

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2008 of 2016

- Deepak Kumar S/o Late Bharatlal Chandrakar, Aged About 33 Years
R/o Village Ganjar, Post Ganjar, P.S. And Tahsil Bagbahra, Civil And
Revenue District Mahasamund, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh , Through: Secretary, Revenue Department,
Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District
Raipur, Chhattisgarh
2. Commissioner, Raipur Division Raipur, District Raipur, Chhattisgarh
3. Sub-Divisional Officer (Revenue), Mahasamund, District Mahasamund,
Chhattisgarh
4. Tahsildar, Bagbahra, District Mahasamund, Chhattisgarh
5. Pawan Kumar S/o Gajanand, Aged About 50 Years
6. Vinod Kumar S/o Gajanand, Aged About 37 Years
7. Smt. Kumari D/o Gajanand, Aged About 45 Years
8. Smt. Savitri D/o Gajanand, Aged About 41 Years
9. Radha D/o Gajanand, Aged About 39 Years

All above respondent No.5 to 9 are R/o Village Pali, P.H.No.73, R N M
Khallari, Tahsil Bagbahra, District Mahasamund, Chhattisgarh

Through : their power of attorney holder namely Pawan Kumar, S/o
Gajanand, aged about 50 years, R/o Village Pali, P.H. No.73, RNM Khallari,
Tahsil Bagbahra, District Mahasamund (C.G.)

Respondent No.5 to 9 are Respondents/Applicants.

10. Shatrughan S/o Late Radhe, Aged About 50 Years, R/o Village
Ganjar, Post Ganjar, P.S. And Tahsil Bagbahra, Civil And Revenue
District Mahasamund, Chhattisgarh
11. Sukdev S/o Devsingh, Aged About 90 Years R/o Village Ganjar, Post
Ganjar, P.S. And Tahsil Bagbahra, Civil And Revenue District
Mahasamund, Chhattisgarh
12. Nehru S/o Shatrughan, Aged About 24 Years R/o Village Ganjar, Post
Ganjar, P.S. And Tahsil Bagbahra, Civil And Revenue District
Mahasamund, Chhattisgarh

---- Respondents

For Petitioner	Shri Manoj Paranjpe, Advocate
For Respondent-State	Shri Arun Sao, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/08/2016

1. By the impugned order, the Board of Revenue, Bilaspur has allowed the revision application preferred by the respondent Nos.5 to 9 and has set aside the order passed by the Additional Commissioner, Raipur Division, Sub Divisional Officer (Revenue), Mahasamund and Tahsildar, Bagbahra.
2. The issue pertains to mutation of petitioner's name in the concerned revenue record on the strength of WILL executed by Late Mathura Bai.
3. The Board of Revenue, Bilaspur has allowed the revision application on the ground that the mutation order has been passed not only with apparent error but also considering the deed of relinquishment submitted by respondent No.11, Sukdev and respondent No.12 Nehru, which could not have been done because the deed of relinquishment is unregistered.
4. The Board of Revenue, Bilaspur has also observed that the WILL has been given effect to while passing the order of mutation without recording statement of the attesting witnesses nor were they subjected to cross-examination.

5. The observation by the Board of Revenue, Bilaspur in respect of the deed of relinquishment as well as *prima facie* proof of WILL is in accordance with law. However, at the same time, since there is an issue concerning non adherence to the procedure for proving a WILL even for considering mutation, the Board of Revenue should have remitted the matter back to the Tahsildar for deciding the issue of mutation on the strength of WILL by examining the attesting witnesses.
6. For the foregoing, instead of keeping this petition pending, the matter is remitted back to the Tahsildar for considering petitioner's prayer for mutation on the basis of WILL executed by Late Mathura Bai after hearing all the parties concerned; allowing the petitioner to examine the attesting witnesses and at the same time, allowing other parties to cross-examine them and produce their witnesses.
7. Let the proceedings be completed within a period of 6 months from the date of submission of certified copy of this order before the Tahsildar. Since this order is passed *ex parte*, the Tahsildar shall issue notice to all the parties and proceed only after their appearance.
8. The writ petition stands disposed of in the above stated terms.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala