**HIGH COURT OF MADHYA PRADESH:JABALPUR**

**SINGLE BENCH**: Hon'ble Mr. Justice Subodh Abhyankar

**MISC. PETITION NO.2162 OF 2020**

Sher Bahadur Singh.

Vs.

Shri Raviraj Singh & others.

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Shri Mrigendra Singh, learned senior counsel with Shri Navtej Ruprah, Advocate for the petitioner.

Shri Sanjay K. Agrawal, learned counsel for the respondents No.1 to 4, 6 and 7.

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**O R D E R**

(Passed on the 3rd day of December, 2020)

This petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 17.1.2020 (Annexure P-6) passed by the Tahsildar, Rampur Baghelan, Satna as also against the order dated 22.7.2020 (Annexure P-7) passed by the Collector, Satna, in a revision, has affirmed the order dated 17.1.2020 passed by the Tahsildar whereby the objection of the petitioner regarding the initiation of the mutation proceedings of the disputed land has been rejected.

2. In brief, the facts as narrated in the petition are that late Shri Sant Singh, the paternal

uncle of the petitioner executed a Will in his favour devolving exclusively right in the property in question to him. On 8.10.1991 the respondents filed a civil suit before the First Civil Judge Class-I, Rampur Baghelan, Satna for declaration of title, permanent injunction and declaring the aforesaid Will as null and void. While the civil suit was pending, the name of the petitioner was mutated in the revenue records by the Naib Tahsildar, Rampur Baghelan, Satna vide its order dated 16.9.1997 hence the respondents also challenged the said mutation in the said civil suit by amendment. In the said civil suit, a cross suit was also filed by the petitioner. However, vide its judgment and decree dated 13.8.2019 the First Civil Judge Class-I, Rampur Baghelan, Satna dismissed the suit as also the cross suit of the respondents and the petitioner respectively.

3. Subsequent to the aforesaid decision of the Civil Judge, the respondent No.1-Raviraj Singh filed an application for mutation before the Tahsildar, Rampur Baghelan, Satna wherein the petitioner also filed his detailed objections, however, vide order dated 17.1.2020 the Tahsildar dismissed the

objections raised by the petitioner. The said order was challenged by the petitioner in a revision under Section 50 of the M.P. Land Revenue Code, 1959 (for short **"Code, 1959"**) before the Collector, Satna, however the Collector, Satna has also dismissed the petitioner's revision vide the impugned order dated 22.7.2020 holding that the Tahsildar is bound by the judgment and decree passed by the Civil Court.

4. Shri Mrigendra Singh, learned senior counsel for the petitioner has vehemently argued before this Court that the Tahsildar as also the Collector have lost sight the findings given in para 64 of the judgment and decree dated 13.8.2019 passed by the learned First Civil Judge Class-I, Rampur Baghelan, Satna wherein it is clearly held that the respondents do not have any right for mutation. It is further submitted that both the authorities below have lost sight of the fact that the name of the petitioner had already been mutated vide order dated 16.9.1997 to which the plaintiffs/respondents have never challenged, therefore, the mutation application filed by the respondent is hit by the principles of *res judicata*. It is further submitted that the Land

Revenue Code also does not provide any provision for initiation of fresh proceeding in respect of an order passed by the earlier competent authority. Thus, it is submitted that the initiation of the fresh mutation proceedings at the instance of the respondent No.1 is bad in law and is liable to be quashed.

5. Shri Sanjay K. Agrawal, learned counsel for the respondents has opposed the prayer of the petitioner and a lengthy reply has also been filed by the respondents contending that the petitioner has tried to mislead this Court and false averments have been made in the petition. It is submitted that so far as the civil suit is concerned, it was filed by one Shyamraj Singh claiming himself to be the son of late Sant Singh and not by the answering respondent, as the answering respondent was in fact a co-defendant with the petitioner in the said suit.

