

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.363 of 2014

1. Mangalu Sahu, S/o Late Shri Jhaduram Sahu, aged about 60 years,

(Revisioner No.1)

2. Umed Sahu, S/o Late Shri Jhaduram Sahu, aged about 50 years,
(Revisioner No.2)

Both R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)

---- Petitioners

Versus

1. The Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court Raipur) (C.G.)

2. The Additional Commissioner, Raipur Division, Raipur (C.G.)

3. The Sub Divisional Officer Dhamtari, Distt. Dhamtari (C.G.)

4. The Sub Divisional Officer Kurud, Distt. Dhamtari (C.G.)

5. The Nayab Tahsildar Kurud, Distt. Dhamtari (C.G.)

6. Sukhram Sahu, S/o Late Shri Jhaduram Sahu, aged about 65 years, R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)

(Respondent No.1)

7. Fulbai, D/o Late Shri Jhaduram Sahu, aged about 50 years, R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)

(Respondent No.2)

8. Ashok Sahu, S/o Shri Seuk Sahu, aged about 43 years, R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)

(Respondent No.3)

9. Gajadhar Sahu, S/o Shri Seuk Sahu, aged about 38 years, R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)

(Respondent No.4)

10. Yuvraj Sahu, S/o Shri Seuk Sahu, aged about 36 years, R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)

(Respondent No.5)

11. Sohan Sahu, S/o Shri Seuk Sahu, aged about 34 years, R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)
(Respondent No.6)
12. Ramdayal Sahu, S/o Late Shri Jhaduram Sahu, aged about 45 years, R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)
(Revisioner No.3)
13. Kunti Bai, D/o Late Shri Jhaduram Sahu, aged about 50 years, R/o Village Birejhar, Tahsil & Police Station Kurud, Distt. Dhamtari (C.G.)
(Revisioner No.4)
---- Respondents

For Petitioners:	Mr. Jitendra Gupta, Advocate.
For State/Respondents No.2 to 5: -	Mr. Dhiraj Kumar Wankhede, Govt. Adv.
For Respondents No.6 and 7:	Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/02/2017

1. The petitioners herein got their names mutated in the revenue records over the land in dispute which was objected by respondents No.6 and 7 herein before the Sub-Divisional Officer and by order dated 17-11-2005, the Sub-Divisional Officer, Dhamtari, set aside the mutation order in favour of the petitioners and remanded back the matter to the Tahsildar for passing order in accordance with law after noticing respondents No.6 and 7. The Naib Tahsildar again rejected the application of respondent No.6 Sukhram and declined to mutate his name in the revenue records. The order of the Naib Tahsildar, Kurud, dated 30-12-2006 was challenged before the Sub-Divisional Officer again but the Sub-Divisional Officer this time affirmed the order of the Naib Tahsildar

leading to filing of appeal before the Additional Commissioner, Raipur Division, Raipur by respondents No.6 and 7. During the pendency of said appeal, a civil suit was filed by the petitioners herein and two others which was decided by the jurisdictional civil court and in which it has been held that the plaintiffs and the defendants are joint owners of the property and they have equal share in the property. The judgment and decree of the civil court was taken cognizance of by the Additional Commissioner and the Additional Commissioner by his order dated 16-10-2012 held that the judgment and decree passed by the civil court is binding on the revenue courts and set aside the orders of the two courts below and held that mutation be made in accordance with law and in the light of the judgment and decree of the civil court, as the civil court has already settled the dispute and the revenue courts are bound by the order of the civil court. The petitioners filed revision before the Board of Revenue pleading inter alia that by virtue of the provisions contained in Section 49(3) of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code'), on 17-11-2005, the Sub-Divisional Officer had no jurisdiction to remand the matter to the Tahsildar and further that against the judgment and decree passed by the civil court on 23-3-2010 dismissing the suit of the petitioners, first appeal is pending before the first appellate Court and therefore that judgment and decree passed by the civil court / trial Court has not become final and as such, the Additional Commissioner is wholly unjustified in holding that the judgment and decree of the civil court is binding and directing the revenue court

to proceed in accordance with the judgment and decree of the civil court.

