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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE PRANAY VERMA
ON THE 13th OF DECEMBER, 2023
WRIT APPEAL No. 2263 of 2023**

BETWEEN:-

1. SHAMBHUDAYAL AGRAWAL THROUGH LRS. RAJKUMAR AGRAWAL S/O LATE SHRI SHAMBHUDAYAL AGRAWAL, AGED ABOUT 73 YEARS, OCCUPATION: BUSINESS 131 SHANTI NIKETAN COLONY, INDORE (MADHYA PRADESH)
2. SMT. VIJLA BAI AGRAWAL W/O SHRI SHAMBHUDAYAL AGRAWAL, AGED ABOUT 70 YEARS, OCCUPATION: HOUSEWIFE 131 SHANTI NIKETAN COLONY, INDORE (MADHYA PRADESH)
3. SMT. EKTA W/O SHRI RAJKUMAR AGRAWAL, AGED ABOUT 40 YEARS, OCCUPATION: HOUSEWIFE 131 SHANTI NIKETAN COLONY, INDORE (MADHYA PRADESH)

.....APPELLANTS

(SHRI YOGESH HEMNANI, LEARNED COUNSEL FOR THE APPELLANTS)

AND

1. INDORE MUNICIPAL CORPORATION THROUGH THE COMMISSIONER INDORE MUNICIPAL CORPORATION INDORE (MADHYA PRADESH)
2. THE COMMISSIONER INDORE MUNICIPAL CORPORATION, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(NONE)

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*This appeal coming on for admission this day, Justice Sushrut Arvind
Dharmadhikari passed the following:*

ORDER

Heard on the question of admission.

The present writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya(Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 has been filed assailing the order dated 21.11.2023, passed in W.P. No.5007/2021 wherein, the appellants had challenged the validity of the order dated 24.07.2020, passed by the respondent No.2 whereby the renewal of the lease and mutation of their names have been rejected.

2. The brief facts of the case are that the land admeasuring 13440 Sq. ft. situated at 40/1, Pardeshipura, Indore was originally granted on lease for 30 years by the respondent IMC to one Madanlal S/o Shivbaksh. Later on, the said land was transferred to one V.V. Deshpande and it was further transferred to one Baldev Prasad S/o Shivilal. Baldev Prasad transferred the said land alongwith the superstructure to Dwarkadas Agrawal i.e. father of appellant No.1. Respondent No.1, thereafter, transferred the lease dated 10.12.1979 in the name of Dwarkadas Agrawal for the remaining period of lease up to 28.03.2009.

3. In pursuance to the Will dated 12.04.1980 bequeathing the land and the superstructure in favour of his grandson - Ajay son of Shankarlal, son Bholaram, and grandsons - Prakash and Manoj in the ratio of 50%, 20%, 20% and 10% respectively. Dwarkadas Agrawal had died on 12.01.1981. Thereafter, the legal representatives of Dwarkadas became owners of the land and the superstructure by virtue of the Will transferred the rights in the name of appellant no.1 vide gift-deed in the year 2016.

4. In pursuance to the aforesaid gift deed, the appellants applied before the IMC for renewal of the lease and mutation of their names in the municipal record. However, the application was rejected on the ground that the lease has

already expired on 28.03.2009 and after expiry of the lease, the lessee had no right to execute the Will, therefore, the gift-deed is prima facie illegal for want of authority and legal right. Being aggrieved, the writ petition was filed. The learned Single Judge dismissed the writ petition as the appellants had become encroachers after expiry of the lease period.

5. Learned counsel for the appellants contended that the order passed by the learned Single Judge is illegal, contrary to law, and, therefore, deserves to be set aside.

6. It is an admitted position that the mutation of the names cannot be done on the basis of Will/gift-deed in a proceedings before the revenue authorities. The remedy available to the appellants is to approach the Civil Court seeking declaration then only mutation can be done. In the present case, as per the gift-deed, the appellants were required to seek permission from the competent authority to alienate the property in question which has admittedly not been taken. The learned Single Judge held that the relief of quashment of the order dated 24.07.2020 passed by the respondent No.2, Commissioner and a direction to the respondents to renew of the lease and to mutate the names of the appellants in the municipal record cannot be done on the basis of gift-deed executed after expiry of the lease-deed and dismissed the writ petition. As per settled legal position, mutation in the revenue record cannot be done on the basis of Will/gift-deed directly without even seeking a declaration from the Competent Civil Court having jurisdiction.

7. The Supreme Court in the case of **Jitendra Singh v. State of Madhya Pradesh** by order dated 06.09.2021 passed in SLP (civil) No.13146/2021 has held as under:

“6. Right from 1997, the law is very clear. In the case of **Balwant Singh**

v. Daulat Singh (D) By Lrs., 8 MP No.38/2023 reported in **(1997) 7 SCC 137**, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

6.1 In the case of **Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186**, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of **Suman Verma v. Union of India, (2004) 12 SCC 58**; **Faqruddin v. Tajuddin (2008) 8 SCC 12**; **Rajinder Singh v. State of J&K, (2008) 9 SCC 368**; **Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689**; **T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342**; **Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191**; **Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259**; and **Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70**.”

8. The Supreme Court in the case of **H. Lakshmaiah Reddy v. L.Venkatesh Reddy**, reported in **(2015) 14 SCC 784** has held as under:

“8. As rightly contended by the learned Senior Counsel appearing for the appellants, the first defendant did not relinquish or release his right in respect of the half-share in the suit property at any point of time and that is also not the case pleaded by the plaintiff. The assumption on the part of the High Court that as a result of the mutation, the first defendant divested himself of the title and possession of half-share in suit property is wrong. The mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. The observations of this Court in Balwant Singh case are relevant and are extracted below: (SCC p. 142, paras 21-22)

“21. We have considered the rival submissions and we are of the view that Mr Sanyal is right in his contention that the courts were not correct in assuming that as a result of Mutation No. 1311 dated 19-7-1954, Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In **Sawarni v. Inder Kaur, Pattanaik, J.**, speaking for the Bench has clearly held as follows: (SCC p. 227, para 7)

“7. ... 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 mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.’

22. Applying the above legal position, we hold that the widow had not divested herself of the title in the suit property as a result of Mutation No. 1311 dated 19-7-1954. The assumption on the part of the courts below that as a result of the mutation, the widow divested herself of the title and possession was wrong. If that be so, legally, she was in possession on the date of coming into force of the Hindu Succession Act and she, as a full owner, had every right to deal with the suit properties in any manner she desired.”

9. The Supreme Court in the case of Suraj Bhan v. Financial Commr., reported in (2007) 6 SCC 186 has held as under :

“9. There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or *jamabandi* have only “fiscal purpose” i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (*vide Jattu Ram v. Hakam Singh*). As already noted earlier, civil proceedings in regard to genuineness of will are pending with the High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition.”

10. Thus, it is clear that mutation of name of a person on the basis of Will is not permissible and the Revenue Authorities have no jurisdiction to do so. If the preponder of the Will wants to take advantage of the Will, then he has to approach Civil Court for declaration of his title. The petitioners have already approached the Civil Court for declaration of their title. Therefore, in the light of the judgment passed by the Supreme Court in the case of Jitendra Singh (supra), it is held that the order of mutation on the basis of Will was *per se* illegal.

11. In view of the aforesaid, no illegality or irregularity has been

committed by the learned Single Judge in passing the impugned order dated 21.11.2023.

12. The writ appeal being bereft of merit and substance is hereby dismissed.

(S. A. DHARMADHIKARI)
JUDGE

(PRANAY VERMA)
JUDGE

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