6. It is further submitted by Shri Agrawal that the application filed by the petitioner for mutation of his name was though allowed by the Naib Tahsildar vide order dated 16.9.1997 holding that Sant Singh had executed the Will in favour of the present petitioner hence he is entitled to get his name

mutated in the revenue records but, it was also observed that Shyamraj Singh can challenge the Will in a civil suit. And, in the civil suit filed by Shyamraj Singh, the judgment was delivered on 13.8.2019. It is further stated that in the said civil suit the petitioner was impleaded as defendant No.1, whereas the respondent No.1 was impleaded as defendant No.2A and other respondents were impleaded as the legal heirs of deceased defendant No.2 Shiv Prasad Singh. It is further submitted that in the said civil suit the petitioner/the defendant No.1 therein also filed a cross suit, claiming himself to be the owner of the property in question on the basis of the Will dated 31.8.1985 executed in his favour by Sant Singh but the same has also been rejected.

7. Learned counsel for the respondents has also draw the attention of this Court to para 13 and 59 of the judgment passed by the Civil Court to submit that the land in question belonged to late Shiv Prasad Singh. It is further submitted that the contradictory statements were made by the petitioner in the civil suit hence in various paragraphs of the judgment passed by the trial Court on the basis of the

petitioner own evidence, it is held that the land in question was purchased by Shiv Prasad Singh and the same was his self-acquired property and therefore Sant Singh had no right or authority in law to execute the Will in favour of the petitioner. It is further submitted that as per the issues No.8 and 9 decided by the trial Court, it is held that the Will dated 31.8.1985 was found to be *non-est* in law and the same did not confer any right or title on the petitioner. Thus, it is submitted that while relying upon the decision rendered by the trial Court, the Tahsildar as also the Collector have not committed any error in law hence the petition being devoid of merit is liable to be dismissed.

8. Lastly, learned counsel for the respondents has submitted that the judgment and decree dated 13.08.2019 passed by the trial Court is also under challenge before the Additional District Judge, which is still pending and no stay has been granted by the lower appellate Court, hence the Tahsildar was well withing his rights to pass the order.

9. So far as the maintainability of the application for mutation filed by the defendant No.1

is concerned, regarding which the petitioner has raised a strong objection that the Tahsildar had no authority to reopen the case which is barred under the principles of *res judicata*, it is submitted by Shri Agrawal that the Tahsildar has already held that the application for mutation has been filed on the basis of the judgment and decree passed by the trial Court and since there is no stay on the said judgment and decree, the Revenue Authority is bound to proceed with the mutation in accordance with the findings recorded by the trial Court. It is further submitted that the answering respondents were not the party to the proceedings before the Naib Tahsildar and the fact that the since a competent Court of civil jurisdiction has already ruled that the property belonged to late Shiv Prasad Singh, the petitioner and the answering respondents being legal representatives of Shiv Prasad Singh have equal right over the said property. Thus it is submitted that the petition being misconceived be dismissed.

10. Heard the learned counsel for the parties and perused the record.

11. From the record this Court finds that the petitioner Sher Bahadur Singh and the respondent No.1 Raviraj Singh are the real brothers being the sons of late Shiv Prasad Singh. It has also come on record that the uncle of the petitioner, Sant Singh had executed a will in favour of the petitioner on 31.8.1985 devolving exclusive right in the property in question. The case of the petitioner is that after the Will was executed by his uncle Sant Singh in his favour on 31.8.1985 a civil suit was filed by one Shyam Raj Singh, who happens to be the son of the petitioner's uncle Sant Singh for declaration of the Will executed in favour of the petitioner by Sant Singh as null and void. According to the petitioner while the aforesaid civil suit was pending, the petitioner also applied for mutation of his name in the revenue records which was allowed by the Tahsildar, Rampur Baghelan, Satna vide its order dated 16.9.1997. After passing of the aforesaid order, the civil suit was also amended by the plaintiff Shyamraj Singh whereby the order passed by the Tahsildar on 16.9.1997 was also challenged. It is also not disputed that in the aforesaid civil suit the respondent No.1

herein Raviraj Singh was also arrayed as defendant No.2A in the array of the defendants. A cross suit in the aforesaid civil suit was also filed by the petitioner but the aforesaid civil suit as also the cross suit came to be dismissed by the learned First Civil Judge Class-I, Rampur Baghelan, Satna vide judgment dated 13.8.2019 holding that neither the plaintiffs nor the defendants were able to prove their cases.