2. I have heard learned counsel for the parties and considered the rival submissions made herein and also gone through the records with utmost circumspection.
3. I would first take-up the objection raised by the petitioners herein that the appellate court has no power to make remand.
4. Undisputedly, sub-section (3) has been inserted in Section 49 of the Code with effect from 23-11-2002 providing that the appellate authority shall not remand the case for disposal by any Revenue Officer subordinate to it. In the instant case, the Sub-Divisional Officer remanded the case by order dated 17-11-2005 to the Naib Tahsildar and the Naib Tahsildar again by order dated 30-12-2006 rejected the application of respondent No.6 herein and held that the name of Sukhram is not entitled to be mutated in the revenue records.
5. At this juncture, it would be appropriate to notice that the order dated 17-11-2005 was not challenged by the petitioners before any higher forum by way of appeal or revision and the petitioners appeared and contested the application before the Naib Tahsildar on remand and ultimately, the Naib Tahsildar rejected the application of Sukhram which was in favour of the petitioners. Even thereafter, the order of the Naib Tahsildar was affirmed by the Sub-Divisional Officer by dismissing the appeal. The petitioners did not have any grievance that the Sub-Divisional Officer had no

power of remand. When the Additional Commissioner by order dated 16-10-2012 held that the decree of the civil court that has been passed at the instance of civil suit filed by the petitioners is binding between the parties, then only, in a revision preferred against that order, for the first time, before the Board of Revenue, the petitioners have raised plea that the appellate authority has no jurisdiction to remand the matter which is wholly untenable in view of the fact that the petitioners willingly accepted the order dated 17-11-2005 and contested the application before the Naib Tahsildar, and even the order was passed in their favour and thereafter, again that order was affirmed in appeal by the Sub-Divisional Officer on 21-10-2008 as such, the petitioners having acquiesced to the proceeding and having got favourable order did not challenge the said order remanding to a lower revenue authority, before the appropriate forum within the stipulated time period and when the Additional Commissioner held that the decree of civil court is binding then only the petitioners have raised such plea which is nothing but the petitioners taking somersault to get the order of the Additional Commissioner set aside which cannot be permitted, as the petitioners are bound by that order and such a plea is not available, at this stage, to the petitioners.

6. Turning back to the next plea raised by the petitioners that appeal against the judgment and decree passed by the civil court is pending before the first appellate court, it is well settled law that decree of civil court is binding upon the revenue courts, as rights and title is decided by the civil court. In this case, the civil court

had already decided the rights and title of the petitioners and the Additional Commissioner had simply held that decision of the civil court between the parties is binding on the revenue court.

7. At this stage, it would be appropriate to notice the binding observations of a Division Bench of the High Court of Madhya Pradesh in the matter of **Ambika Prasad Bakshi and another v. Onkar Prasad Saini and others**¹ in which Their Lordships have held that revenue courts are bound by the decision of the civil courts and should order mutation of the names, and observed as under: -

“17. ... Suffice it to say that the jurisdiction of a Civil Court is superior to the Revenue Courts and whatever is decided by the Civil Court is the final decision and Tahsildar is bound to make a mutation on the basis of a valid order of the Civil Court. Where a judgment of the Civil Court relating to disputed land is produced before the Revenue Court, the Revenue Court is bound by it and should order mutation according to the decree of the Civil Court. When there was definite finding of the Civil Court that the respondents have become Bhumiswamis of the suit land, the Revenue Courts had no jurisdiction to enquire regarding the rights of the respondents after coming into force of M.P. Land Revenue Code, 1959.”

8. In light of the aforesaid decision, the judgment and decree of the civil court deciding rights and title between the parties is binding on the revenue court. The Additional Commissioner is absolutely justified in holding so and dismissing the revision petition which has rightly been affirmed by the Board of Revenue. However, it is made clear that if the appellate court reverses / modifies the judgment and decree passed by the trial Court, that shall be also

1 AIR 2005 MP 60

binding on the revenue courts and it is brought to the notice of the revenue court that the judgment and decree so modified/reversed shall be complied with by the revenue courts and as such, the order of mutation shall be subject to the appellate decree passed by the appellate court.

9. With the aforesaid observation, the writ petition stands finally disposed of. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma