

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 15th OF SEPTEMBER, 2023

MISC. PETITION No. 2388 of 2021

BETWEEN:-

**RAMKUMAR RAJPUT S/O GAJRAJ SINGH RAJPUT,
AGED ABOUT 40 YEARS, R/O VILLAGE DHUPKARAN
TEHSIL SIRALI DISTT. HARDA AT PRESENT R/O
BAKAD PUNE MAHARASHTRA PRESENT OFFICE
INDIANA STATE USA (OTHER COUNTRY)**

.....PETITIONER

(BY SHRI SAKET MALIK - ADVOCATE)

AND

- 1. SMT. ANITA W/O MAHENDRA SINGH D/O LATE
GAJRAJ SINGH RAJPUT, AGED ABOUT 46
YEARS, R/O 41 VARDHMAN AVENUE
APARTMENT SARASWATI NAGAR ANNPURNA
ROAD INDORE (MADHYA PRADESH)**

- 2. SMT. SUNITA W/O PUSHPENDRA SINGH
PARIHAR, D/O LATE GAJRAJ SINGH RAJPUT,
AGED ABOUT 44 YEARS, R/O 1839 REWA
COLONY HANSRAJ KIRANA STORE IN FRONT
OF BRIJMOHAN NAGAR RAMPUR BHAROLI,
JABALPUR (MADHYA PRADESH)**

- 3. SMT. VINITA W/O GOPAL SINGH, D/O LATE
GAJRAJ SINGH RAJPUT, AGED ABOUT 41
YEARS, R/O SHANKRACHARYA NAGAR, RAJA
BHOJ ARKE, BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SANJAY K. AGRAWAL – ADVOCATE FOR RESPONDENTS NOS.2 & 3)

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

ORDER

This petition under Article 227 of Constitution of India has been filed against order dated 30.01.2020 passed by Commissioner, Narmadapuram Division, Hoshangabad in Case No.017/Appeal/2019-20.

2. It is the case of petitioner that after the death of Gajraj Singh Rajput all the parties inherited equal share in the disputed lands. Since respondents had relinquished their share in the properties, therefore properties were recorded in the name of petitioner. The order of mutation dated 20.02.2011 passed by Tehsildar, Sirali was challenged by petitioner by filing appeal before S.D.O. Khirkiya, District Harda, who by order dated 31.02.2019 set aside the order of mutation and directed for mutation of names of all legal heirs of Gajraj Singh Rajput. The order of S.D.O. was challenged by petitioner before Commissioner Narmadapuram Division, Hoshangabad, who by order dated 30.01.2020 has dismissed the appeal.

3. It is submitted by counsel for petitioner that since respondents had relinquished their right in the properties in dispute, therefore, Tehsildar had rightly mutated the name of petitioner. It is submitted that relinquishment deed is not required to be registered.

4. Heard learned counsel for parties.

5. It appears that Gajraj Singh Rajput was the owner of the lands in dispute. After his death name of his wife Smt. Nirmala was recorded in

revenue records. After the death of Nirmala, it appears that a notarized relinquishment deed was executed by respondents thereby relinquishing their share in the properties and accordingly, name of petitioner was recorded by Tehsildar Sirali, District Harda. Respondents preferred an appeal against order of Tehsildar mainly on the ground that mutation was done without information of respondents. S.D.O. Kirkiya, District Harda by order dated 13.02.2019 allowed the appeal and directed for mutation of names of all the legal representations and Commissioner, Narmadapuram Division, Hoshangabad has also dismissed the appeal by order dated 30.01.2020 on the ground that mutation of name of petitioner on the basis of relinquishment deed was not proper.

6. So far as contention of counsel for petitioner that relinquishment is not required to be registered is concerned, the same is misconceived.

7. Supreme Court in the case of **Sita Ram Bhama Vs. Ramvatar Bhama** reported in **(2018) 15 SCC 130** has held as under:

“10. The only question which needs to be considered in the present case is as to whether document dated 9-9-1994 could have been accepted by the trial court in evidence or the trial court has rightly held the said document inadmissible. The plaintiff claimed the document dated 9-9-1994 as memorandum of family settlement. The plaintiff's case is that earlier partition took place in the lifetime of the father of the parties on 25-10-1992 which was recorded as memorandum of family settlement on 9-9-1994. There are more than one reasons due to which we are of the view that the document dated 9-9-1994 was not mere memorandum of family settlement, rather a family settlement itself. Firstly, on 25-10-1992, the father of the parties was himself owner of both, the residence and shop being self-acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a will, so that the father could have made the

will in favour of his two sons, the plaintiff and the defendant. Neither the plaintiff nor the defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10-9-1993. After his death, the plaintiff, the defendant and their mother as well as sisters become the legal heirs under the Hindu Succession Act, 1956 inheriting the property being a Class I heir. The document dated 9-9-1994 divided the entire property between the plaintiff and the defendant which document is also claimed to be signed by their mother as well as the sisters. In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, the courts below are right in their conclusion that there being relinquishment, the document dated 9-9-1994 was compulsorily registrable under Section 17 of the Registration Act.”

8. Supreme Court in the case of **Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and another**, reported in **(2015) 16 SCC 787** has held as under:

“15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose

of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.

9. Petitioner has relied upon the judgment passed by a coordinate Bench of this Court in the case of **Sharda Prasad (since dead) through his L.Rs. Smt. Chatra Bai and others Vs. Prabhakar Kachi and others** decided on **03.03.2020** in **Second Appeal No.433/2001** in which it has been held that registration of relinquishment deed is not necessary. It is suffice to mention here that aforesaid judgment is *per incuriam* as it has not taken note of law laid down by Supreme Court as well as provisions of Section 17 of Registration Act.

10. This Court by order dated **19.01.2023** passed in the case of **Dharmendra Singh Parihar Vs. Ram Gopal Chaudhary and others** in **S.A. No.1550/2021** has also held that registration of relinquishment deed is compulsory and has held as under:

“15. It is well established principle of law that a relinquishment deed is necessarily required to be registered under Section 17 of Registration Act. By an unregistered document whether it is in the form of application, or reply or an unregistered relinquishment deed, no co-sharer can relinquish his or her right. Therefore, even if the application filed by the defendants No.3 to 5 before the Tahsildar, Exhibit D/3 is taken on its own face value, then at the most it can be said that they had agreed for mutation of names of plaintiffs and the defendant No.2 but by no stretch of imagination the said application can be treated as an relinquishment deed.”

11. Thus, it is clear that even if any relinquishment deed was ever executed by respondents, still the same has inadmissible for want of

registration. Even otherwise it is the case of respondents that mutation was done without any information to them. Further, it is clear from so called relinquishment deed that a consent was given for mutation of name of petitioner with a declaration that respondents will not claim their share in future.

12. Once a person cannot relinquish his or his title without executing a registered relinquishment deed, then the principle of estoppel will also not apply against him or her. At the most, the said application can be treated as an application expressing no objection to the mutation of names of the plaintiffs as well as the defendant No.2. However, it equally well established principle of law that mutation is not a document of title and it is meant only for fiscal purposes.

13. 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; *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.”

14. 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.”

15. 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.”

16. Thus, this Court is of considered opinion that S.D.O. Khirkiya, District Harda as well as Commissioner, Narmadapuram Division, Hoshangabad did not commit any mistake by holding that all the legal representatives of Gajraj Singh Rajput are entitled for share in the property which cannot be denied to them on the basis of relinquishment deed. Even otherwise relinquishment deed is not admissible.
17. Accordingly, no case is made out warranting interference.
18. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE