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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

ON THE 9th OF JANUARY, 2024

MISC. PETITION No. 3059 of 2020

BETWEEN:-

1. **PRADEEP SINGH S/O LATE SHRI CHOTE SINGH KUSHWAH, AGED 52 YEARS, OCCUPATION: BUSINESS, R/O SANJAY COLONY, MORENA, DISTRICT MORENA (MADHYA PRADESH)**
2. **SANJAY SINGH S/O LATE SHRI CHOTE SINGH KUSHWAH, R/O SAF FAMILY QUARTER, IN FRONT OF PARADE GROUND, MORENA, DISTRICT MORENA (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI N.K. GUPTA - SENIOR ADVOCATE WITH SHRI Y.P.S. RATHORE - ADVOCATE)

AND

1. **BHANUPRATAP SINGH**
2. **AJAY SINGH
BOTH S/O LATE SHRI CHOTE SINGH KUSHWAH,
R/O SANJAY COLONY, MORENA, DISTRICT
MORENA (MADHYA PRADESH)**
3. **SMT. KUSUMLATA W/O SHRI PRABAL SINGH CHAUHAN, D/O LATE CHOTE SINGH KUSHWAH,
R/O BACK SIDE OF K.S. SCHOOL, NEAR NEW
HOUSING BOARD COLONY, MORENA, DISTRICT
MORENA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANIL KUMAR SEXENA WITH SHRI AVINASH CHATURVEDI - ADVOCATE FOR RESPONDENT NO.2)

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This petition coming on for orders this day, the court passed the following:

ORDER

This petition has been filed assailing the judgment and order dated 20.10.2020 passed by Commissioner, Chambal Division, Morena in Case No.58/Appeal/2020-21 (Bhanupratap Singh and another vs. Sanjay Singh and others) by which learned Commissioner, Chambal Division, Morena directed the appeal to be allowed and set aside the order impugned and directed the Trial Court to afford an opportunity of hearing and take the evidence on Will and pass a fresh order of mutation.

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

3. Learned counsel for the petitioners mainly submits that property was recorded in the name of one Chhote Singh who died leaving four sons and one daughter behind him. Tehsildar concerned mutated the name of all four sons and one daughter in place of deceased Chhote Singh. Respondents are also sons of Chhote Singh who claimed their title on the basis of Will which is to be determined by the Civil Court.

4. Learned counsel for the respondents has opposed the petition but conceded the legal position that validity of Will is to be determined by the Civil Court and Revisional Court has no authority and jurisdiction to see the validity of Will. It is also admitted by learned counsel for respondents that respondents have not filed any suit before the Civil Court in respect of validity of Will. From the fact, it emerged that property was recorded in the name of deceased Chhote Singh. He died leaving four sons and one daughter behind him and after the death of Chhote Singh, Tehsildar mutated the name of five legal heirs in place of deceased Chhote Singh.

5. Challenging the order of Tehsildar, respondents filed an appeal before the SDO on the basis of Will which came to be dismissed. There against, second appeal was filed before the Commissioner, Chambal Division, Morena

wherein impugned order has been passed. It is also on record that a civil suit is also pending between the parties but that has not been filed by the respondents.

6. Considering the rival arguments advanced by both the parties and settled position of law, it is clear that revenue court cannot decide the right of parties on the basis of Will and it is to be decided by the Civil Court. Petition succeeds and is liable to be allowed.

7. Petition is **allowed**. Order of Commissioner, Chambal Division, Morena in Case No.58/Appeal/2020-21 is quashed and set aside. Parties shall abide by the outcome of litigation in Civil Court. No order as to costs.

(alok)



(RAJENDRA KUMAR-IV)
JUDGE