12. It is also found that subsequent to the dismissal of the aforesaid civil suit, the respondent No.1 Raviraj Singh, taking clue from the judgement so pronounced, filed an application for mutation before the Tahsildar on 11.9.2019 in which the petitioner also filed his objection that the application itself is not maintainable, as the order of mutation has already been passed in favour of the petitioner by the Tahsildar on 16.9.1997 there was no reason for the Tahsildar to review its own order, which is also not permissible under law. The aforesaid objection of the petitioner was rejected by the Tahsildar vide its impugned order dated 17.1.2020 and has also been confirmed in a revision by the Collector vide its order dated 22.7.2020 holding that the revenue authority is

bound by the judgement and decree passed by a Civil Court.

13. So far as the judgment passed by the Civil Court is concerned, it would be apt to refeer to the conclusion arrived at by the learned Judge of the Civil Court in respect of the issues framed and para 77 are as under:-

| क्र. | वाद प्रश्न | निष्कर्ष |
|---|---|---|
| 1 | क्या वादी स्व. संत सिंह का वैध पुत्र है? | पुत्र होना प्रमाणित किंतु वैध पुत्र होना प्रमाणित नहीं। |
| 2 | क्या विवादित आराजी वादी एवं प्रतिवादी क्र. 2 के संयुक्त परिवार की संपत्ति थी? | प्रमाणित नहीं |
| 3 | क्या वादी वाद पत्र के पद क्र. 3 में लिखी भूमियों का मालिक स्वामी है? | प्रमाणित नहीं |
| 4 | क्या वादी उपरोक्त विवादित आराजी में विधिक रूप से काबिज दाखिल है? | प्रमाणित नहीं |
| 5 | क्या अनुलग्न 'अ' का मूल वसीयतनामा वादी के स्वत्व के विरूद्ध होने से अवैध घ ोषित किये जाने योग्य है? | प्रमाणित नहीं |
| 6 | क्या नायब तहसीलदार रामपुर बाघेलान जिला सतना म.प्र. के प्रकरण क्र. 23अ6/92–93 आदेश दिनांक 16.09.1997 अधिकारिता रहित होने से अवैध है? | प्रमाणित नहीं |
| 7 | क्या वादी के विरूद्ध विबंध का सिद्धांत लागू होता है? | प्रमाणित नहीं |
| 8 | क्या वादग्रस्त आराजी प्रतिवादी क्र.2 की स्वअर्जित संपत्ति है? | प्रमाणित |
| 9 | क्या प्रतिवादी क्र. 1 वसीयतनामा दिनांक 31.08.1985 के आधार पर वादग्रस्त आराजी का भूमिस्वामी है? | प्रमाणित नहीं |
| 10 | क्या वादी का वाद समय बाधित है? | प्रमाणित नहीं |
| 11 | क्या प्रतिदावा अवधि बाधित है? | प्रमाणित |
| 12 | सहायता एवं व्यय ? | निर्णय की कंडिका 77 के अनुसार दावा एवं प्रतिदावा खारिज। |

