2026:AHC:209145

# HIGH COURT OF JUDICATURE AT ALLAHABAD

**WRIT - B No. - 4060 of 2026**

Smt. Guddi Devi

.....Petitioner(s)

Versus

State Of U.P. And 6 Others

.....Respondent(s)

| | | |
|---|---|---|
| Counsel for Petitioner(s) | : | Arvind Kumar Maurya, Arvind Singh |
| Counsel for Respondent(s) | : | Surendra Pal, Ajay Shankar, C.S.C. |

**Court No. - 51**

**HON'BLE ARUN KUMAR, J.**

1. Heard Sri Arvind Kumar Maurya, learned counsel for the petitioner, learned Standing Counsel for the State respondent nos. 1 to 4 and Sri Surendra Pal, learned counsel for the respondent nos. 6 and 7.

2. The present petition has been filed challenging the order dated 15.07.2026, passed by respondent no. 2, arising out of proceeding under Section 35 of the U.P. Revenue Code, 2006.

3. Facts of the case are that the land in dispute belongs to one Netram, who executed a registered Will dated 01.01.2016 in favour of petitioner and respondent no. 5. On the death of Netram, the names of his sons as natural heirs were recorded on the basis of succession through PA Form-11. An application was moved by the petitioner alongwith respondent no. 5 for expunging the names of respondent nos. 6 and 7 and for recording their names on the basis of Will dated 01.01.2016. The Naib Tahsildar by his order dated 09.09.2024 allowed the said application directing that the names of petitioner alongwith respondent no. 5 be recorded over the land in dispute. The said order was modified by the order dated 21.09.2024 directing correction of clerical mistake in the operative portion of the order dated 09.09.2024. The appeal filed by the respondent nos. 6 and 7 was dismissed by the order of the Deputy District Magistrate dated 21.02.2025. The aforesaid orders were challenged in Revision No.905 of 2025 before the respondent no. 2 by the respondent nos. 6 and 7.

4. During pendency of the Revision No. 905 of 2025, the respondent nos.

6 and 7 filed Writ-B No. 1495 of 2025, challenging the orders passed by Naib Tahsildar and Deputy District Magistrate and further seeking a writ of mandamus directing the Board of Revenue to decide the stay application filed in the said revision. In the aforesaid writ petition, a direction was issued by the interim order of this court dated 09.05.2025 directing the parties to maintain status-quo regarding possession, nature and character of the land in dispute and the Board of Revenue was directed to hear and decide the revision expeditiously. Pursuant to the aforesaid order of this Court, passed in Writ-B No. 1495 of 2026, the Revision No.- 905 of 2025 has been allowed by the order dated 15.07.2026setting aside the orders passed by the Naib Tahsildar and Deputy District Magistrate relegating the matter back to the Naib Tahsildar, Vishalpur, Pilibhit for deciding the case afresh.

5. It is contended by the learned counsel for the petitioner that the order dated 09.09.2024 was passed after the Will was proved in accordance with law. It is further submitted that on the same date, Netram executed a sale deed whose validity has never been questioned, however, the validity of Will dated 01.01.2016 is being challenged on the ground that he died the very next day and was not in sound state of mind. It has been further stated that the names of respondent nos. 6 and 7 have been recorded on the basis of succession immediately after the death of Netram, as such, the petitioner was not heard. Submission is that in the fact of the case, the order under challenge passed by the Board of Revenue is liable to be set aside.

6. Per contra, learned counsel appearing for the respondent nos. 6 and 7 has contended that the Will was not proved in accordance with Section 68 of the Indian Evidence Act as there exists discrepancy in the witnesses of Will inasmuch as interpolation has been made by scoring out the name of earlier witness Budhdev and writing the name of Dhanpal. It is further submitted that as the respondent nos. 6 and 7 are in possession of the land in dispute, their names cannot be expunged unless the Will is established to have been executed in accordance with law by a competent civil court. It is also pointed out that a civil suit challenging the veracity of Will is also pending before the competent civil court. Submission is that the Will cannot be executed to have been proved by denying opportunity of cross-

examination of the witnesses, by the respondent nos. 6 and 7, who are the recorded tenure-holders. Argument is that in summary proceedings the Naib Tahsildar has no authority to adjudicate the veracity of Will. Moreover, the mutation proceedings are only for fiscal purposes and no right is created or extinguished in favour of any person by recording his name in the revenue records.

