

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2649 of 2020**

- Santosh Singh S/o Gulab Singh Aged About 49 Years Resident Of Village Pratappur , Police Station And Tahsil Pratappur, District Surajpur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Collector , District Surajpur Chhattisgarh
2. The Tahsildar Pratappur, District Surajpur Chhattisgarh
3. Sunita Singh W/o Late Krishna Pratap Singh Aged About 56 Years Caste Kshatriya, Resident Of Kedarpur Nagar, Ambikapur Tahsil Ambikapur , District Surguja Chhattisgarh
4. Gulab Singh S/o Shivpratap Singh Aged About 70 Years Resident Of Village Pratappur, Police Station And Tahsil Pratappur , District Surajpur Chhattisgarh

---- Respondents

For Petitioner : Shri Rahul Mishra, Advocate

For Respondents/State : Ms. Sunita Jain, GA

Hon'ble Shri Justice Goutam Bhaduri**Order****18/11/2020**

1. Heard.
2. Learned counsel for the petitioner would submit that one late Krishna Pratap Singh, who is the husband of respondent No.3 Sunita Singh has executed a WILL in favour of the petitioner in respect of certain land. He would further submit that after the death of Krishna Pratap Singh, his wife applied for the mutation of her name in the revenue records, to which the petitioner objected on the basis of the aforementioned WILL, however, the Tehsildar by order dated

27.09.2017 (Annexure P-3) after hearing the petitioner directed for mutation of the name of respondent No.3 i.e. the wife of the deceased and the said order was subject of challenge by the petitioner before the SDO, Pratappur, which is pending adjudication. He would further submit that in the meanwhile, respondent No.3 Sunita Singh filed an application under Section 178 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code, 1959') and the Tehsildar has ordered for partition of holding. He would further submit that since the question of title was involved, therefore, the order of the Tehsildar is without jurisdiction as necessarily the petitioner is the interested party having acquired right in his favour and in the partition proceedings, the petitioner was not made a party, therefore, the order dated 16.09.2020 (Annexure P-1) may be quashed.

3. I have heard learned counsel for the petitioner.
4. The order dated 27.09.2017 (Annexure P-3) would show that the name of the wife of the deceased Krishna Pratap Singh was mutated after hearing the petitioner. The claim of the petitioner was on the basis of the WILL. However, the claim on the basis of WILL was denied by the Tehsildar and the petitioner preferred an appeal before the SDO. No stay was granted by the court of SDO in respect of the order of mutation passed by the Tehsildar. Therefore, the order of mutation of the name passed by the Tehsildar on 27.09.2017 till date has not been disturbed and on the basis of that mutation the names were mutated in revenue records. The subsequent proceedings for partition is being commenced on the basis of said mutation and the partition order has been passed vide Annexure P-1 dated 16.09.2020. Since the contention of the petitioner on the basis of WILL was turned down by the Tehsildar at the very

inception while the order for mutation of name of respondent No.3 was ordered for, therefore, the petitioner would be a foreigner as of now. Further in proceedings for partition the petitioner do not have any locus as no right exists in his favour. When the petitioner is claiming his right on the basis of a WILL, then he has all the liberty to approach the appropriate forum/Civil Court. At this moment, since the name of the petitioner was not recorded in the revenue records, the partition order which has been passed by the Tehsildar on 16.09.2020 cannot be said to be without jurisdiction.

5. The petition therefore has no merit. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu