

A.F.R

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6512 of 2022

Ranjan Kumar Sahu

....

Petitioners

Mr. S.Ku. Patra,
Advocate

-versus-

Sub-Collector, Athamallik, Angul & Anr.

....

Opposite Parties

Mr. U.K. Sahoo,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
29.06.2022**

Order No.

04.

1. On consent of both the parties this matter is taken up for final disposal.

2. This writ petition involves the following prayer:-

“It prayed therefore that this Hon’ble Court may graciously be pleased to pass an order issue Rule NISI calling upon Opp. Parties to show cause and if they fail to show cause or show insufficient cause then issue appropriate writ, order, direction to quash the order dt.27.10.21 (Annexure-3) and 6.11.21 (Annexure-4) and direction may given to the Op.Parties to mutated the above schedule land in favour of the petitioner.

And pass any other order which will deem fit and proper in the ends of justice.”

3. Challenge in the writ petition is made to the orders at Annexures-3 & 4 herein.

4. Challenging the order of the original authority vide Annexure-3 involving the Mutation Case No.616 of 2021 and further also the order of dismissal of the appeal at the instance of the Petitioner vide Annexure-4, Mr. Patra, learned counsel for the Petitioner taking this Court to the pleadings in the writ petition as well as the case of the Petitioner before the Forums below contended that for the property involved belongs to Athamallik in the Angul district, there is no need of probate in the involvement of deed involving such property. Taking this Court to a reported judgment of this Court in the case of *Aparna Sahu and Others Versus Raghunath Biswal and Others* as reported in 2009 (II) CLR 155 and a further judgment of this Court in W.P.(C) No.10400 of 2021 decided on 22.04.2021 both if there is requirement of probate involving Angul district, learned counsel for the Petitioner claims that the original authority as well as the appellate authority have failed in appreciating the position of law in this situation through both the above judgments and accordingly learned counsel for the Petitioner claimed that in this situation both the orders require to be interfered with and set aside.

5. In his opposition learned State Counsel, however, taking this Court to the ground of rejection in the orders at Annexures-3 & 4 attempted to substantiate the case of the public authority. There is no denial to the settled position of law dealing with Wills in the District of Angul through both the aforesaid judgments requiring no probate.

6. Considering the rival contentions of the parties and on perusal of the judgment in 2009(II)CLR 155 more particularly the direction in paragraph no.15 therein, this Court finds, the Single Bench of this Court taking up similar issue particularly involving the

property under Athamallik Sub-Division in the District of Angul has come to observe as follows:

“15. Only on other ground which needs to be dealt with is with regard to the submission of Mr. Mukherjee that P.W.3 did not identify the testator before the Sub-Registrar. This submission also appears to be factually not correct. P.W.3 in his examination-in-chief has stated :

“Ext. 1 is the said will. This is my signature in the front page of the will marked Ext. 1/f. This is signature on the last page of the will marked Ext. 1/g. Then the deed of will was presented. Sub-Registration Officer. I was present before the Registration Officer at the time of registration. I also give my signature.”

Mr. Mukherjee, relied upon the following statement made by the said witness in cross-examination, in support of his argument that P.W.3 had not identified the will.

“Before the Registration Officer, I did not identify Jahar Biswal to the Registration Officer. X x x”

The words “to the Registration Officer” are very significant. The deed itself reveals that P.W.3 has signed as identifier. He also admitted about such fact. He was present in the Sub-Registration Officer in course of registration. The question of identifying Jahar personally to the Sub-Registrar does not arise. A cumulative reading of the entire evidence clearly establishes the fact that not only there was valid attestation but also there was no defect in the registration of the will executed by Jahar in favour of the plaintiff. That apart, all these are questions of fact, which have been dealt with by the Courts below in extensor.”

7. This issue has again visited this Court in W.P.(C) No.10400 of 2021 and this Court while disposing of the above writ petition on 22.04.2021, has directed in paragraph no.11 therein as follows:-

“11. Law is well-settled that probate of the Will is not necessary in the undivided district of Dhenkanal. Thus, the restriction imposed at para-6 of the aforesaid

circular with regard to probate the Will may not be applicable to the case at hand save and except other conditions of the circular dated 07.05.2018, in respect of which this Court does not express any opinion.”

8. This Court in deciding the W.P.(C) No.10400 of 2021, even has taken some other decisions as indicated in paragraph no.7. In the above scenario and for the position of law on the issue of no need for registration and/or probate of Will involving property in the district of Angul, this Court finds, the position of law has been settled through the above judgment deciding no need of probate of such document particularly in respect of Angul District a District carved out of Dhenkanal District, which is already exempted from getting into such registration and/or probate of Will. For the settled position of law and since the orders at Annexures-3 & 4 have been passed in no consideration of settled position of law, this Court while setting aside both the orders at Annexures-3 & 4, remits the matter to the Tahasildar, Kishorenagar to dispose of the mutation case allowing in favour of the Petitioner keeping in view the settled position of law and giving direction for necessary correction in the Record of Rights.

9. The entire exercise shall be completed within a period of six weeks from the date of communication of an authenticated copy of this order by the Petitioner.

10. The Petitioner is directed to appear before the Tahasildar, Kishorenagar along with a certified copy of this order on 11.07.2022.

11. The writ petition stands disposed of with the above direction.

(Biswanath Rath)
Judge

Ayaskanta Jena

