

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 7 of 2017**

1. Shantanu Prasad S/o Late Gangaram, Aged About 62 Years R/o Village Jamdi, Tahsil & District Surajpur (Chhattisgarh), Civil & Revenue District Surajpur, (Chhattisgarh)
2. Bhuminath, S/o Late Gangaram, Aged About 56 Years R/o Village Jamdi, Tahsil & District Surajpur (Chhattisgarh), Civil & Revenue District Surajpur, (Chhattisgarh)

---- Appellants**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 Surajpur, (Chhattisgarh)
4. Neera, D/o Late Gangaram, W/o Omkar, Aged About 38 Years R/o Village Jarhi, Tahsil Pratappur, District Surajpur, (Chhattisgarh)

---- Respondents

For Appellants : Shri B.P. Sharma, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****16/01/2017**

1. This appeal is directed against the order dated 21.12.2016 passed by Learned Single Judge of this Court rejecting the writ petition filed by the writ Petitioners in WPC No.3149 of 2016.
2. Briefly stated facts of the case are that late Shri Gangaram Choubey had executed a partition deed dated 25.11.1992, by which an area of 9.050 Hectares of his land was divided amongst his legal heirs. On the basis of this partition deed, name of the persons entitled to the partition were mutated in the revenue records in the year 1992-93. Respondent No.1-Hemawati, daughter of late Shri

Gangaram Choubey was not given any share in the partition. She challenged the order of mutation basically on the ground that she is one of the legal heir. She also claimed that this property in the hand of late Shri Gangaram Choubey was ancestral and he could not execute partition deed without giving her any share in the property.

3. The Revenue Court held that prima facie the Petitioner being the daughter is entitled to share in the property. However, at the same time, a civil suit was filed by her before the civil Court, where she had prayed that decree be given holding her to be entitled to the share in the property. The Learned Single Judge has held as follows:-

“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.”

4. We are in agreement with the finding of the Learned Single Judge. It is well settled law that the revenue records are physical in nature and do not create any title. At this stage, Learned Counsel for the Appellants submits that on the basis of entry in the revenue records, Himawati may alienate on her share in the property. This apprehension may be justified.

5. In view of the above, we dispose of the appeal. While disposing of the same, we direct that Himawati shall not transfer the property in question without taking permission of the civil Court before whom she has filed the civil suit.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE