

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3149 of 2016**

1. Shantanu Prasad S/o Late Gangaram, Aged About 62 Years
2. Bhuminath, S/o Late Gangaram, Aged About 56 Years

Both R/o Village Jamdi, Tahsil & District Surajpur (Chhattisgarh) Civil & Revenue District Surajpur (Chhattisgarh)

---- Petitioners**Versus**

1. Himawati D/o Late Gangaram, Aged About 48 Years R/o Village Jamdi, Tahsil & District Surajpur (Chhattisgarh)
2. Pushpa Devi, D/o Late Gangaram, W/o Ramjanki Tiwari, Aged About 50 Years R/o Village Bagdha, Tahsil Pratappur, District Sarguja (Chhattisgarh)
3. Pramina, D/o Late Gangaram, W/o Likneshwar, Aged About 45 Years R/o Village Sunderpur, Tahsil Surajpur, District Sarguja (Chhattisgarh)
4. Neera, D/o Late Gangaram, W/o Omkar, Aged About 38 Years R/o Village Jarhi, Tahsil Surajpur, District Sarguja (Chhattisgarh)

---- Respondents

For Petitioners : Shri Sameer Oraon, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****21/12/2016**

1. Petitioners are aggrieved by the order passed by the Board of Revenue allowing the revision application preferred by respondent No.1 to set aside the order passed by the Additional Commissioner, Ambikapur and to maintain the order passed by the Additional Collector, Ambikapur on 13.04.2007.
2. The issue pertains to mutation of the name of the parties in the property

belonging to late Gangaram Choubey S/o Ramavtar Choubey. By a registered partition deed dated 25.11.1992, an area of 9.050 Hectares land owned by late Gangaram Choubey was divided amongst his legal heirs without giving any share to respondent No.1. On the basis of the registered partition deed, name of such sharers were mutated in the year 1992-93. Respondent No.1 preferred an appeal before the Additional Collector, Surguja which was allowed on 13.04.2007 holding that respondent no.1 being one of the daughter of late Gangaram Choubey is also entitled to get her name mutated in the revenue records. This appellate order of the Additional Collector was set aside by the Additional Commissioner, Surguja Division, Surguja on 17.07.2009, against which respondent No.1 preferred revision application before the Board of Revenue, which has been allowed by the impugned order.

3. It is argued that the appeal preferred by respondent No.1 before the Sub-Divisional Officer (R), was barred by limitation, therefore, the SDO rightly rejected her appeal on 07.06.2006, but the same was wrongly interfered by the Additional Collector and thereafter by the Board of Revenue. He would submit that a civil suit preferred by respondent No.1 is already pending before the 2nd Civil Judge, Class-II, Surajpur, therefore, the Board of Revenue should not have interfered with the matter. It is also argued that the land was self-acquired property of late Gangaram and he affected the partition during his lifetime, therefore, respondent No.1 has no right over the property.
4. Having heard learned counsel for the petitioners, this Court would not comment on merits because the matter is still pending adjudication before the civil court. However, at this stage, when the fact is admitted that respondent No.1 was also a daughter of late Gangaram, prima facie, she

appears to be entitled to get her name mutated in the revenue records. The issue as to whether the property was self-acquired by late Gangaram or it belonged to his father, the common ancestor Ramavatar Choubey, shall be considered by the civil Court. Since there was no interim order by the civil Court restraining the parties to prosecute the mutation proceedings, the Board of Revenue has not committed any error in deciding the revision application on merits. However, the order of mutation passed in favour of respondent No.1 Himawati shall remain subject to the decree which may eventually be passed by the civil Court.

5. The writ petition is dismissed subject however to the above observation.

Sd/-

Judge

Prashant Kumar Mishra

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