

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 17<sup>th</sup> OF MARCH, 2023**

**MISCELLANEOUS PETITION No. 1458 of 2022**

**BETWEEN:-**

**SARWARJAHAN      W/O      ABDUL  
RASEED, AGED ABOUT 62 YEARS,  
OCCUPATION: HOUSE WIFE R/O  
GOHAPURA,      KASBA      SEHORE,  
SEHORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI AHADULLA USMANI - ADVOCATE )***

**AND**

- 1.   SALMABEE   W/O   MOHAMMAD  
     IQBAL, D/O MOHAMMAD ISLAM  
     AGED   ABOUT   50   YEARS,  
     OCCUPATION: HOUSEWIFE R/O  
     NEAR AKHADA WALI MASJID,  
     CHANDBADH,   PS   BAJARIA,  
     BHOPAL (MADHYA PRADESH)**
- 2.   NAJMABEE   D/O   MOHAMMAD  
     ISLAM   W/O   MOHAMMAD  
     IDREESH,   AGED   ABOUT   48  
     YEARS,               OCCUPATION:  
     HOUSEWIFE R/O NEAR AKHADA  
     WALI MASJID, CHANDBADH, PS  
     BAJARIA,   BHOPAL   (MADHYA  
     PRADESH)**
- 3.   SITARABEE   D/O   MOHAMMAD  
     ISLAM W/O MOHAMMAD AARIF,  
     AGED   ABOUT   47   YEARS,  
     OCCUPATION: HOUSEWIFE R/O  
     NEAR AKHADA WALI MASJID,  
     CHANDBADH,   PS   BAJARIA,  
     BHOPAL (MADHYA PRADESH)**
- 4.   FAREEDABEE D/O MOHAMMAD  
     ISLAM   W/O   MOHAMMAD  
     SAYEED,   AGED   ABOUT   32  
     YEARS,               OCCUPATION:**

**HOUSEWIFE R/O NEAR AKHADA  
WALI MASJID, CHANDBADH, PS  
BAJARIA, BHOPAL (MADHYA  
PRADESH)**

- 5. FAIMEEDABEE D/O  
MOHAMMAD ISLAM W/O  
MOHAMMAD IQBAL, AGED  
ABOUT 40 YEARS, OCCUPATION:  
HOUSEWIFE R/O NEAR AKHADA  
WALI MASJID, CHANDBADH, PS  
BAJARIA, BHOPAL (MADHYA  
PRADESH)**
- 6. MOHAMMAD ASIF S/O  
MOHAMMAD ISLAM, AGED  
ABOUT 45 YEARS, OCCUPATION:  
TAILOR R/O NEAR AKHADA  
WALI MASJID, CHANDBADH, PS  
BAJARIA, BHOPAL (MADHYA  
PRADESH)**
- 7. MOHAMMAD SHAHID S/O  
MOHAMMAD ISLAM, AGED  
ABOUT 35 YEARS, OCCUPATION:  
CARPENTER R/O NEAR AKHADA  
WALI MASJID, CHANDBADH, PS  
BAJARIA, BHOPAL (MADHYA  
PRADESH)**

**.....RESPONDENTS**

**(BY SHRI RAUNAK YADAV - ADVOCATE)**

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*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 10/01/2022 passed by Additional Commissioner, Bhopal Division, Bhopal (M.P.) in case No.317/Appeal/2021-22, by which the order dated 20/01/2020 passed by Additional Collector Sehore, District Sehore in case No.93/Appeal/2019-

20 as well as order dated 05/08/2019 passed by Nazul Officer in case No.334/A-6/2017-18, have been set aside and the matter has been remanded back to the Nazul Officer, Sehore to decide the question of mutation after giving notice to the interested/ necessary parties.

2. The crux of the matter in short is that the petitioner filed an application for mutation on the basis of a *Hibanama* purportedly executed by Mohammad Islam on 04/03/2004. The said application was rejected by the Nazul Officer by order dated 05/08/2019 in case No. 334/A-6/2017-18.

3. Being aggrieved by the said order, the petitioner preferred an appeal which was allowed by Additional Collector Sehore, District Sehore by order dated 20/01/2020 and directed for the mutation of the name of the petitioner.

4. Being aggrieved by the order passed by the Additional Collector, the respondents preferred an appeal before the Additional Commissioner, Bhopal Division, Bhopal, which was registered as case No.317/Appeal/2021-22, which was allowed by order dated 10/01/2022 with a finding that the mutation proceedings were decided without issuing notices to the necessary parties and the matter was remanded back to the Nazul Officer to decide the question of mutation afresh.

5. Challenging the order passed by the Additional Commissioner, Bhopal Division, Bhopal, it is submitted by the counsel for the petitioner that it is incorrect to say that no notices were given to the respondents. In fact, they were avoiding the service of notices, therefore the notices were published in newspaper having circulation in the area and thus, it cannot be said that Nazul Officer had decided the application without giving an opportunity of hearing to the respondents.

6. *Per contra*, it is submitted by the counsel for the respondents that *Hiba* is an unregistered document and therefore, it cannot be relied upon.

7. Heard the learned counsel for the parties.

8. The first question for consideration is as to whether the revenue authorities have any jurisdiction to direct for mutation of name on the basis of *Hibanama*.

9. So far as the question of registration of *Hibanama* is concerned, as per Section 147 of Principles of Mohammedan Law, writing is not necessary for the validity of the gift either of movable or of immovable property. However, as per Section 149 of Principles of Mohammedan Law, there are three ingredients which are required to be proved for a valid *Hiba*, i.e., (1) a declaration of the gift by the donor; (2) an acceptance of the gift, expressed or implied, by or on behalf of the donee; and (3) delivery of possession of the subject of the gift by the donor to the donee as mentioned in Section 150.

10. Only if all the above mentioned three conditions are complied with, *Hiba* would be complete.

11. Thus, in order to hold that a gift was given by the donor to the donee, there has to be finding on the above mentioned three ingredients.

12. The revenue authorities cannot act as a Civil Court. The mutation entries are only for fiscal purposes and it is well established principle of law that the mutation entries are not the documents of title and no title is created on the basis of mutation entries.

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.

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.”

**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, the determination of right of a party by the revenue authorities is beyond its jurisdiction. Unless and until a gift / *Hiba* is held to be a valid one, no right would be created in favour of beneficiary/donee and the said declaration can be made by the Civil Court of competent jurisdiction only and not by the revenue authorities.

**17.** Under these circumstances, this Court is of the considered opinion that the application for mutation on the basis of *Hiba* by itself was not maintainable. If the petitioner is of the view that she has acquired title on

the basis of *Hibanama*, then she has an opportunity to approach the Civil Court of competent jurisdiction for declaration of her title.

**18.** Since the proceedings for mutation itself are not maintainable, therefore there was no question for remand of the matter to the Nazul Officer for adjudication on the question of *Hiba*.

**19.** Accordingly, the order dated 10/01/2022 passed by Additional Commissioner, Bhopal Division, Bhopal in case No.317/Appeal/2021-22, is hereby **affirmed**, though on a different ground. Consequently, the proceedings for mutation on the basis of *Hibanama* are held to be not maintainable.

**20.** The petition is accordingly **disposed of**.

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

shubhankar