

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA  
ON THE 21<sup>st</sup> OF NOVEMBER, 2023  
MISC. PETITION No. 363 of 2021**

**BETWEEN:-**

1. HARENDRA SINGH (MANMOD) S/O  
GURDAYAL R/O VILLAGE HIPSLI TEHSIL  
BEGUMGANJ DISTRICT RAISEN (MADHYA  
PRADESH)
2. SHIRENDRA KUMAR GAUR S/O HARENDRA  
SINGH (MANMOD) R/O VILLAGE HIPSLI  
TEHSIL BEGUMGANJ DISTRICT RAISEN  
(MADHYA PRADESH)

**.....PETITIONER**

*(BY SHRI PRAMENDRA SINGH THAKUR - ADVOCATE )*

**AND**

1. GOVIND SINGH S/O GURDAYAL SINGH  
PATEL R/O VILLAGE HIPSLI TEHSIL  
BEGUMGANJ DISTRICT RAISEN (MADHYA  
PRADESH)
2. RAJENDRA SINGH S/O GURDAAYAL SINGH  
PATEL R/O VILLAGE HIPSLI TEHSIL  
BEGUMGANJ DISTRICT RAISEN (MADHYA  
PRADESH)
3. VIRENDRA SINGH S/O GURDAAYAL SINGH  
PATEL R/O VILLAGE HIPSLI TEHSIL  
BEGUMGANJ DISTRICT RAISEN (MADHYA  
PRADESH)
4. MADHO SINGH (MANMOD) S/O GURDAAYAL  
SINGH PATEL R/O VILLAGE HIPSLI TEH.  
BEGUMGANJ, DISTRICT RAISEN (MADHYA  
PRADESH)
5. MAHENDRA SINGH S/O GURDAAYAL SINGH  
PATEL R/O VILLAGE HIPSLI TEHSIL  
BEGUMGANJ DISTRICT RAISEN (MADHYA

PRADESH)

6. RAMRATI BAI W/O JAGEESH OCCUPATION:  
D/O GURDAAYAL SINGH PATEL R/O  
VILLAGE GAHERAS TEH. GAIRATGANJ,  
DISTRICT RAISEN (MADHYA PRADESH)
7. SMT. SHANTI BAI W/O PURSHOTTAM  
DAYAL PATEL D/O GURDAAYAL SINGH  
PATEL R/O VILLAGE KANJELA TAH.  
BEGUMGANJ, DISTRICT RAISEN (MADHYA  
PRADESH)
8. DHAN BAI W/O BHAGWAN SINGH PATEL  
R/O VILLAGE AARAN TEH. RAHATGARH,  
DISTRICT SAGAR (MADHYA PRADESH)
9. HARI BAI W/O HARNAM SINGH R/O  
VILLAGE TULSILPUR TEH. BEGUMGANJ,  
DISTRICT RAISEN (MADHYA PRADESH)
10. BENI BAI W/O MAHESH KUMARN R/O  
VILLAGE HIPSLI TEHSIL BEGUMGANJ  
DISTRICT RAISEN (MADHYA PRADESH)
11. SAROJ BAI W/O PURSHOTTAM PATEL R/O  
KISAN MOLLA GAIRATGANJ TEH.  
GAIRATGANJ DISTRICT RAISEN (MADHYA  
PRADESH)

.....RESPONDENTS

*(SHRI ROHTAS BABU PATEL- ADVOCATE FOR RESPONDENTS No.7 and 8)*

.....  
*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 seeking following reliefs:

- “(i) The Hon’ble Court may kindly be pleased to quash Impugned order dated 29.07.2019 (Annexure P/4) passed by learned Sub Divisional Officer,

Begumganj, District Raisen (MP) and Impugned order dated 28.12.2020 (Annexure P/6) passed by the learned Collector District Raisen (MP) in the interest of justice.

- (ii) Any other relief which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be issued in favour of the Petitioner along with cost of the petition."

2. It is the case of petitioners that petitioner No.1 and respondents are legal heirs of Late Gurdayal Singh Patel. The disputed property i.e. Khasra Nos.317, 404, 502, 665, 667, 671, 674, 716 and 717 admeasuring 12.279 hectares situated at village Hipsli, Tahsil Begumganj, District Raisen, was owned by Late Gurdayal Singh. Gurdayal Singh Patel passed away in the year 1992 and after his death, property was mutated in the name of his widow wife, namely; Smt. Talsa Bai by order dated 27.03.1992. After a lapse of more than 28 years, respondents No.6 to 10 filed an appeal before SDO, Begumganj, District Raisen on 30.08.2018 challenging mutation order dated 27.03.1992 on the ground that mutation of name of widow of Gurdayal Singh Patel is erroneous, whereas names of all the legal heirs of Gurdayal Singh Patel should have been mutated. An application under Section 5 of Limitation Act was also filed for condonation of delay of 28 years. The application was opposed by petitioners. Thereafter, respondents No.6 and 8 filed an affidavit before SDO, Begumganj claiming that they have not filed any appeal against mutation order dated 27.03.1992 and have also not signed any *Vakalatnama*. However, it is the case of petitioners that by order dated 29.07.2019, SDO, Begumganj, District Raisen has allowed the application for condonation

