HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 4648 of 2026

Amlawati Devi And 3 Others

.....Petitioner(s)

Versus

State Of U.P. And 7 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Manoj Kumar Maurya
Counsel for Respondent(s)	:	Amit Kumar Singh, C.S.C., Digambar Dwivedi

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Court No. - 51

HON'BLE ARUN KUMAR, J.

1. Heard Sri Manoj Kumar Maurya, learned counsel for the petitioners, learned Standing Counsel for the respondent nos.1 to 4 and Sri Amit Kumar Singh, learned counsel for the respondent nos.5 to 8.

2. The present writ petition has been filed challenging the order dated 6.8.2026, passed by respondent no.2, allowing the revision filed by respondent nos.5 to 8 arising out of proceedings under Section 34/35 of the U.P. Revenue Code, 2006/U.P. Land Revenue Act, 1901.

3. Facts of the case giving rise to the present petition are that after the death of Balesar, on the basis of Will dated 30.7.1990 executed in favour of respondent nos.5 to 8, their names were recorded. Jalesar, his brother, filed a recall application for setting aside the order dated 30.7.1990, which was rejected by the order dated 27.8.1990. The appeal filed against the aforesaid order was allowed and the matter was remanded back to be decided afresh. By the order dated 30.5.2006, the claim of Jalesar was accepted. The said order was subsequently set aside in appeal and the matter was again relegated back to the Tehsildar. The Tehsildar by his order dated 7.11.2015 allowed the claim of respondent nos.5 to 8 recording a categorical finding that the Will dated 20.2.1984 executed in their favour was proved in accordance with law and the order dated 27.8.1990 was just and proper.

4. Against the order of the Tehsildar dated 7.11.2015, the petitioners filed a recall application, which was rejected by the order of Tehsildar dated 20.3.2024. The appeal filed by the petitioners was allowed by the order of the Deputy District Magistrate, Salempur dated 20.5.2025. The said order has been set aside in revision by the respondent no.2 by its order dated 6.8.2026, which is the subject matter of challenge in the present writ petition.

5. It is contended by learned counsel for the petitioners that the petitioners are the heirs of Jalesar, the brother of Balesar, whose share in the land in dispute is the subject matter of the present proceeding. It has been further contended that as the Will was disputed by Jalesar immediately after passing of the order dated 30.7.1990, therefore, the said order was rightly set aside and the contesting respondents were required to get their rights declared under the said Will, in accordance with law. It has been further contended that Balesar died on 5.9.1979, therefore, the Will dated 20.2.1984 in favour of respondent nos.5 to 8 is a forged and fabricated document. It is further contended that by the order dated 20.5.2025, the matter was relegated back to be decided afresh, in which the contesting respondents would get appropriate opportunity to establish their claim. The order of respondent no.2 setting it aside has completely shut the doors of the petitioners upholding the order of the Tehsildar dated 7.11.2015.

6. Per contra, learned counsel appearing for the respondent nos.5 to 8 has contended that the petitioner no.1 is not the legally wedded wife of Jalesar, as the name of his wife was Maya Devi. The said fact has also been considered by the Deputy District Magistrate while allowing the appeal of the petitioners. It is further contended that the petitioners failed to establish the date of death of Balesar as 5.9.1979 by any cogent evidence. It has been further contended that the order dated 7.11.2015 passed in favour of respondent nos.5 to 8 are being challenged by the petitioners being the heirs of Jalesar but as Jalesar himself had no right to succeed as the heirs of Balesar, therefore, the present petition on behalf of his alleged heirs is not maintainable.

7. I have considered the submissions made by learned counsel for the

parties and perused the records.

8. The order of respondent no.2 dated 6.8.2026 observes that Jalesar had himself accepted the fact that at the time of date of death of Balesar, her mother was alive. Thus, on the date of death of Balesar, her mother alone could have inherited his share in the absence of any Will executed by him. As the respondent nos.5 to 8 were recorded on the basis of Will, after examination and cross-examination of the attesting witness, the objections raised by Jalesar against the order dated 30.7.1990 on the basis of succession itself was not maintainable. The said finding recorded by the respondent no.2 has not been challenged by the petitioners in the present writ petition. Moreover, the challenge to the Will on the ground that Balesar had died prior to 20.2.1984, when the Will was executed, has not been proved by any material evidence on record. The said observation also finds part of the order of the Deputy District Magistrate, but no positive finding has been recorded in the order dated 20.5.2025 passed by her regarding the date of death of Balesar. The respondent no.2 while allowing the revision has recorded a finding that the appellate authority while allowing the appeal had not considered the fact that whether the petitioner no.1 had right to inherit the property of Jalesar during the life time of her first wife Maya Devi, as she had all along been raising objection against the fact that, petitioner no.1 was the legally wedded wife of Jalesar.

9. In view of the aforesaid facts, the order of respondent no.2 setting aside the order passed by the Deputy District Magistrate dated 20.5.2025 observing that the settled position since 1990 does not warrant interference in the aforesaid circumstances, requires no interference by this Court, at this stage.

10. The orders passed in mutation proceedings are only for fiscal purposes, which do not create or extinguish right of any person. The orders in summary proceedings of mutation are always subject to final adjudication made by the court of competent jurisdiction. Learned counsel appearing for the respondent nos.5 to 8 has informed that the suit for cancellation of the Will dated 20.2.1984 has already been instituted by the petitioners, which is pending consideration before the civil court.

11. In view of the aforesaid discussions, no good ground for interference is made out. The writ petition lack merits and is, accordingly, dismissed.

(Arun Kumar,J.)

October 29, 2026
Anil

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