

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 3rd OF MAY, 2023

MISC. PETITION No. 441 of 2020

BETWEEN:-

**DINESH SILONIYA S/O SHRI GOPAL SINGH,
AGED ABOUT 50 YEARS, OCCUPATION:
1. AGRICULTURIST VILL. BAGER THE. ASHTA
DIST. SEHORE (MADHYA PRADESH)**

**RAJESH SILORIYA S/O GOPAL SINGH, AGED
2. ABOUT 47 YEARS, VILLAGE BAGER TEHSIL
ASHTA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AVINASH ZARGAR - ADVOCATE)

AND

**SMT. SORAM BAI W/O SHRI RAM PRASAD,
AGED ABOUT 55 YEARS, OCCUPATION:
1. BELONGS TO SCHEDULED TRIBE VILL. RAM
NAGAR TEH. ICHCHAWAR DIST. SEHORE
(MADHYA PRADESH)**

**SMT.SUGAN (WRONGLY TYPED AS SUMAN) BAI
W/O LAKHANLAL, AGED ABOUT 40 YEARS,
2. NIPANIYA SIKH TEHSIL ICHCHAWAR
DISTT.SEHORE (MADHYA PRADESH)**

**3. STATE OF MP THROUGH COLLECTOR
DISTT.SEHORE (MADHYA PRADESH)**

.....RESPONDENTS

(MS. PAPIYA GHOSH -PANEL LAWYER FOR RESPONDENT NO.3/STATE)

(SHRI SANJAY ROY -ADVOCATE FOR RESPONDENT NO.1 AND 2)

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

ORDER

This Miscellaneous Petition under Article 227 of the Constitution of India has been filed against the order dated 16.12.2019 passed by the Additional Commissioner, Bhopal, Division Bhopal in Case No.1067/Appeal/2017-18.

2. It is submitted by counsel for the petitioner that the petitioners had moved an application for mutation of their names on the basis of a Will executed by Shree Nana. The application was rejected by the Tehsildar. The order of the Tehsildar has been affirmed by the S.D.O as well as the Additional Commissioner. However, the S.D.O has also gone to the extent of disputing the ownership of Shree Nana also.

3. During the course of argument, it was fairly conceded by the counsel for the petitioner that in the light of judgment of the Supreme Court in the case of *Jitendra Singh Vs. State of M.P.* by order dated 6-9-2021 passed in *S.L.P. (C) No. 13146 of 2021* has held that the revenue authorities have no jurisdiction to mutate the names on the basis of Will. However, it is submitted that since in the present case the Will is not disputed and all the legal representatives of Shree Nana have agreed for mutation of the names of the petitioner on the basis of Will, therefore, the revenue authorities have jurisdiction to the entertain the said application.

4. Heard the learned counsel for the parties.

5. The Supreme Court in the case of Jitendra Singh (supra) 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.

6. 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.”

In the circumstances, we are of the opinion that the High Court erred in concluding that the first defendant by his

conduct had acquiesced and divested himself of title of his half-share in suit property and the said erroneous conclusion is liable to be set aside.

7. 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.”

8. Once the revenue authorities have no jurisdiction to mutate the name of a beneficiary on the basis of a Will then whether the Will is disputed or undisputed will not have any importance.

9. Under these circumstances, this Court is of the considered opinion that the application filed by the petitioners for mutation of their names on the basis of Will itself was not maintainable. However, it is observed that in case if the petitioners are so advised then they can file a civil suit for declaration of title of Shree Nana as well as their title on the basis of Will. If civil suit is filed then the civil court is expected to decide the same strictly in accordance with the evidence which would

come on record without getting influenced or prejudiced by any of the findings/observations made by the revenue authorities.

10. With aforesaid observation, the petition is **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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