

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.2653 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Sudhir Kumar, Advocate, for the petitioners. Mr. Deepak Bhatt, Advocate, for the caveator. The brief fact, which engages consideration in the instant case are that one Mr. Gurdasmal, who was the recorded owner, its that based upon the "Will" said to have been executed by him, the petitioner contends that he got himself recorded in the revenue records. It needs no reference that "Will" of the tenure holder will legally only come into existence, only subsequent to his death and not prior to it during his life time its not document creating any right at all, at the stage when the revenue entries were made on an application filed by the petitioner in the year 1986, Mr. Gurdasmal, was alive, at that relevant time and he died much later. In that eventuality, the very foundation of the mutation i.e. "Will" and the basis of recording the name of the petitioner during his life time, would not be a proceeding which would be sustainable in the eyes of law, because according to the records Mr. Gurdasmal, is shown to have met with the sad demise on 20.03.1990 i.e. much after the recording of the

		name of the present petitioner in 1986. The respondents claim had been that they will be the succeeding the estates of Late Shri Gurdasmal, in the light of the provisions contained under section 171 of the UPZA& LR Act. Be that as it may, at this stage, it would not be apt to decide as to who would be vested with the rights of the estates of Late Shri Gurdasmal, and in what manner. But the fact remains that the respondents claiming themselves to be the successors, they have sought themselves to be declared as successor of late Mr. Gurdasmal, in accordance with the provisions contained under section 171 of the Act, by instituting the proceedings under section 229B of UPZA and LR Act, which has been dismissed. As against which, an appeal under section 331 of the Act, at the behest of the respondent is still pending consideration before the court of Additional Commissioner. It was contended by the respondent in their application for recall preferred under section 201 of the Act, that they could gather the knowledge of the order dated 26.05.1986, only at the stage when the proceedings under section 229B of the UPZA and LR Act was being carried before the court of Assistant Collector, 1st Class, and thus, they contend that it is on that day only, they could gather the knowledge, which has given them an occasion to file an application under
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			section 201 of the Land Revenue Act, seeking recall of the order dated 26.05.1986, which was recorded on the basis of the alleged “Will”, even prior to the death of the testator. The recall application as preferred by the respondent was rejected, but later on, on the appeal preferred by him under section 210 of Act, the same was allowed, and the revision preferred by the respondent under section 219 of the Land Revenue Act, was dismissed affirming the recall of the order dated 26.05.1986. In fact, its now the parties are under the principal litigation before the Commissioner, in continuation to the suit for declaration under section 229 B of the Act, which will be treated as to be a proceeding in continuance to the suit filed before the Assistant Collector, in the light of the implications of the provisions contained under section 341 of the Zamindari Abolition Act. The simplicitor implications of allowing of the application under section 201 of the Act, of the respondent would be that the order of the mutating the present petitioner on 26.05.1986, has been set aside. Setting aside the order dated 26.05.1986, will not amount to be a closure of the mutation proceedings, which is still to be decided on merits, but it shouldn’t be revived as fresh, as now since the parties are already under a regular litigation, their rights and interests are protected to be decided by regular court by the provisions contained under section 40A of the Land
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			Revenue Act. Thus all contentions qua the impact of mutation as claimed by the petitioner based upon the “Will” of late Shri Gurdasmal, would still be a subject matter left open to be argued by him in the appeal, which has been preferred by the respondent in continuation to the proceedings of the principal suit, under section 229B, which is still pending consideration. Under legal principles, the summary proceedings should normally be not given a predominant legal role over the principal proceedings, where rights are still to be adjudicated. Since here the rights inter se between the parties based on “Will” and based on succession are still to be decided on merits before the regular court, where the appeal is pending as of now. The recalling of the order passed under section 34 of the Act, will not at all affect any material right of the present petitioner because all his contentions qua deriving of his rights of the estates of late Mr. Gurdasmal, based on the “Will” would be still a question to be decided at the appellate stage. Recalling of the order passed under section 201 of the Act, though this Court is hesitant to observe, as to the manner in which it has been obtained, but still having observed as above, infact the parties are to be deprecated from multiplying their proceedings and they should have got their substantative rights decided in the
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			regular suit itself under section 229 B of the Act, and even for the time being, if it is presumed that the petitioner cannot be said to be having a right under Order 41 Rule 22 of CPC, then too, he is not deprived of his rights protected by under section 40A, to file a regular suit for declaration of the rights based upon the alleged “Will” executed by late Mr. Gurdasmal. A summary proceeding under section 34 of the Act, cannot be given precedence over the regular suit. Thus, recalling of an order dated 26.05.1986, by the impugned order under challenge would be independent which is to be based upon the decision to be taken in the regular suit or an appeal, as the case may be, by the concerned court. That by virtue of the impugned order while allowing the application under section 201 of the Act, it is only the revival of the mutation proceedings, which has been done by the revisional court, which is yet to be decided on merits. (Sharad Kumar Sharma, J.) 22.09.2023 NR
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