

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

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

ON THE 25th OF AUGUST, 2023

MISC. PETITION No. 4708 of 2023

BETWEEN:-

**SMT. URMILA D/O VRINDAVAN TIWARI, AGED ABOUT
33 YEARS, OCCUPATION: HOUSEWIFE R/O VILLAGE
BANGRAKHERA BHUDOR, TEHSIL GWARA DISTRICT
CHHATARPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI D.K. TRIPATHI - ADVOCATE)

AND

- 1. KRIPARAM S/O BRANDAVAN TIWARI R/O
VILLAGE MAMON TEHSIL AND DISTRICT
TIKAMGARH (MADHYA PRADESH)**
- 2. RAJEEV S/O BRANDAVAN R/O VILLAGE MAMON
TEHSIL AND DISTRICT TIKAMGARH (MADHYA
PRADESH)**

.....RESPONDENTS

(SHRI SOURABH SINGH THAKUR - ADVOCATE FOR RESPONDENT NO.2)

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

ORDER

So far as respondent No.1 is concerned, it is submitted by Shri D.K. Tripathi that Kriparam himself filed an affidavit before the Court of Additional Commissioner, Sagar Division, Sagar that he has not preferred an appeal but by mistake it has been filed and therefore, he had prayed that appeal filed by him should be closed at that stage only. A copy of application for closure of appeal alongwith an affidavit have been filed by him which have been placed on record

as Annexure P/8 at Page Nos.36 and 37.

2. This petition under Article 227 of Constitution of India has been against order dated 31.07.2023 passed by Additional Commissioner, Sagar Division, Sagar in Case No.888/A-6/2022-23 by which names of respondents have been mutated in the revenue record on the basis of a Will.

3. Undisputed fact is that petitioner is the sister of respondents Nos.1 & 2. Respondents Nos.1 & 2 filed an application for mutation of their names on the basis of a Will. The said application was allowed by Tehsildar, Tehsil Tikamgarh, District Tikamgarh by order dated 18.07.2022 passed in Revenue Case No.0642/A-6/2022-23. The said order was subsequently amended by order dated 27.07.2022.

4. Being aggrieved by order passed by Tehsildar, Tehsil Tikamgarh, District Tikamgarh, petitioner preferred an appeal before S.D.O. (Revenue) Tikamgarh, District Tikamgarh which was registered as Appeal No.0128/Appeal/2022-23 and said appeal was allowed by order dated 21.02.2023 and it was directed that names of all legal heirs of Vrindavan Tiwari be recorded.

5. Being aggrieved by order passed by S.D.O. (Revenue) Tikamgarh, respondents preferred an appeal before Additional Commissioner, Sagar Division, Sagar which was registered as Appeal No.888/A-6/2022-23. It is not out of place to mention here that during pendency of said appeal, respondent No.1 had moved an application for dismissal of appeal filed on his behalf.

6. Be that whatever it may be.

7. Additional Commissioner, Sagar Division, Sagar by impugned order dated 31.07.2023 has allowed the appeal and has restored back order passed by Tehsildar.

8 . Challenging the order passed by Additional Commissioner, Sagar Division, Sagar, it is submitted by counsel for petitioner that Supreme Court in the case of **Jitendra Singh v. State of Madhya Pradesh** decided on **06.09.2021** passed in **SLP (civil) No.13146/2021** has held that mutation of name of a beneficiary on the basis of Will is not permissible. Thus, it is submitted that revenue authorities have no jurisdiction to mutate the name of respondents by frustrating the rights of petitioner and thus, Additional Commissioner, Sagar Division, Sagar has wrongly set aside order passed by S.D.O. Tikamgarh, District Tikamgarh.

9. *Per contra*, it is submitted by counsel for respondent No.2 that this Court while deciding the case of **Smt. Chandrawati and another v. State of M.P. and others** decided on **13.03.2020** in **M.P. No.508/2019** had not considered Madhya Pradesh Bhu Rajaswa Sanhinta (Bhu-Abhilekho mai Namantran) Niyam, 2018. Therefore, revenue authorities have jurisdiction to mutate names of beneficiaries. It is further submitted that coordinate Bench of this Court has taken a contrary view in the case of **Lokmani Jain Vs. Akhilesh Kumar Jain and another** decided on 22.10.2021 in W.P. No.16920/2021.

10. Heard learned counsel for parties.

11. So far as Madhya Pradesh Bhu Rajaswa Sanhinta (Bhu-Abhilekho mai Namantran) Niyam, 2018 are concerned, it merely speaks about acquisition of *Bhumiswami* right. It is nowhere provided that name can be mutated on the basis of Will. Will is a departure from normal rule of succession. Therefore, burden is on the propounder of Will to remove all the suspicious circumstances which are attached to a Will. It is true that right can be acquired by Will but the

primary question is as to whether the revenue authorities can adjudicate the genuineness of a Will or not?

12. This Court in the case of **Smt. Chandrawati (supra)** had held that revenue authorities have no jurisdiction to decide the genuineness of Will and said judgment was affirmed by Supreme Court in the case of **Jitendra Singh (supra)**.

13. So far as order passed by coordinate Bench of this Court in the case of **Lokmani Jain (supra)** is concerned, it is suffice to mention that it has not taken note of judgment passed by Supreme Court in the case of **Jitendra Singh (supra)**, therefore, it is held to be *per curiam*.

14. It is well established principle of law that revenue records are not documents of title and revenue entries do not confer title. If beneficiary or propounder wants to take advantage of a Will, then he has to seek a declaration from competent Court of civil jurisdiction so that genuineness of a Will can be considered and decided in accordance with law.

15. Accordingly, this Court is of considered opinion that Additional Commissioner, Sagar Division, Sagar committed a material illegality by passing an order dated 31.07.2023 in Case No.888/A-6/2022-23. Thus, the same is **set aside**.

16. Application filed by respondents for mutation of their names on the basis of a Will executed by their father Vrindavan Tiwari is hereby **dismissed**.

17. S.D.O. (Revenue) Tikamgarh, District Tikamgarh had rightly directed Tehsildar to mutate names of all the legal heirs of late Shri Vrindavan Tiwari.

18. Needless to mention that in case if respondents prefer to file a civil suit for declaration of their title on the basis of Will, then the same shall be decided in accordance with law without getting influenced or prejudiced by any

of the findings recorded by revenue authorities.

19. With aforesaid observations, petition is **allowed**.

(G.S. AHLUWALIA)
JUDGE

vc

