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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 1st OF SEPTEMBER, 2022

MISC. PETITION No. 3941 of 2021

BETWEEN:-

1. AWADH NARAYAN SAHU S/O SHRI BABULAL SAHU, AGED ABOUT 64 YEARS, OCCUPATION: AGRICULTURIST VILLAGE IKLAMA TEHSIL GOHARGANJ DISTT. RAISEN (MADHYA PRADESH)
2. RAJKUMAR SAHU S/O SHRI BABULAL SAHU, AGED ABOUT 64 YEARS, OCCUPATION: AGRICULTURE VILL. IKLAMA, TEH. GOHARGANJ, DIST. RAISEN (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI SHOBHITADITYA, ADVOCATE)

AND

1. HEMENDRA KUMAR SAHU S/O SHRI BABULAL SAHU, AGED ABOUT 46 YEARS, OCCUPATION: AGRICULTURE VILLAGE IKLAM TAHSIL GOHARGANJ DISTT. RAISEN (MADHYA PRADESH)
2. HITENDRA KUMAR SAHU S/O SHRI BABULAL SAHU, AGED ABOUT 44 YEARS, OCCUPATION: AGRICULTURE VILL. IKLAMA, TEH. GOHARGANJ, DIST. RAISEN (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SUBODH KATHAR, ADVOCATE)

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

ORDER

This Miscellaneous Petition is filed under Article 227 of the Constitution of India being aggrieved of order dated 18.10.2021, Annexure P-9 passed by learned Additional Commissioner, Bhopal in Case No.826/Appeal/2017-18 (Anneuxre P/9) on the ground that father of the petitioners Shri Babulal Sahu executed two registered sale-deeds in

favour of the petitioners on 25.02.1969 for the sale of his land in old Khasra No.11/1 and new Khasra No.22 ad-measuring 25.86 acres to the petitioner No.1 and his land contained in old khasra No.33 and 34 (new Khasra No.15), 40, 42 and 288/31/1 ad-measuring 25.46 acres to the petitioner No.2 at village Umariya, Tehsil Goharganj, District Raisen. Petitioners lost their mother in 1972, when father of the petitioners namely Babulal Sahu married with Smt. Savitri Bai in 1973 from whom respondents No.1 and 2 were respectively born in the year 1975 and 1978.

Petitioner's contention is that father of the petitioners was left with around 13 acres of land which was available for bequeathing to the respondents No.1 and 2 and accordingly, petitioners had handed over possession of the said land to the respondents in 1992-1993 by way of a family arrangement. In the year 2012, petitioners obtained copy of the revenue record when they came to know that respondents had deceitfully partitioned the property of their father by including the land of the petitioners which was transferred to the petitioners by way of registered sale-deeds and half of the land of the petitioners was arbitrarily mutated in the name of respondents vide order/revenue entry of Nayab Tehsildar dated 09.05.1989. It is submitted that partition and correction of revenue records dated 09.05.1989 was done behind the back of the petitioners without affording any opportunity of hearing to the petitioners. Petitioners filed an appeal before the Sub Divisional Officer, Goharganj on 24.08.2012 which was registered as Case No.79/Appeal/2011-12 along with an application for condonation of delay. SDO dismissed the application for condonation of delay, thereafter, an appeal was filed before the Additional Commissioner which was registered as Case No.815/Appeal/2012-13. Additional Commissioner remanded the matter to the SDO vide order dated 21.09.2017 with an observation that father of the petitioners Shri Babulal Sahu having already sold his land to the petitioners by registered sale-deeds had no authority and right or interest in the partition of the said land.

SDO allowed the appeal of the petitioners vide order dated 20.03.2018 and had set aside the mutation entry dated 09.05.1989 holding that land sold to the petitioners by the registered sale-deeds could not be partitioned.

In the meanwhile, respondents preferred a civil suit vide RCS No.2-A/2018 against the petitioners for declaration of their title as per order/mutation entry dated 09.05.1989 and perpetual injunction.

It is submitted that suppressing this fact of pendency of civil suit RCS No.2A/2018 appeal was filed before the Additional Commissioner which was allowed by the Additional Commissioner on the ground that mutation entry dated 09.05.1989 was based on a some compromise between the petitioners and the respondents. Hence this writ petition.

Reliance is placed on the judgment of **Shiva Martand Tapkire and Another Vs. Arun Nanakchand Khatri and Another, AIR 1969 Bom 93.**

The issue involved in the present case is that whether the Batwarapanji in which mutation was recorded contains signatures of the petitioner or not. If petitioners had given consent to a compromise and were consenting party to partition and had included their property which was admittedly sold to them in the year 1969, at that time, admittedly, they were minor. And when family partition took place in the year 1989 then they had attained age of majority. If they had entered into a compromise and got their land into common pool then what will be its impact.

Learned Additional Commissioner while passing impugned order dated 18.10.2021 has specifically noted that the present petitioners who were non-appellants before the learned Additional Commissioner had appeared before the Nayab Tehsildar and had presented partition papers in case No.17/अ-27/87-88 when order for partition was passed on 21.04.1989 and on the basis of which land was recorded within the knowledge and

consent of the petitioners on the Namantran Panji.

Learned Commissioner has mentioned that there is not challenge to said Nayab Tehsildar which contains signatures of the present petitioners. She has held that an order passed by the Tehsildar in 1989 on the basis of the consent of the parties is not appealable and has placed reliance on decision of High Court in **Gopi Nath Vs. Shiv Prasad and Others, 2012 Revenue Nirnay 323**, in which it is held that as per Art 231(1) and (2) of the Hindu Laws by Mulla in a joint Hindu family property purchased from the income of the joint property in the name of elder brother will not be treated as self acquired property of his elder brother.

Learned Additional Commissioner has also placed reliance on the judgment of Supreme Court in **Narendra Kumar J. Modi Vs. Commissioner of Income Tax, 1976 AIR SC 1953** and in **M/S Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), AIR 2008 SC 673**, which too are applicable to the facts and circumstances of the case.

As far as, law laid down by the Bombay High Court in **Shiva Martand Tapkire (supra)** is concerned, it is in relation to Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and facts of that case are not applicable to the facts of the present case.

Therefore, in view of the fact that petitioners themselves were signatory to the partition and on their consent an order of partition and consequent mutation in the name of four brothers namely the petitioners and the respondents was carried out cannot be faulted with. There is no error apparent in the impugned order calling for interference. Petition fails and is **dismissed**.

(VIVEK AGARWAL)
JUDGE

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