ORISSA HIGH COURT : CUTTACK

WP(C) No.36128 of 2025

An application under Articles 226 & 227 of the Constitution of India.

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Jamuna Mahanta & Another
... **Petitioners.**

-VERSUS-

State of Odisha & Others
... **Opposite Parties**.

Counsel appeared for the parties:

For the Petitioners : Dr. Purusottam Chuli, Advocate

For the Opposite Parties : Mr. G. Mohanty, Standing Counsel.

P R E S E N T:

HONOURABLE
MR. JUSTICE ANANDA CHANDRA BEHERA

Date of Hearing : 23.12.2025 :: Date of Judgment : 23.12.2025

JUDGMENT

ANANDA CHANDRA BEHERA, J.—

1. This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioners praying for quashing (setting aside) the order dated 03.09.2025 (Annexure-4 series) passed in Mutation Case Nos.1453, 1454, 1455, 1456 & 1457 of 2025 by the Addl. Tahasildar, Harichandanpur, District-Keonjhar (Opposite Party No.4).

2. The factual backgrounds of this writ petition, which prompted the petitioners for filing of the same is that, one Laxman Mahanta, recorded owner of Plot Nos.1056, 1523, 1544, 338/2900, 1656/3038, 620/3062, 627/3063, 1195 and 1231 of Khata No.205 in Mouza-Bhanrapur, Plot No.1227 of Khata No.129 in Mouza-Chasatangar, Plot No.1228/2013 and 1228 of 2022 of Khata No.130/2011 in Mouza-Chasatangar, Plot No.1675 of Khata No.94 in Mouza-Bhanrpur, Plot Nos.243, 244, 275, 277, 278, 279, 290, 501, 506 and 670 of Khata No.18 in Mouza-Madhyapur under Harichandanpur Tahasil in the district of Keonjhar

bequeathed the properties of said Plots in favour of his two wives, i.e. petitioners executing and registering a Will vide Will No.1051900309 dated 13.11.2019.

When the said Testator of the aforesaid Will, i.e., Laxman Mahanta died on dated 09.03.2024, then, the petitioners possessed the aforesaid bequeathed properties and filed mutation cases vide Mutation Case Nos.1453, 1454, 1455, 1456 & 1457 of 2025 before the Tahasildar, Harichandanpur (Opposite Party No.3) for the mutation of the said properties to their names on the basis of that registered Will No.1051900309 dated 13.11.2019.

As per orders dated 03.09.2025 (Annexure-4 series), the Addl. Tahasildar, Harichandanpur (Opposite Party No.4) rejected to the Mutation Case Nos.1453, 1454, 1455, 1456 & 1457 of 2025 filed by the petitioners assigning reasons that,

> *"Found that no probate is executed in respect of the applied Will Deed and for such, the R.I. has recommended the case for consideration. In view of no execution of probate, I am liable to reject the case."*

So, the petitioners challenged that Annexure-4 series passed by the Addl. Tahasildar, Harichandanpur (Opposite Party No.4) by filing this writ petition on the ground that,

> *"When the properties covered under the Will No.1051900309 dated 13.11.2019 executed in favour of the petitioners are situated in the district of Keonjhar and the said Will has been executed in the District of Keonjhar, which is outside the area specified in the Clauses of Section 57 of the Indian Succession Act, 1925 and when Keonjhar District was under the ex-princely State, then, the question of probation of that Will does not arise. For which, The Addl. Tahasildar, Harichandanpur (Opposite Party No.4) should not have rejected to the mutation cases of the petitioners as per Annexure-4 series".*

3. I have already heard from the learned counsel for the petitioners and learned Standing Counsel for the State(Opposite Parties).

4. It is the settled propositions of law that, when a Will in question is executed in the Districts, which were coming under the ex-princely State like Mayurbhanj, Bolangir, Koraput, Dhenkanal, Ganjam, Sundargarh, Sambalpur, Angul, **Keonjhar**, Rayagada, Jharsuguda, Malkanagiri and



others, no probate of Will is necessary. In the said Districts, Revenue Authorities and Tahasildars can proceed with the mutation cases on the basis of un-probated Wills.

