

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>WPMS No. 2009 of 2022</p> <p><u>Hon'ble Manoj Kumar Tiwari, J.</u></p> <p>Mr. Pawan Mishra, learned counsel for the petitioner.</p> <p>Heard learned counsel for the petitioner and perused the record.</p> <p>Respondent nos. 1 & 2 filed application seeking mutation of their name in place of petitioner, in revenue records, on the strength of a sale deed dated 17.03.2008, alleged to have been executed in their favour. Respondent no. 3 also filed another mutation application in which he relied upon a sale deed dated 25.07.2008 alleged to have been executed by respondent no. 1 in his favour. Both mutation applications were allowed by Tehsildar, Roorkee, District Haridwar vide order dated 11.09.2012. Petitioner filed a restoration application, which was rejected by Tehsildar, Roorkee vide order dated 19.12.2012. Petitioner thereafter filed Appeal, which was dismissed by Assistant Collector, Roorkee vide judgment dated 25.01.2016. Revision filed by petitioner too was dismissed by Additional Commissioner, Garhwal vide judgment dated 12.02.2020. Thus feeling aggrieved, petitioner has approached this Court.</p>

It is a fact that petitioner had filed suit for cancellation of sale deed contending that he had not executed any sale deed in favour of respondent nos. 1 & 2 and the sale deed was prepared by trick photography. The said suit was dismissed by learned Civil Judge (J.D.), Roorkee, District Haridwar and petitioner's Appeal is pending before District Judge, Haridwar.

Mutation of name in respect of agricultural land in revenue records is governed by U.P. Land Revenue Act, 1901. Proviso to Section 33 (2) (b) of the said Act provides that the power to record a change under clause (b) shall not be construed to include the power to decide a dispute involving any question of title. Similar stipulation is made in proviso to Section 39 (2) of the said Act. Section 40-A of the said Act provides that order of mutation shall not come in the way of any party if he approaches a competent court for declaration of his right. Section 40-A of the said Act reads as under: -

"Section 40-A Saving as to title suits- No order passed under Section 33, Section 35, Section 39, Section 40, Section 41 or Section 54 shall bar any suit in a competent court for relief on the basis of a right in a holding."

Hon'ble Supreme Court in the case of Jitendra Singh Vs. The State of Madhya Pradesh & others, reported in 2021 SCC Online SC 802, has considered & discussed the scope

of mutation proceedings. The relevant extract of the said judgment is reproduced below:

“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 crystallised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.

7. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., 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.

8. In the case of SurajBhan 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; Faqrudin 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. ChinnaNarasimha, (2017) 7 SCC 342; BhimabaiMahadeoKambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; PrahladPradhan v. SonuKumhar, (2019) 10 SCC 259; and AjitKaur v. Darshan Singh, (2019) 13 SCC 70."

Thus, mutation of name in respect of agricultural land 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 land revenue. The proceedings under Section 34/35 of Land Revenue Act 1901 are summary in nature, which are subject to provision contained in Section 40-A of the said Act.

In the present case, the mutation application filed by respondents was allowed by Tehsildar. The Appellate as well as Revisional Authority has affirmed the order passed by Tehsildar, whereby he ordered mutation of names of respondent nos. 1, 2 & 3, based on the sale deeds executed in their favour.

Petitioner contends that he had not

executed any sale deed in favour of respondent nos. 1 & 2. The revenue authority while considering mutation application cannot go into the validity of sale deed and such question can only be decided by a competent Court of law.

Petitioner had approached Civil Court seeking cancellation of sale deed executed in favour of respondent nos. 1 & 2 however, his suit was dismissed. Now, the matter is pending before the Appellate Court.

From the legal position, as discussed above, it is apparent that mutation proceedings are summary in nature, which are subject to finding recorded in a regular suit.

Since the question of title cannot be gone in summary proceedings, therefore, I do not find any reason to interfere with the order passed by Tehsildar, as affirmed by Assistant Collector and Additional Commissioner, Garhwal. Thus, there is no scope of interference.

Accordingly, writ petition fails and is dismissed. However, mutation entries, made pursuant to impugned orders, shall abide by the decision in pending appeal before District Judge, filed by petitioner.

(Manoj Kumar Tiwari, J.)

05.09.2022