of delay on the ground that respondents No.6 to 10 came to know about mutation order only when Smt. Tulsa Bai passed away in the year 2018. It is the case of petitioners that Smt. Tulsa Bai had executed a registered Will in favour of petitioner No.2 and on the basis of Will, petitioner No.2 moved an application for mutation of his name. The application filed by petitioner No.2 for mutation was allowed by Tahsildar and name of petitioner No.2 was mutated in respect of property in dispute. Order of mutation dated 07.12.2019 was also challenged by respondents No.7 to 10 on the ground that Tulsa Bai did not have right to execute a Will. In the meanwhile, petitioners also filed an appeal against order passed by SDO, Begumganj, District Raisen by which delay in filing an appeal was condoned, which too has been dismissed by Additional Collector, District Raisen by its order dated 28.12.2020 thereby throttling the justice. It is submitted that later on appeal filed by respondents No.7 to 10 against mutation of name of petitioner No.2 on the strength of Will executed by Smt. Tulsa Bai was dismissed by order dated 04.01.2021.

**3.** Challenging the order dated 28.12.2020 passed by Additional Collector, Raisen in case No.28/Revision/2019-20 and order dated 29.07.2019 passed by SDO, Begumganj in case No.33/Appeal/A-6/2017-18, it is submitted by counsel for petitioners that appeal was filed after 27 years 5 months and 20 days, and therefore, delay should not have been condoned because no sufficient reason was assigned for condonation of delay.

**4.** Heard the learned counsel for petitioners.

**5.** In order to understand controversy, following dates are important:

(i) By order dated 27.03.1992, name of Late Smt. Tulsa Bai

was mutated after the death of Gurdayal Singh Patel.

- (ii) Smt. Tulsa Bai died sometimes in the year 2018 and accordingly, petitioner No.2 filed an application for mutation of his name on the ground of registered Will.
- (iii) Respondents No.6 to 10 preferred an appeal against order dated 27.03.1992 with delay of 27 years 5 months and 20 days alongwith an application under Section 5 of Limitation Act.
- (iv) By order dated 29.07.2019 passed by SDO, Begumganj, District Raisen in case No.33/Appeal/A-6/2017-18, application under Section 5 of Limitation Act was allowed.
- (v) By order dated 28.12.2020, appeal filed by petitioners was dismissed by Additional Collector, Raisen in case No.28/Revision/2019-20.
- (vi) By order dated 04.01.2021, SDO (Revenue) Begumganj, District Raisen has dismissed the appeal filed by respondents No.7 to 10 against order dated 07.12.2019 by which name of petitioner No.2 was mutated on the strength of registered Will executed by Smt. Tulsa Bai.

**6.** Undisputedly, petitioners are father and son, whereas respondents as well as petitioner No.1 are children of Gurdayal Singh Patel. After the death of Gurdayal Singh Patel, all his children are entitled for equal share. However, it appears that by order dated 27.03.1992, only name of widow of Gurdayal, namely; Smt. Tulsa Bai was mutated in the revenue records. It is well established principle of law that mutation entry is not a document of title. Merely because name of Smt. Tulsa Bai (widow of late Gurdayal Singh Patel) was mutated in revenue record would not

mean that all other legal heirs of Gurdayal Singh Patel lost their right or title in the property. Furthermore, it appears that sometimes in the year 2018 late Smt. Tulsa Bai also expired and thereafter, petitioner No.2 on the strength of registered Will executed by Smt. Tulsa Bai got his names mutated in the revenue records. It is well established principle of law that revenue authorities have no jurisdiction to mutate the name of beneficiary of a Will and if beneficiary of Will wants to take advantage of the same, then he has to approach the competent Court of civil jurisdiction because it is for the propounder of the Will to remove all suspicious circumstances, which are attached to a Will.

7. 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.”

8. 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.”

9. 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.”

**10.** Accordingly, it is clear that petitioners No.1 and 2 could not have got their names mutated in the revenue record on the basis of registered Will executed by late Smt. Tulsa Bai for two reasons:

- (i) After the death of Gurdayal Singh Patel, Late Smt. Tulsa Bai was not entitled for entire property but she was entitled for equal share alongwith her children and therefore, any Will executed by Smt. Tulsa Bai in respect of entire property is null and void and beyond her share.
- (ii) The revenue authorities have no jurisdiction to mutate the name of a beneficiary on the strength of Will.

**11.** As already mentioned that mutation entry is not a document of title therefore, merely because name of Late Smt. Tulsa Bai was mutated that would not take away the right/title of respondents in property in dispute.

**12.** It is the case of respondents No.7 to 10 that they came to know about mutation dated 27.03.1992 only after the death of their mother. Respondents No.6 to 10 are married daughters residing in their matrimonial houses. Since respondents No.6 to 10 have equal share in the property alongwith their siblings therefore, even if their appeal

against order of mutation was barred by time, still their right in the property would not come to an end and every co-parcener is treated to be in joint possession of property in dispute.

**13.** Under these circumstances, when SDO, Begumganj, District Raisen as well as Additional Collector, Raisen have exercised their discretion in favour of respondents No.6 to 10 by condoning the delay in filing an appeal against order dated 27.03.1992, this Court is of the considered opinion that no case is made out warranting interference.

**14.** Petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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