007 passed by Sub Divisional Officer, Hata, District Damoh in File No.147-A/25/2006-07.

2. It is the case of petitioner that one Sinnet Singh died issueless. Accordingly, petitioner as well as respondent No.6 filed an application for mutation of their names on the basis of Will. The application filed by the petitioner was allowed by Tahsildar.

3. Being aggrieved by said order, respondents No.6 preferred an appeal before Sub Divisional Officer, Hata District Damoh which was registered as Revenue Case No.147-A/25/2006-07. The said appeal was allowed by order dated 28/09/2007 and matter was remanded back to the Tahsildar, Patera to reconsider the case. Thereafter, petitioner preferred an appeal before the Board of Revenue which has been dismissed by order dated 21/12/2018 passed in Revision Case No.304-Teen/2016 and in view of the amendment in the M.P. Land Revenue Code, matter was transferred to Collector, Damoh. Accordingly, by order dated 25/07/2022, Additional Collector Damoh has affirmed the order passed by Sub Divisional Officer, Hata on the ground that the Wills relied upon by petitioner as well as respondent No.6 are registered, therefore the matter was rightly remitted by the SDO Hata.

4. Being aggrieved by order passed by Additional Collector, Damoh in case No.09/2019-20, it is submitted by counsel for petitioner that since Sinnet Singh had executed a Will in favour of petitioner, therefore, his name was rightly recorded by Tahsildar Patera District Damoh.

5. *Per contra*, it is submitted by counsel for respondent No.6 that Additional Collector Damoh and Sub Divisional Officer, Hata did not commit any mistake by remanding the matter back to Tahsildar Patera to

pass an order afresh after considering the Wills relied upon by both the parties.

6. Heard learned counsel for the parties.

7. The moot question for consideration is as to whether the Revenue Courts have any jurisdiction to mutate the name of propounder of a Will or not ?

8. The question of 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; *Faqruddin 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. The Supreme Court in the case of **H. Lakshmaiah Reddy v. L. Venkatesh Reddy**, reported in (2015) 14 SCC 784 has held as under :

“8. As rightly contended by the learned Senior Counsel appearing for the appellants, the first defendant did not relinquish or release his right in respect of the half-share in the suit property at any point of time and that is also not the case pleaded by the plaintiff. The assumption on the part of the High Court that as a result of the mutation, the first defendant divested himself of the title and possession of half-share in suit property is wrong. The mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. The observations of this Court in *Balwant Singh case* are relevant and are extracted below: (SCC p. 142, paras 21-22)

“21. We have considered the rival submissions and we are of the view that Mr Sanyal is right in his contention that the courts were not correct in assuming that as a result of Mutation No. 1311 dated 19-7-1954, Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In *Sawarni v. Inder Kaur*, Pattanaik, J., speaking for the Bench has clearly held as follows: (SCC p. 227, para 7)

‘7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.’

22. Applying the above legal position, we hold that the widow had not divested herself of the title in the suit property as a result of Mutation No. 1311 dated 19-7-1954. The assumption on the part of the courts below that as a result of the mutation, the widow divested herself of the title and possession was wrong. If that be so, legally, she was in possession on the date of coming into force of the Hindu Succession Act and she, as a full owner, had every right to deal with the suit properties in any manner she desired.”

11. The Supreme Court in the case of **Suraj Bhan v. Financial Commr.**, reported in **(2007) 6 SCC 186** has held as under :

“9. There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in revenue records does not confer title on a

person whose name appears in record-of-rights. It is settled law that 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. So far as title to the property is concerned, it can only be decided by a competent civil court (vide *Jattu Ram v. Hakam Singh*). As already noted earlier, civil proceedings in regard to genuineness of will are pending with the High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition.”

12. Under these circumstance, this Court is of considered opinion that the application for mutation of names of petitioner as well as respondent No.6 on the basis of Wills filed by them was not maintainable. If the petitioner and respondent No.6 want to establish their title on the basis of Wills, then they have to approach the Civil Court for declaration of their title.

13. Accordingly, the application filed for mutation of names of petitioner as well as respondent No.6 are hereby **dismissed**. The order dated 25/07/2020 passed by Additional Collector, Damoh is hereby modified and instead of remanding the matter, it is directed that the application for mutation is itself was not maintainable. Both the parties are granted liberty that if they are so advised, they can approach the Civil Court of competent jurisdiction for establishing their right and the names of decree holder would be mutated in the revenue record. Till then the property shall be recorded in the name of State Government with a clear endorsement of nontransferable.

14. If any third party right has been created, then the purchasers will not have any right on the basis of sale-deed executed by any of the parties.

15. With aforesaid observation, the writ petition is **disposed of**.

(G.S. AHLUWALIA)
JUDGE

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