

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR

MISC PETITION NO.	6597/2019
Parties Name	DR. RAJDEEP KAPOOR VS. MOHD. SARWAR KHAN AND ANOTHER
Bench Constituted	Single Bench
Judgment delivered By	HON'BLE SHRI JUSTICE VISHAL DHAGAT
Whether approved for reporting	YES
Name of counsel for parties	For petitioner: Shri Anurag Gohil, Advocate. For Respondents : Shri Arvind Kumar Chouksey, Advocate.
Law laid down	- Evidence Act with strict technicalities is not applicable in mutation proceedings. Revenue Officer is only required to do enquiry to reach satisfaction in respect of evidence filed regarding acquisition of rights over land. Examination on oath and cross-examination need not be done by Tehsildar in mutation proceedings.
Significant paragraph number	- Para-17

(O R D E R)
06/01/2021

Petitioner has filed this misc. petition calling in question order passed by Additional Commissioner, Bhopal dated 27.11.2019 by which order passed by SDO and Naib Tehsildar dated 15.02.2019 and 15.01.2018 was set aside and application for mutation filed by Mohd. Sarwar Khan was allowed.

2. Brief facts of the case are as under: -

Respondent Mohd. Sarwar Khan filed an application under sections 109 and 110 of M.P Land Revenue Code, for mutation of his name on land bearing Survey number 288, measuring 7.350 Ha. situated in Village Sagoni Kalan, Tehsil Hazur, District Bhopal, MP. Application for mutation was filed on the ground that late Dr. Harwant Singh Kapoor had executed a 'Will' on 13.05.1988 in

favour of respondent Mohd. Sarwar Khan. On the basis of said 'Will' respondent Mohd. Sarwar Khan is in possession over the land and is doing agriculture over it. Since testator had died, therefore, land may be mutated in the name of legatee. Learned Naib Tehsildar by order dated 15.01.2018 dismissed the application for mutation on the ground of delay. Naib Tehsildar held that 'Will' was executed on 13.05.1988 and thereafter testator had died on 29.06.2012. Application for mutation has been filed after delay of five years.

Respondent has challenged the order passed by Naib Tehsildar before Sub Divisional Officer. Before appellate court petitioner filed an application under Order 1 Rule 10 of C.P.C. and filed its objection to mutation proceedings. Learned Sub Divisional Officer, considering the evidence available on record, held that there is dispute of title over the land in question, therefore, mutation cannot be ordered in favour of respondent. Sub Divisional Officer refused to interfere in the matter and dismissed the appeal by order dated 15.02.2019.

Respondent challenged the order passed by SDO before Additional Commissioner, Bhopal. Additional Commissioner, Bhopal vide order dated 27.11.2019 set aside the orders passed by Sub Divisional Officer and Naib Tehsildar and allowed the application filed by respondent on the basis of 'Will' executed by late Dr. Harvant Kapoor. Additional Commissioner held that petitioner, Dr. Rajdeep Kapoor had admitted the 'Will' before Naib Tehsildar. He had made a statement that the land was given to respondent by his father out of affection. Petitioner's father Dr.

Harvant Kapoor was running a clinic in the shop given to him by father of respondent i.e. Anwar Khan out of affection and friendly relationship. No rent was charged for the said shop. Witnesses of the 'Will' had also been examined and they had stated that Dr. Harwant Singh Kapoor and Anwar Khan were good friends. Anwar Khan had given his shop without any charge to Dr. Harvant Kapoor for running his clinic. Later on petitioner i.e. Dr. Rajdeep Kapoor was also running his clinic from the same shop. 'Will' dated 13.05.1988 is a notarized document. Admitted document is not required to be proved as per Section 58 of the Evidence Act. Second 'Will' which has been produced by petitioner is not worthy of credit in view of apex court judgment in case of **H. V. Nirmala vs. R. Sharmila, (2018) 3 SCC 303**. On the basis of such finding and law, Additional Commissioner allowed the appeal filed by respondent.

3. Counsel appearing for petitioner has challenged the order passed by Additional Commissioner on the ground that Commissioner has no jurisdiction to decide the validity of the 'Will'. It is within the jurisdiction of civil court to decide the genuineness and validity of a 'Will'. There was delay in filing the application for mutation and findings of Commissioner are perverse. 'Will' presented by respondent in the court of Tehsildar has been counterfeited and forged. On aforesaid grounds petitioner made a prayer for setting aside order passed by Additional Commissioner.

4. Counsel appearing for respondent supported the order passed by Additional Commissioner. He submitted that admitted facts need not be proved as per section 58 of the Evidence Act. Second 'Will' filed by the petitioner before court of SDO cannot be believed. He relied on the judgment passed by apex court in case of **H. V. Nirmala (supra)**. It was argued that 'Will' was not filed before Naib Tehsildar and was only produced in appellate court which cannot be believed. Additional Commissioner has rightly decided the issue and he rightly set aside the orders passed by Naib Tehsildar and SDO.

5. Heard the counsel appearing for the parties.

6. Three questions before this Court are as under:-

(i) Whether Naib Tehsildar rightly dismissed application to do mutation on ground of delay ?

(ii) Whether S.D.O rightly held that there was dispute of title between the parties ?

(iii) Whether Additional Commissioner was within his jurisdiction to allow the appeal and setting aside the orders passed by Sub Divisional Officer and Naib Tehsildar ?

Answer to question no.(i):-

7. Naib Tehsildar had not doubted the 'Will'. He had given a finding that petitioner had admitted the 'Will' as well as signature of Dr. Harvant Kapoor. Two attesting witnesses of the 'Will' has also stated that 'Will' was executed out of love and affection in favour of respondent. Application for mutation was rejected only

on the ground of delay. Naib Tehsildar failed to consider the fact that when 'Will' was executed when respondent was only 5 years old. Testator died on 29.06.2012. Respondent was in possession of land and was doing agriculture on it.

8. As per Section 109(1) of the M.P. Land Revenue Code, any person lawfully acquiring any right or interest in land shall report acquisition of right within six months to Patwari, Nagar Sewak or Naib Tehsildar/Tehsildar. In case of minor acquisition of right and title be reported by Guardian to aforesaid Revenue authorities. After receiving report Tehsildar, within 15 days shall register the case in his court. Issue notice to all interested person and after giving reasonable opportunity of hearing to interested person, pass order of mutation in 30 days in undisputed cases and within six (6) months in disputed cases. Reporting of acquisition of legal right and interest within 6 months is obligatory and not mandatory. Sections 109 or 110 of the M.P. Land Revenue Code, does not bar mutation if reporting of acquisition of right or title is beyond 6 months. Revenue Officer doing mutation beyond period of 6 months has to be more circumspect in passing order of mutation but only on ground of delay cannot refuse to do mutation in matter of undisputed cases. In view of same Naib Tehsildar committed an error in dismissing application only on ground of delay.

Answer to question no.(ii):-

9. Sub Divisional Officer gave a finding that there was dispute of title, therefore, Revenue Court could not pass an order for

mutation. Learned Sub Divisional Officer failed to consider the fact that there was no dispute regarding execution of 'Will' by petitioner before the court of Naib Tehsildar. 'Will' was admitted by son of testator to have been signed and inked by his father. Attesting witnesses of 'Will' also gave evidence that 'Will' is executed by testator. There was no dispute of title between the parties before the Tehsildar. Dispute of title was for the first time raised before the appellate authority by filing objection to mutation by petitioner. There was no dispute of title before Naib Tehsildar and once the facts of execution of 'Will' has been admitted in evidence by petitioner he cannot be allowed to take a U-turn and dispute the 'Will'. The Principle of estoppel is arising out of doctrine of equity. Principle of estoppel is a principle of equity and once a fact is admitted by a party before the court then in subsequent proceedings he cannot be allowed to deny the said fact by leading evidence. Therefore S.D.O wrongly held that there was dispute between the parties on basis of inadmissible evidence.

Answer to question no.(iii):-

10. Mutation proceedings before revenue courts are to be decided as per evidence adduced by the parties before it. Evidence means documents and affidavits/statements submitted by a parties in support of their case. Procedure to be adopted by revenue courts and their power is described in sections 32, 33, 34, 43 and 53 of MP Land Revenue Code. The said sections are quoted as under: -

“32. Inherent power of Revenue Courts. - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court.

33. Powers of Revenue Officers to require attendance of persons and production of documents and to receive evidence. - (1) Subject to the provisions of Sections 132 and 133 of the Code of Civil Procedure, 1908 (V of 1908) and to rules made under Section 41, every Revenue Officer acting as a Revenue Court shall have power to take evidence, to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness or to produce any document for the purposes of any inquiry or case arising under this Code or any other enactment for the time being in force.