''77. *चूंकि उपरोक्त विवेचानुसार वादी द्वारा विवादित आराजियात में स्वयं के स्वत्व एवं वैधानिक आधिपत्य का तथ्य प्रमाणित नहीं किया जा सका है और न यही प्रमाणित किया जा सका है कि वसीयतनामा अनुलग्न ''अ'' तथा प्रकरण क्र.–23अ6/92–93 में नायब तहसीलदार तहसील रामपुर बाघेलान द्वारा पारित आदेश दिनांक 16.09.1997 अवैध व शून्य है। ऐसी स्थिति में वादी को दावे में वांछित अनुतोष प्रदान किया जा सकना संभव नहीं है। इसी तरह प्रकरण में प्रतिवादी क्र. 1 की ओर से भी यह प्रमाणित नहीं किया सकता है कि वह वसीयत दिनांक 31.08.1985 के आधार पर विवादित आराजियात का स्वत्वधारी है। उपरोक्त विवेचना से प्रतिवादी क्र. 1 का प्रतिदावा अवधि बाधित होना भी पाया गया है। ऐसे में वादी को दावे में तथा प्रतिवादी क्र. 1 को प्रतिदावे में वांछित अनुतोष प्रदान किया जा सकना संभव नहीं है। परिणामस्वरूप–*

1. *वादी का वाद एवं प्रतिवाद क्र. 1 का प्रतिदावा खारिज किया जाता है।*
2. प्रकरण की परिस्थितियों में वादी एवं प्रतिवादीगण अपना–अपना वाद व्यय वहन करेंगे।
3. अधिवक्ता शुल्क प्रमाणन के अधीन नियम 523 म0प्र0 कोर्ट रूल्स के अनुसार संगणित कर या जो वास्तव में दिया गया हो, में से जो भी न्यून हो, देय होगा।

उपरोक्तानुसार डिक्री तैयार की जाये।''

Thus a bare perusal of the aforesaid findings recorded by the learned Judge of the Civil Court clearly reveal that the learned Judge found favour with none of the parties and the civil suit as also the cross suits were dismissed in *toto*. It is also apparent that the Civil Court has not given any direction to any of the authorities or any of the parties to proceed further in respect of the disputed property, however

the respondent No.1 by relying upon the certain findings recorded in the aforesaid civil suit in respect of the Will, has filed the application for mutation under Sections 109 and 110 of the Code, 1959. In his application the respondent No.1 has made the following pleadings:-

> ''08– यह कि आवेदित आराजी के संबंध में माननीय व्यवहार न्यायाधीश रामपुर बाघेलान द्वारा जरिए निर्णय एवं डिक्री दिनांक 13.08.2019 यह आदेश दिया गया है कि उक्त भूमि अनावेदक शेर बहादुर सिंह के एकांकी हक की न होकर स्व0 शिव प्रसाद सिंह की स्व–अर्जित संपत्ति है, जिसके आधार पर अनावेदक क्र0 01 का प्रतिदावा (निर्णय की कण्डिका 30, 35, 56, 63, 72 एवं वाद प्रश्न क्रमांक 8, 9, 11 के समक्ष अंकित टीप अनुसार) सिविल न्यायालय से खारिज हुआ है और सिविल न्यायालय के निष्कर्षो को ध्यान में रखते हुए आवेदक एवं अनावेदकगण का वारसान नामान्तरण आवेदित भूमि में संयुक्त रूप से विधिवत् किया जाना न्यायोचित व आवश्यक है।
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> 09– यह कि आवेदक द्वारा उक्त नामान्तरण आवेदन पत्र सिविल न्यायालय के निर्णय डिक्री दिनांक 13.08.2019 के अमल में प्रस्तुत किया जा रहा है आवेदन पत्र के साथ निर्णय एवं डिक्री दिनांक 13.08.2019 की प्रमाणित प्रति श्रीमान के अवलोकन हेतु संलग्न की जा रही है।''

14. A perusal of the impugned order dated 17.1.2020 reveals that the Tahsildar while rejecting the objection raised by the petitioner regarding the maintainability of the aforesaid application for mutation has relied upon the para 77 of the judgment of the learned Civil Court reproduced hereinabove holding that in para 77 of the judgment, the learned Judge of the Civil Court has found that the disputed property belongs to Shiv Prasad being his self-

acquired property. The Tahsildar has also opined that since against the aforesaid judgment an appeal has been filed by the petitioner, however, there is no stay order granted in his favour and thus there is no restrain in exercising his jurisdiction, as the Revenue Court is bound by the judgment and decree passed by the Civil Court and since the application for mutation has been filed by the respondent No.1-Raviraj Singh on the basis of the decree, hence the said decree is binding on the Tahsildar and thus the objections raised by the petitioner regarding the maintainability of the mutation application were rejected. The aforesaid finding has also been affirmed by the Collector vide its impugned order dated 22.7.2020.

