IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 19th OF JANUARY, 2023

SECOND APPEAL No. 1550 of 2021

BETWEEN:-

DHARMENDRA SINGH PARIHAR S/O DADAN SINGH PARIHAR, AGED ABOUT 52 YEARS, R/O WARD NO. 12 HAL MUKAM GOPAL TOLA VILLAGE KACHNAR TAHSIL NAGAUD DISTT. SATNA (MADHYA PRADESH)

.....APPELLANT

(BY SHRI AKSHAY PAWAR – ADVOCATE)

AND

1. **RAM GOPAL CHAUDHARY S/O SITARAMA CHAUDHARY, AGED ABOUT 63 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE KHAIRA TAHSIL NAGAUD DISTT. SATNA (MADHYA PRADESH)**

2. **KUMARE CHAUDHARY S/O SHRI SITARAMA CHAUDHARY, AGED ABOUT 68 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE KHAIRA, TAHSIL NAGAUD, DISTRICT SATNA (MADHYA PRADESH)**

3. **BADKAIYAA CHAUDHARY S/O SITARAMA CHAUDHARY, AGED ABOUT 53 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE KHAIRA, TAHSIL NAGAUD, DISTRICT SATNA (MADHYA PRADESH)**

4. TEEDHI CHAMAR W/O ARJUN CHAUDHARY D/O SEETARAMA CHAUDHARY OCCUPATION: AGRICULTURIST R/O VILLAGE BAMHOR, TAHSIL NAGAUD, DISTRICT SATNA (MADHYA PRADESH)

5. SMT. SUNDARIYA D/O SEETARAMA CHAUDHARY W/O SIPAHIYA CHAUDHARY, R/O VILLAGE GALLGII, TEHSIL NAGAUD, DISTRICT SATNA (MADHYA PRADESH)

6. SMT. SUKWARIYA D/O SEETARAMA CHAUDHARY W/O SIPAHIYA CHAUDHARY OCCUPATION: AGRICULTURIST R/O VILLAGE GALLGII, TEHSIL NAGAUD, DISTRICT SATNA (MADHYA PRADESH)

7. SMT. SURATIYA CHAUDHARY D/O SEETARAMA CHAUDHARY W/O LULLI CHAUDHARY OCCUPATION: AGRICULTURIST R/O VILLAGE BANDHI, TEHSIL RAGHURAJNAGAR, DISTRICT SATNA (MADHYA PRADESH)

8. STATE OF MP. THROUGH COLLECTOR, DISTRICT SATNA (MADHYA PRADESH)

.....RESPONDENTS

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

JUDGMENT

This Second Appeal has been filed under Section 100 of CPC against the judgment and decree dated 30.09.2021 passed by Third Additional District Judge, Nagod, District Satna in Regular Civil Appeal No.39/2016 arising out of judgment and decree dated 18.07.2016 passed by Second Civil Judge, Class-II Nagod, District Satna (M.P.) by which the suit filed by the plaintiff for partition and mutation has been decreed.

2. The appellant is the defendant having purchased part of property in dispute from defendant No.2 Smt. T.D. Chamar.

3. The facts necessary for disposal of the present Appeal in short are that the plaintiffs filed a suit for partition, for declaration of sale deed dated 29.12.2006 executed in favour of the appellant as null and void, for quashment of mutation as well as for permanent injunction.

4. It is the case of the plaintiff that property in dispute is an ancestral property and the plaintiff No.3 had filed an application under Section 178 of MPLR Code before the Tahsildar, which was registered as Revenue Case No.92/A-27/2003-04 for partition and the said application was allowed by order dated 17.02.2006, Exhibit P.1. Being aggrieved by the said order, Ramgopal Choudhary preferred an appeal before the SDO, Nagod, District Satna, which was registered as Appeal No.87/Appeal/05-06. The said appeal was allowed by order dated 20.09.2006, Exhibit P/2 and the order of the Tahsildar was set aside and the matter was remanded back. Thereafter, it appears that the proceedings under Section 178 of MPLR Code, which were pending before Tahsildar, Nagod, District Satna, were dismissed for want of prosecution.

5. The crux of the matter is that the property in dispute remained un-

partitioned. The defendant No.2 Smt. T.D. Chamar alienated a part of the property in favour of the appellant by a registered sale deed dated 29.12.2006, Exhibit D/30 / Exhibit P.5 and therefore, it was claimed that the sale deed executed by Smt. T.D. Chamar in favour of the appellant is null and void because a co-sharer cannot sell specific piece of land and that too in excess in his or her share.

6. The defendant No.2/Smt. T.D. Chamar, who had alienated the property to the appellant was proceeded *ex parte.* The appellant/defendant No.1 filed his written statement and denied that the property in dispute is an ancestral property. It was claimed that the defendant No.2 Smt. T.D. Chamar was in possession of araji Nos.489/1 area 3.13 Bigha and 49/1 area 9 Biswa. It was admitted that the plaintiff No.3 Badkaiyaa Choudhary had filed an application under Section 178 of MPLR Code before the Tahsildar for partition and seeking 1/5th share in the property. It was claimed that the defendants No.3 to 5, namely; Smt. Sundariya, Smt. Sukwariya and Smt. Surtiya had filed their reply, Exhibit D/3 and had stated that they are relinquishing their share and therefore, it was clear that only the plaintiffs and the defendant No.2 had share in the property in dispute. On 16.07.2004, the Tahsildar, Nagod issued public notice and these aforesaid replies were submitted by the defendants No.3 to 5 on 08.10.2004 and accordingly, the *fard Batwara* was prepared and the order of partition was passed by the Tahsildar on 17.02.2006. Accordingly, the land in dispute was partitioned in five equal shares and the names were also mutated on the strength of the said partition deed. The defendant No.2 had taken a loan of Rs.22,000/- from the State Bank of India on Kishan Credit Card. It was also admitted that SDO, Nagod issued a notice of Appeal No.92/A-27/03-04. It was also