(2) No person shall be ordered to attend in person, unless he resides -

(a) within the limits of the tahsil if the Revenue Officer acting as a Revenue Officer is a Naib-Tahsildar and in the case of any other Revenue Officer, within the local limits of his jurisdiction; or

(b) without such limits but at a place less than fifty, or where there is a railway communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where he is summoned to attend, less than two hundred miles distant from such place.

(3) Any person present may be required by any such Revenue Officer to give evidence or to produce any document then and there in his possession or power.

(4) Every such Revenue Officer shall have power to issue a commission to examine any person who is exempted from attending Court or who cannot be ordered to attend in person or is unable to attend on account of sickness or infirmity.

34. Compelling attendance of witness. - If any person on whom a summons to attend as witness or to produce any document has been served fails to comply with the summons, the officer by whom the summons has been, issued under Section 33 may -

(a) issue a bailable warrant of arrest;

(b) order him to furnish security for appearance; or

(c) impose upon him a fine not exceeding rupees fifty.

35. to 42. xxx xxx xxx

43. Code of Civil Procedure to apply when no express provision made in this Code. - Unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908) shall, so far as may be, be followed in all proceedings under this Code.

44. to 52. xxx xxx xxx

53. Application of Limitation Act. - Subject to any express provision contained in this Code the provision of the [Indian Limitation Act, 1908] (IX of 1908), shall apply to all appeals and applications for review under this Code.”

11. Mutation is to be done by Tehsildar under Section 110 of the M.P. Land Revenue Code. Section 110 of the Land Revenue Code, is quoted as under:-

“110. Mutation of acquisition of right in land records. -

(1) The Patwari or Nagar Sarvekshak or person authorised under section 109 shall enter into a register prescribed for the purpose every acquisition of right reported to him under section 109 or which comes to his notice from any other source.

(2) The Patwari or Nagar Sarvekshak or person authorised, as the case may be, shall intimate to the Tahsildar, all reports regarding acquisition of right received by him under sub-section (1) in such manner and in such Form as may be prescribed, within thirty days of the receipt thereof by him.

(3) On receipt of intimation under section 109 or on receipt of intimation of such acquisition of right from any other source, the Tahsildar shall within fifteen days, -

(a) register the case in his Court;

(b) issue a notice to all persons interested and to such other persons and authorities as may be prescribed, in such Form and manner as may be prescribed; and

(c) display a notice relating to the proposed mutation on the notice board of his office, and publish it in the concerned village or sector in such manner as may be prescribed;

(4) The Tahsildar shall, after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry as he may deem necessary, pass orders relating to mutation within thirty days of registration of case, in case of undisputed matter, and within five months, in case of disputed matter, and make necessary entry in the village khasra or sector khasra, as the case may be, and in other land records.

(5) The Tahsildar shall supply a certified copy of the order passed under sub-section (4) and updated land records free of cost to the parties within thirty days, in the manner prescribed and only thereafter close the case :

Provided that if the required copies are not supplied within the period specified, the Tahsildar shall record the reasons and report to the Sub-Divisional Officer.

(6) Notwithstanding anything contained in section 35, no case under this section shall be dismissed due to the absence of a party and shall be disposed of on merits.

(7) All proceedings under this section shall be completed within two months in respect of undisputed case and within six months in respect of disputed case from the date of registration of the case. In case the proceedings are not disposed of within the specified period, the Tahsildar shall report the information of pending cases to the Collector in such Form and manner as may be prescribed.”

12. Code of Civil Procedure is to be followed by Revenue Courts for smooth functioning when there is no express provision made in M.P. Land Revenue Code or Rules made thereunder. C.P.C is not to be followed when there is express provision under M.P. Land Revenue Code or Rules made thereunder.

13. Evidence Act, 1872 is also not applicable to proceedings under M.P. Land Revenue Code. Section 3 of Evidence Act, 1872 defines court as under:-

“3. Interpretation clause. - In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:-

“Court”.- “Courts” includes all Judges and Magistrates, and all persons except arbitrators, legally authorized to take evidence.”

14. Summary recommendation of 185th report of Law Commission of India in respect of definition of Court is as under:-

“It is not necessary to include all Revenue Courts within the definition of “Court” for purpose of the Evidence Act. The question whether one provision of Evidence Act apply or not, would depend upon nature of Tribunal. One nature of inquiry contemplated or other special characteristic of each such ‘Revenue Court’. We are, therefore, not in favour of applying Evidence Act to all ‘Revenue Courts’.

15. Rules notified regarding record of rights, Notification No.2498-VII-N dated 10th June 1965, published in Gazette dated 2.7.1965 as amended by No.1351-VII-NI dated 16.4.1968 and No.2764-2953-VII-N-I dated 26.7.1968 R-32 for mutation are as under:-

“IV-Mutations in the Khasra

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.

25. A copy of the entries made in the register during a month shall be sent by the Patwari at the end of each month to the Tahsildar. If no entry is made in any month in the register blank report shall be sent by the Patwari to the Tahsildar.

26. Certification of the entries in the mutation register shall be made at the Headquarters of the Gram Panchayat or at any other convenient centre in the Gram Panchayat area fixed for this purpose by the Tahsildar.

27. On receipt of the intimations from the Patwaris, or from the Registering Officers under Section 112, the Tahsildar shall have the intimations duly published by beat of drum in the village to which they relate and shall get a copy of the intimation posted at the chaupal, gudi

or any other place of public resort in the village and shall also send a copy thereof to the Gram Panchayat of the village. He shall also give written intimation of the same to all persons appearing to him to be interested in the mutation.

28. On a date and place to be specified in the intimation the Tahsildar shall hear the parties concerned and certify the mutation entry, provided that, where a party remains absent after having been duly served with a notice, the entry will be certified ex parte.

29. The Tahsildar shall read out the entry in the presence of the parties interested, and where the correctness of the entry is admitted, shall record such admission in the mutation register, and add an endorsement under his signature that the entry has been duly certified and also indicate the modified entry that will be made in the khasra as a result of the certification.

30. All original documents produced before the Tahsildar shall be endorsed by him and returned to the parties as soon as orders have been passed.

31. The changes shall first be entered in the register of mutations villagewise. Where there are no disputes, the mutations shall be certified in the register itself by the Tahsildar, and suitable entries made in the Rasid Bahis. If there are disputes, separate cases shall be started for each person after taking extract from the register for starting cases separately. The Tahsildar shall give a certificate in the mutation register that entries in the Rasid Bahi have been made according to mutations sanctioned in undisputed cases and separate cases have been started for disputed entries.

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.

33. When the disputed cases are decided, the entries in the khasra and the Rasid Bahi shall be got corrected by the Tahsildar. The Tahsildar shall give a certificate in the mutation register that entries in the Rasid Bahi and khasra have been made according to the decisions in the disputed cases.

34. Intimation of transactions of land which registering officers are required to send under Section 112, shall be in Form F. A separate form shall be prepared for each village in the first week of each month, for the transaction of the past month, and shall be despatched to the Tahsildar.

35. The acknowledgment to be given of the report of acquisition of right received under Section 109 shall be in Form G.”

16. In view of above and considering Section 110(4) of M.P. Land Revenue Code, it is clear that parties have to lead evidence before the revenue court. Evidence means document and affidavits of witnesses. Neither witness is to be examined on oath or to be cross-examined in revenue courts in mutation proceedings. Tehsildar is required to do further enquiry as he may deem necessary. Thus, he is required to reach his satisfaction in respect of evidence adduced before him by parties. Examination-in-chief or cross-examination as done under section 137 of the Evidence Act, is not to be done by parties as in practice prevailing before Naib Tehsildar in mutation proceedings. This is not envisaged under M.P. Land Revenue Code. Naib Tehsildar is required to receive evidence, hear interested parties and to do enquiry for satisfaction regarding acquisition of rights by a party/parties and pass order on mutation.

17. Additional Commissioner has considered the documentary evidence as well as statement of witnesses and has come to the conclusion that 'Will' is genuine and there is no dispute about the 'Will'. Principle of estoppel is applicable in revenue courts.

Petitioner is stopped from leading the evidence contrary to his admission before court of Tehsildar. Additional Commissioner has acted legally and within his jurisdiction to set aside the order passed by Tehsildar and SDO and allowing the application for mutation.

18. A copy of this order be sent to Principle Secretary (Revenue) for compliance and guiding Tehsildar/Naib Tehsildar to follow proper procedure and not to conduct trials in mutation proceedings so that applicants are not involved in tedious, long-drawn and unnecessary technicalities and orders in mutation proceedings so passed within time frame as laid down in M.P. Lok Seva Guarantee Adhiniyam, 2010.

19. In view of aforesaid miscellaneous petition filed by the petitioner is dismissed. Petitioner is at liberty to establish his title before Civil Court.

(VISHAL DHAGAT)
JUDGE

mms