15. On careful examination of the record, this Court is of the considered opinion the Tahsildar as also the Collector have erred in holding that there is a decree passed in favour of the respondent No.1 where there is none, which is binding on the Revenue Court and which is also abundantly clear from the judgment of the Civil Court that there is no such decree passed by the Civil Court in favour of the respondent No.1. What the Civil Court has done is to

dismissed the civil suit and the cross suit by the plaintiff Shyamraj Singh and the petitioner Sher Bahadur Singh respectively. In the considered opinion of this Court it was not open for the respondent No.1 and also for the Tahsildar to form an opinion by selective reading of the judgment of the Civil Court. Had it been a case where the respondent No.1 had also filed a cross suit and some decree passed in his favour, then, it would have been open for the respondent No.1 to contend that a decree has been passed. However, when the ownership of the said property was never challenged by the respondent No.1 in the said civil suit, there was no adjudication in this respect by the Civil Court also and it was not open for the respondent No.1 to contend that an order has been passed in his favour where there was none.

16. This Court has no hesitation to hold that in the absence of any decree in favour of the respondent No.1, the Tahsildar was also not authorized to reopen the case and to reconsider the earlier mutation proceeding, which culminated in favour of the petitioner on 16.9.1997. The contention raised by the

learned counsel for the respondents that the Tahsildar was bound by the order passed by the Civil Court is absolutely unfounded and misconceived specially when there is no such direction issued by the Civil Court in respect of the respondent No.1's right, title or share in the property. A perusal of the issues decided by the Civil Court in its judgment dated 13.08.2019, which have been reproduced above, also clearly reveals that they cannot be handpicked to decide the rights of one of the parties and if this preposition is accepted, it would lead to disastrous consequences and total failure of civil jurisprudence as each party to the suit would try to execute the decree on the basis of one or two issues decided in his or her favour which is an absurdity in itself. Thus, it is held that the Tahsildar had no jurisdiction to reopen the case on the basis of the Civil Court's judgment dated 13.08.2019 when the earlier mutation proceedings had already attained the finality and were binding on the parties.

17. At this juncture, it would be fruitful to refer to a decision rendered by the Supreme Court in the case of ***Arasmeta Captive Power Co. (P) Ltd. v.***

***Lafarge India (P) Ltd., (2013) 15 SCC 414,*** para 35 of the same reads as under :-

> "35. In State of Orissa v. Mohd. Illiyas it has been stated thus: (SCC p. 282, para 12)
>
> > "12. … According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. ***A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment***."
>
> *(emphasis supplied)*

Similarly, in the case of ***State of M.P. v. Ramesh Chandra Bajpai, (2009) 13 SCC 635***, the Supreme Court, in para 26 has held as under:-

> "26. ***In our view, the aforementioned decision has been misapplied and misconstrued by the High Court. It is now well-settled principle of law that a decision is an authority for what it decides and not what can logically be deduced therefrom……***."
>
> *(emphasis supplied)*

18. As a result, in view of the aforesaid discussion, this Court finds that the Tahsildar has clearly exceeded his jurisdiction to entertain such an application for mutation despite there being no order passed by the Civil Court and the said order has also been wrongly affirmed by the Collector vide its order dated 22.7.2020. Thus, both the orders passed by the Tahsildar and the Collector, Satna being bad in law are hereby *set aside, resultantly, the further proceedings in the Court of Tehsildar are also hereby quashed and the petition stands allowed*.

19. Needless to say, since an appeal has already been preferred against the judgment and decree dated 13.8.2019, the parties would be governed by the final decision of the appellate Court. Accordingly, petition stands **allowed** with no order as to costs.

(Subodh Abhyankar)
Judge
03/12/2020

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