7. I have heard the submissions of learned counsel for the parties and perused the record.

8. The claim of petitioner is on the basis of Will dated 01.01.2016. The execution of a sale deed on the same day by Netram, which is not under challenge before any forum, in itself does not justifies that he was in sound mental state when the Will was executed, particularly when he died the very next day. Moreover, the Hon'ble Supreme Court in the case of **Tara Chand vs. Bhawarlal and others**, (2025) SCC Online SC 2902 held that once mutation on basis of Will is disputed, the Tahsildar has no jurisdiction to adjudicate the validity of Will and record the name of persons claiming right under it.

9. Where mutation is claimed on the basis of a disputed Will involving complicated questions regarding its execution or genuineness, the revenue authorities are not expected to render a final adjudication on title. They may, for the limited purpose of mutation, pass an appropriate order subject to the rights of the parties to obtain an adjudication from the competent civil court. Any order of mutation would remain subject to any decree or declaration that may be granted by the competent civil court.

10. The Hon'ble Supreme Court in **Tara Chand (supra)** has reiterated the aforesaid proposition of law, which reads as under:

> *"....., in a case of serious dispute regarding the validity/ genuineness of the will including competence of testator?s capacity to execute it, or where there are two rival wills set up, it would be a dispute beyond the competence of the Tahsildar to decide, and in such a case the appropriate course for the parties would be to approach the Civil Court to get the dispute adjudicated."*

11. The writ jurisdiction under Article 226 is primarily concerned with the decision-making process. The finding recorded by the Tehsildar, upholding the validity of the Will on the basis of the statement of its marginal witnesses, was beyond his jurisdiction and was rightly set aside by the by the Board of Revenue. Such findings do not ordinarily warrant interference under Article 226 unless shown to be perverse, unsupported by evidence, or suffering from jurisdictional error. In the present case, no material has been placed before this Court to demonstrate that the finding recorded by the Tehsildar upholding the valid execution of a Will on the basis of the statement of the marginal witnesses, in the absence of their cross-examination, was permissible under law, in summary proceedings of mutation.

12. It is not in dispute that the mutation proceedings with regard to correction of revenue entries are for fiscal purposes only. They neither create nor extinguish right of the parties nor they have any presumptive value on the title.

13. It is settled legal position that the mutation proceedings are summary in nature and cannot decide question of title or adjudicate upon the veracity of the document, which can form the basis of title of a person. The orders passed in such proceedings do not come in the way of a person getting his rights adjudicate in regular suits.

14. The proposition that mutation entries in revenue records do not create or extinguish title over land nor such entries have any presumptive value on title has been restated in a recent decision in the case of **Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company & Ors.**, (2019) 3 SCC 191, placing reliance upon earlier decisions in **Balwant Singh Vs. Daulat Singh and Narasamma Vs. State of Karnataka**, (2009) 5 SCC 591. The observations made in the judgment are as follows:-

> *"6. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay*

*the land revenue in question. (See Sawarni v. Inder Kaur, Balwant Singh v. Daulat Singh and Narasamma v. State of Karnataka)."*

15. Reference may also be had to the judgment in **Faqruddin Vs. Tajuddin**, (2008) 8 SCC 12, wherein it was held that the revenue authorities cannot decide questions of title and that mutation takes place only for certain purposes. The observations made in this regard are as follows:-

*"45. Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense... It is well-settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title."*

16. A similar observation was made in **Narain Prasad Aggarwal Vs. State of Madhya Pradesh**, (2007) 11 SCC 736, wherein it was held as follows:-

*"19. Record-of-right is not a document of title. Entries made therein in terms of Section 35 of the Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable..."*

17. In view of the aforesaid facts and the law laid down by the Hon'ble Supreme Court, no interference is warranted by this Court in the present petition challenging the order of respondent no.2 15.07.2026.

17. The present petition being devoid of merit is, accordingly, dismissed. However, the petitioner will be at liberty to get her right declared on the basis of Will dated 01.01.2016 by the court of competent jurisdiction by availing the remedy as available to her under common law.

18. As the final decision is yet to be taken by the Naib Tehsildar,

Vishalpur, Pilibhit pursuant to order dated 15.07.2026, passed by the respondent no. 2 in Revision No. 905 of 2025, the concerned Authority is directed to decide the pending proceedings, in accordance with law, within a period of three months from the date of presentation of a certified copy of this order. Till the case is finally decided by the Naib Tehsildar/ Tehsildar, the parties shall maintain status-quo regarding the nature and possession of the land in dispute and shall not create any third party interest in it.

**(Arun Kumar,J.)**

**October 6, 2026**
Ashok Kr.

Digitally signed by :-
ASHOK KUMAR
High Court of Judicature at Allahabad