admitted that the Appellate Court remanded the matter back but claimed that since plaintiff No.3 did not appear before the Tahsildar, therefore, the proceedings before the Tahsildar were dismissed for want of prosecution. However, it was claimed that since the proceedings under Section 178 of MPLR Code stood dismissed for want of prosecution therefore, the order of partition passed by the Tahsildar got automatically revived.

7. Several other defences were also taken but one thing is clear that the appellant/defendant No.1 has categorically admitted that the property in dispute was an ancestral property and an application was filed by the plaintiff No.3 before the Tahsildar for partition. It is his case that in the said proceedings the defendants No.3 to 5 had relinquished their share by filing a consent application. It is the case of the appellant/defendant No.1 that although the order of partition passed by the Tahsildar was set aside by SDO and the matter was remanded back but since the plaintiff No.3 did not appear before the Tahsildar and the proceeds under Section 178 of MPLR Code were dismissed for want of prosecution therefore, the order of partition dated 17.02.2006 passed by Tahsildar in Revenue Case No.92/A-27/03-04 got automatically revived.

8. The other defendants supported the case of the plaintiff by filing their written statement.

9. The trial Court after framing issues and recording evidence, decreed the suit and held that the parties have $1/8^{th}$ share in the property. The sale deed executed in favour of the appellant on 29.12.2006 by the defendant No.2 is valid only to the extent of share of the defendant No.2 in the property i.e. $1/8^{th}$ and the sale deed in excess of her share is null and void. The mutation in favour of the appellant/defendant No.1 was

also set aside and was declared as null and void and a permanent injunction was also issued against defendant No.1/appellant thereby restraining him interfering in the possession of the defendants in excess of the share of defendant No.2.

10. Being aggrieved by the judgment and decree passed by the trial Court the appellant preferred an appeal, which too has been dismissed by the Court below.

11. Challenging the judgment and decree passed by the Courts below, it is submitted by the counsel for the appellant that once the defendants No.3 to 5 had given up their share by filing a consent application before the Tahsildar, then the Courts below have committed a material illegality by holding that the plaintiffs as well as the defendants No. 2 to 5 have 1/8th share in the property. In fact the defendants No.3 to 5 had already relinquished their share, therefore, the plaintiffs and defendant No.2 had 1/5th share in the property and accordingly, the sale deed, which was executed in favour of the appellant/defendant No.1 is valid to the 1/5th share of the defendant No.2 and proposed the following substantial questions of law:

> "i. Whether the trial court and lower appellate court have committed illegality in ignoring the principle of Estoppel?
>
> ii. Whether the trial court and lower appellate court have committed illegality in ignoring doctrine of Waiver by Conduct?
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> iii. Whether in view of waiver of the legal right by defendant no.3 to 5, the defendant no.1 is legally entitled for 1/5th Share of the land which he has purchased by registered sale deed dated 29.12.2006 from defendant no.2."

12. Heard the counsel for the appellant.

13. It is the case of the appellant that by filing an application before the Tahsildar, the defendants No.3 to 5 are now estopped from claiming their share because by their conduct they have relinquished their share in the property.

14. The submission made by the counsel for the appellant cannot be accepted. The application filed by the defendants No.3 to 5, Exhibit D/3 before the Tahsildar thereby giving their consent for partition of the property amongst the plaintiffs as well as the defendant No.2 would certainly amount to relinquishment of their share.

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.

16. The Supreme Court in the case of **Yellapu Uma Meheshwari and another Vs. Buddha Jagadheeshwararao and others** 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."

17. Once a person cannot relinquish his or his title without executing a 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.

18. 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.
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> **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; Faqruddin 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."

19. 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."

20. 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."

21. No other argument is advanced by the counsel for the appellant.

22. The Courts below have rightly held that in absence of any relinquishment of share by the defendants No.3 to 5, they were also equally entitled for their share and have rightly apportioned the property in eight equal shares amongst the plaintiffs and the defendants No.2 to 5. It is true that a co-sharer can alienate his share but cannot alienate any

specific piece of un-partitioned property. Since the defendant No.2 had only 1/8th share in the property in disputed, therefore, both the Courts below have rightly held that the sale deed executed in favour of the appellant/defendant No.1 by defendant No.2 is valid only to the extent of share of defendant No.2. It has been rightly held the sale deed is null and void in excess of share of defendant No.2 and accordingly, the decree of permanent injunction to that extent has also been rightly issued.

23. As no substantial questions of law arises in the present case, accordingly, the judgment and decree dated 30.09.2021 passed by Third Additional District Judge, Nagod, District Satna in Regular Civil Appeal No.39/2016 as well as judgment and decree dated 18.07.2016 passed by Second Civil Judge, Class-II Nagod, District Satna (M.P.) are hereby affirmed.

24. The appeal fails and is hereby **dismissed in *limine.***

(G.S. AHLUWALIA)
JUDGE

Shanu