5. On this aspect, it has already been clarified by the Hon'ble Courts in the ratio of the decisions reported in

> (I) ***1972(2) C.W.R.-1451, Amrutlal Majhi and others vrs. Japi Sahuani and others.*** (II) ***AIR 1973 Orissa-112, Balaram Tripathy and another vrs. Lokanath Tripathy.*** (III) ***48(1979) CLT-211 (Para-8), Mst. Radha Hota vrs. Dutika Satpathy and another,*** (IV) ***2008(I) OLR729, Sailabala Satpathy vrs, Parbati Satpathy and others.*** (V) ***2009(II) CLR-155, Aparna Sahu and others vrs. Raghunath Biswal and others.*** (VI) ***2012(II) OLR-394, Kunjabihari Sahu vrs. State of Orissa and others.*** (VII) ***2015(II) CLR-1075 & 2015(II) OLR-1025, Ritesh Kumar Patel @ Ritesh Patel vrs. Kishore Chandra Patel and others.*** (VIII) ***W.P.(C) No.24927 of 2021, Subrat Purohit vrs. State of Orissa and others.*** (IX) ***W.P.(C) No.33187 of 2021, Ratnamala Mishra vrs. State of Orissa and others.*** (X) ***W.P.(C) No.5216 of 2023, Fatik Bala and others vrs. State of Odisha and others***. (XI) ***2023(I) CLR-621, Amrita Pandey vrs. State of Orissa and another*** that,
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> "If the Wills are executed in a place either outside the areas specified in the clauses of Section 57 of the Indian Succession Act, 1925 or in respect of the immovable properties situated beyond the territories specified in clauses of Section 57 of the Indian Succession Act, 1925, those areas/territories were under the ex-princely State



> called as Gadajat Wills, probate of such Wills are not required under law. The Revenue Authorities in the said areas can proceed with the mutation cases on the basis of un-probated Wills."

6. Government of Orissa has issued a Letter vide letter No.23734 dated 13.08.2019 to the Collector, Mayurbhanj (which district was also coming under the ex-princely State) on the basis of the decision of this Hon'ble Courts in a case between ***Ritesh Kumar Patel @ Ritesh Patel vrs. Kishore Chandra Patel and others*** reported in ***2015(II) OLR 1025***, modifying the previous Letter No.16449 dated 07.05.2018 that,

> "probate of a Will is not required in the District of Mayurbhanj and the Revenue Authorities can proceed with the mutation case, if the same is filed for mutation on the basis of un-probated Will. Because, initiation of probate proceeding for probation of a Will is not necessary in the district of Mayurbhanj. For which, the restriction for mutation of the properties on the basis of an un-probated Will in the district of Mayurbhanj as directed earlier in Para No.6 of Letter No.16449 dated 07.05.2018 of the Government stands modified."

7. In view of the ratio of the aforesaid decisions of the Hon'ble Courts as well as Letter No.23734 dated 13.08.2019 of Government of Odisha, "no probate is necessary in respect of

"Gadajat Wills" and the revenue courts including Tahasildars in such areas of the Districts in the State shall entertain mutation cases on the basis of un-probated Wills.

8. As per law, it is beyond the jurisdiction of the revenue authorities to decide the disputed matters concerning the Wills, if dispute arises before the revenue authorities either in respect of the genuineness of the Will in question or in respect of the properties covered under the Will.

9. On this aspect, the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

> (i) In a case between ***Pradeep Kumar Singh and another vrs. State of Uttar Pradesh Through Secy. Revenue Lko. and others*** reported in ***2022(4) Civil Court Cases-455(Allahabad)*** that, in a mutation case, where Will is still subject to scrutiny of appropriate civil Court, then finding of civil Court will be binding on mutation court. (Para-15)
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> (ii) In a case between ***Noor Ahmad @ Chand vrs. Board of Revenue and others*** reported in ***2022(1) Civil Court Cases-391(Allahabad)***—Legality of Will, cannot be tested in mutation proceedings and could have been tested only in a regular proceedings.(Para-6)
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> (iii) In a case between ***Ashok Kumar Pati and another vrs. State of Orissa and others*** reported in ***2021(I)***

OLR-655—Contentious issue of title claim based on a Will cannot be decided by a Revisional Authority under Section 15(b) of OSS Act, 1958—Amount to exercise of excess jurisdiction—Issue of title can only be decided by a Civil Court.

(iv) In a case between ***Jitendra Singh vrs. State of Madhya Pradesh and others*** : reported in ***2021(4) Civil Court Cases(S.C.)-29***—Mutation—When an application for mutation is filed on the basis of Will, if dispute is with respect to title and more particularly, when mutation is sought on the basis of Will, such party has to get his rights crystalized by Civil Court and only thereafter on the basis of decision of Civil Court, necessary mutation entry can be made.(Para-5)

10. It is the clarified propositions of law according to the principles of law enunciated in the ratio of the above decisions of the Hon'ble Courts and Apex Court as well as Letter No.23734 dated 13.08.2019 of the Government of Orissa that, "Mutation cases in the areas inside the State of Odisha, those were coming under the ex-princely State, on the basis of un-probated Wills are entertainable by the Revenue Authorities and Tahasildars, but, if after initiation of mutation proceedings on the basis of un-probated Wills, any dispute either in respect to the genuineness of such un-probated Wills in question or any dispute concerning the properties covered

under the said Wills is raised, then, the Revenue Authorities and Tahasildars have no other option, but, to drop the mutation proceeding directing the parties to crystalize their rights by the Civil Court and only thereafter on the basis of the decision of the Civil Court, necessary mutation entry can be made. Because, in a mutation proceeding, Revenue Authorities and Tahasildars have no jurisdiction to decide any contentious issue based on a Will.

11. As per the discussions and observations made above, when, it is held that, there is no requirement for probation of the Will executed in favour of the writ petitioners (applicants in Mutation Case Nos.1453, 1454, 1455, 1456 & 1457 of 2025), because, the said Will dated 13.11.2019 has been executed in the District of Keonjhar, (which was under the ex-princely State) in respect of the properties under Harichandanpur Tahasil, then, at this juncture, orders dated 03.09.2025 (Annexure-4 series) passed by the Addl. Tahasildar, Harichandanpur (Opposite Party no.4) for the rejection of the Mutation Case Nos.1453, 1454, 1455, 1456 &1457 of 2025 of the petitioners on the ground of non-

probation of the Will dated 13.11.2019 cannot be sustainable under law.

For which, orders dated 03.09.2025 (Annexure-4 series) passed by the Opposite Party No.4 (Addl. Tahasildar, Harichandanpur) in Mutation Case Nos.1453, 1454, 1455, 1456 & 1457 of 2025 are to be quashed.

Therefore, the writ petition filed by the petitioners is allowed. Orders dated 03.09.2025 (Annexure-4 series) passed in Mutation Case Nos.1453, 1454, 1455, 1456 & 1457 of 2025 by the Opposite Party No.4 (Addl. Tahasildar, Harichandanpur) are quashed.

12. The Addl. Tahasildar, Harichandanpur (Opposite Party No.4) is directed to consider the mutation cases vide Mutation Case Nos.1453, 1454, 1455, 1456 & 1457 of 2025 afresh and to proceed with the same as per law following the formulated guidelines given in the ratio of the Judgment dated 18.02.2025 between ***Ramesh Chandra Sahu & Another Vs. The State of Odisha, represented through its Secretary Revenue and Disaster Management Department, Bhubaneswar & Others*** passed in ***WP(C) No.1848 of 2025***.

13. So, with the aforesaid findings, observations, clarifications and guidelines, this writ petition filed by the petitioners is disposed of finally.

(ANANDA CHANDRA BEHERA)
JUDGE

High Court of Orissa, Cuttack
The 23 .12. 2025// Rati Ranjan Nayak
Sr. Stenographer

Signature Not Verified
Digitally Signed
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