IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 321 OF 2019

(Madhukar Lahanu Maulikar & Ors. Vs. Sudarshan Namdeo Maulikar & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Shri A.A. Dhawas, Counsel for the petitioners.
Shri A.S. Dhore, Counsel for respondent nos. 1 and 2.
Shri A.M. Joshi, A.G.P. for respondent nos. 3 to 7.

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CORAM : ANIL L. PANSARE, J.
JUNE 18, 2024

The challenge is to order dated 10/8/2018 passed by the learned Additional Commissioner, Nagpur Division, in Revision No. 170/R.T.S. 59/2017 (Annexure – 6), thereby reversing the order dated 26/7/2017 passed by the Additional Collector, Chandrapur, in Revenue Appeal No. 8/R.T.S. 64/2015-16.

2] The Additional Collector, Chandrapur, vide aforesaid order, has maintained the order dated 17/8/2015 passed by the Sub-Divisional Officer, Rajura, who upsets the order dated 22/5/2013 passed by the Tahsildar, Rajura, in Case No. 37/R.T.S. 64/2012-13. The Tahsildar has, by taking cognizance of the Will executed by one Lahanu, has recorded names of respondent nos. 1 and 2, the beneficiaries of the Will. All the petitioners are claiming themselves to be the legal representatives of Lahanu. The effect of order of the Additional Commissioner, Nagpur Division, is that the order passed by the Tahsildar has been maintained. In other words, the names of the beneficiaries in the Will have been recorded in the revenue entries.

3] Some of the petitioners had, before the Tahsildar, taken objection to the Will. Despite such objection, the Tahsildar proceeded to record the names of the beneficiaries of the Will.

4] The Hon'ble Supreme Court in the case of *Jitendra Singh Vs. State of Madhya Pradesh and Others [2021 SCC OnLine SC 802]* has held in paragraph 6 as under :

> *"6. It is not in dispute that the dispute is with respect to mutation entry in the revenue records. The petitioner herein submitted an application to mutate his name on the basis of the alleged will dated 20.05.1998 executed by Smt. Ananti Bai. Even, according to the petitioner also, Smt. Ananti Bai died on 27.08.2011. From the record, it emerges that the application before the Nayab Tehsildar was made on 9.8.2011, i.e., before the death of Smt. Ananti Bai. It cannot be disputed that the right on the basis of the will can be claimed only after the death of the executant of the will. Even the will itself has been disputed. Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made."*

5] As could be seen, it is a settled position of law that if there is any dispute with respect to the title, more particularly when the mutation entry is sought to be made on the basis of Will, the party, who is claiming title/right on the basis of Will, has to approach the appropriate Civil Court and get his rights crystallized and only thereafter, on the basis of the decision before the Civil Court, necessary mutation entry can be made.

6] In view of above, the order passed by the Additional Commissioner, Nagpur Division, is quashed and set aside. Respondent nos. 1 and 2 shall take necessary steps in terms of the aforesaid position of law.

7] I am informed that the names of the legal representatives of Lahanu have been mutated in revenue record. This entry shall be subject to the outcome of the proceedings, which respondent nos. 1 and 2 shall initiate. Respondent nos. 1 and 2 shall communicate to the Tahsildar about initiation of the proceedings, if they so desire, and upon such communication, the Tahsildar shall proceed to record a remark in the revenue record that the names, which have been mutated, are subject to outcome of the said proceedings.

8] The Writ Petition is disposed of in above terms.

(ANIL L. PANSARE, J.)

Sumit