HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 98 of 2017

- Smt. Bharti Jhadhav D/o Late Raghupatrao Mahadik, Aged About 55 Years W/o Shri Akhilesh Yadav, R/o Vivekanand Nagar, Raipur, District Raipur Chhattisgarh

---- Petitioner

Versus

1. Raaghoba Mahadik S/o Shri Raghupatrao Mahadik R/o Village Rajim, Tehsil Rajim, District Raipur Chhattisgarh
2. Lalit Mahadik, S/o Shri Raghupatrao Mahadik R/o Village Rajim, Tehsil Rajim, District Raipur, Chhattisgarh.
3. The State Of Chhattisgarh, Through Its Tahsildar Rajim, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Rajkumar Pali, Advocate
For Respondents No. 1 & 2	:	Mr. B.P. Sharma, Advocate
For State	:	Mr. Gagan Tiwari, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

25.06.2021

1. Heard

2. The challenge in this writ petition is to the order passed by the Revenue Board dated 03.11.2016, wherein the mutation of the name of the respondents No. 1 & 2 in respect of certain immovable property of agricultural lands have been affirmed. The mutation of name was initially passed by the Tehsildar, on the basis of a WILL executed by one Gajpat Rao Mahadik dated 04.02.2008. The respondents No. 1 & 2 filed an application for mutation of their name in respect of lands left behind by the deceased. The Tehsildar, Rajim by its order dated 30.05.2009, ordered for mutation of name of the respondents No. 1 & 2. The said order was subject of challenge by the petitioner by way of appeal before the SDO and the SDO by its order dated 11.02.2011 allowed the appeal which was further subject of challenge by way of second appeal by the respondents No. 1 & 2

before the Additional Commissioner. The Additional Commissioner restored the order of the Tehsildar for mutation of name by its order dated 19.01.2012. The petitioner though challenged such order before Revenue Board, but the Revenue Board has dismissed the revision, hence this petition.

3. Learned counsel for the petitioner submits that the Tehsildar has not followed the law laid down for mutation of name and despite the fact that the original WILL was not produced before the Tehsildar, on the basis of a forge WILL the name of the respondents No. 1 & 2 have been mutated. Therefore, the order of the Tehsildar which was initially passed and has been affirmed subsequently at the later stage before the Revenue Board is bad in law. He further submits that the property was ancestral property and the WILL could not be created and if any, created, would be bad in law.

4. Learned counsel for the respondents No. 1 & 2 submits that the petitioner has already preferred a civil suit for claiming declaration that the WILL is outcome of forgery, as such the finding on the basis of WILL would be eventually decided by the civil Court and this proceeding may be disposed off.

5. Learned counsel for the petitioner do not dispute the fact that the civil suit challenging the WILL has already been filed.

6. Presently, it appears that the order of "mutation" of the name of the respondents No. 1 & 2 is primarily under challenge which was made on the basis of WILL. It is a trite law which is held by ***AIR 1996 SC 2823*** in the matter of ***Smt. Sawarni v. Smt. Inder Kaur and Others*** as also ***(2019) 3 SCC 191*** in the matter of ***Bhimabai Mahadeo Kambekar (Dead) through LRs v. Arthur Import and Export Company and Others*** that the mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose

favour the mutation is ordered to pay the land revenue in question. This proposition is also lamented in decision ***AIR 2014 SC 2665*** in the matter of ***Municipal Corporation Gwalior v. Puran Singh alias Puran Chand and Others*** wherein it is held that the Khasara entries do not convey title of the suit property as the same is only relevant for the purposes of paying land revenue and it has nothing to do with the ownership.

7. When the WILL is already under challenge, the authenticity of WILL is required to be decided by the civil Court whereby the parties would be opened to lead their respective evidence to prove the WILL in accordance with the provisions of the Indian Evidence Act 1872 and the Indian Succession Act 1925. The finding on which the authenticity of WILL is said to be conclusive by the Revenue Court therefore would not be taken as an admissible fact or the fact proved for the purpose of deciding the civil case by the civil Court. The civil Court will adjudicate the civil suit on its own merits without being influenced by the finding arrived at by the Revenue Court.

8. With the aforesaid observation/ direction, the writ petition stands disposed off.

9. The petitioner may prosecute her claim before the civil Court to prove her claim.

Sd/-
(Goutam Bhaduri)
Judge

Vishakha