

HIGH COURT OF MADHYA PRADESH

WP-11871-2021

(RAJKUMAR SHARMA AND OTHERS VS MANJESH KUMAR)

Gwalior, Dated : 11.08.2021

Shri Prashant Singh Kaurav, learned counsel for the petitioner.

Shri Abhishek Singh Bhaduriya, learned counsel for respondent
No.1.

With consent, heard finally.

The present petition has been filed challenging the order dated 28.06.2021 passed by the Additional Commissioner, Gwalior Division, whereby the order dated 25.07.2016 passed by the Upper Collector, Datia and order dated 31.03.2011 passed by the Sub-Divisional Officer, Bhander, District Datia have been quashed thereby mutating the name of respondent in the Revenue Record.

It is submitted that upon the death of Balikdas S/o Panni, respondent filed an application before the Tahsildar for entering their names in the Revenue Records on the basis of *Will*. The petitioners also filed an application for mutation of their names over the said land on the basis of hereditary succession. These applications were heard jointly before the Tahsildar and thereafter an application was preferred before the learned SDO for transferring the matter. The said application was allowed and the learned SDO vide order dated 31.03.2011 directed to record the name of the petitioners. Assailing the order dated 31.03.2011, the respondent preferred an appeal before the learned Upper Collector, District Datia and the same was dismissed vide order

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dated 25.07.2016. Thereafter, the matter was put forth before the Additional Commissioner challenging both the orders dated 31.03.2011 and 25.07.2016 on the ground that the Balikdas was unmarried and *Will* was executed in their favor and on the basis of the *Will* their names deserves to be mutated, whereas, it was the case of the petitioner that since the Balikdas remained unmarried, but having blood relations through males and as per the provision of Section 8(c) of the Hindu Succession Act, 1959 when there is no heir of any of the two classes, then the property shall devolve upon the agnates of the deceased.

It is submitted that the learned SDO vide its order dated 31.03.2011 has considered the aforesaid legal aspect and has passed the order of mutation on this basis and the same was affirmed by the learned Collector. While in the second appeal, the Additional Collector has failed to appreciate this legal aspect and has passed the impugned order has directed for mutation of name of the basis of will. It is submitted that once, the *Will* on the basis of which the mutation is sought, the same is objected, then no mutation can be done on the basis of *Will*. The Revenue Authorities are having no right to check the genuineness of the *Will* and mutate the name on the basis of *Will* in question, rather, it is the domain of Civil Courts. The person alleging has mutation on the basis of the *Will* if objected is required to get the

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genuineness of the *Will* checked by filing appropriate proceedings before the Civil Courts. The aforesaid question was considered by this Court in **M.P. No.23/2021(Kusum Bai and another Vs. Ummedi Bai)** decided on 16.02.2021, wherein a detailed order has been passed and it is held that the Revenue Authorities are having no jurisdiction to get the mutation done on the basis of *Will*. He has further relied upon the order passed by the Coordinate Bench of this Court in **M.P. No. 5345/2019(Avnish Kumar Vs. Satyaprakash)** decided vide order dated 29.11.2019, wherein the similar controversy has been put to rest. In such circumstances, it is submitted that the order impugned is bad in law and prays for setting aside of the same.

Per contra, learned counsel for the respondent has opposed the arguments made by the petitioner stating that the order passed by the Authorities on the basis of the *Will* is well reasoned and justified order. In case, the *Will* in question was duly checked by the Authorities by getting their statements recorded. In case, petitioners want their names to be mutated on the basis of succession, then they are required to establish their succession under the Hindu Succession Act and mere entry in the Revenue Records, on the basis of *Will*, he will not have title over the property in question. They are required to get the title over the suit property in terms of the Sec. 8 of the Hindu Succession Act. He supports the impugned order and has argued that the same is

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well reasoned order and does not call for any interference in the present petition. He has prayed for dismissal of the same.

Heard learned counsel for the parties and perused the record.

From perusal of the record it is seen that the mutation is being sought only on the basis of *Will* which is objected by the other party. The learned SDO has recorded the names of all the family members only on the basis of succession and which was affirmed by the Additional Collector, but the Additional Commissioner has set aside the orders passed by the learned SDO as well as Additional Collector and has directed for mutation on the basis of the *Will*. It is not disputed that the will in question is not objected by the other party. In such circumstances, this Court has already considered the aforesaid question and has passed as detailed order in M.P. No.23/2021, wherein it is held that the Revenue Authorities are having no jurisdiction to consider the genuineness of the *Will*.

The Hon'ble Supreme Court in the case of **Niranjan Umeshchandra Joshi Vs. Mrudula Jyoti Rao, (2006) 13 SCC 433** has considered the mode and manner of the execution of *Will* of an unprivileged will and has held as under:

"32. Section 63 of the Succession Act lays down the mode and manner of execution of an unprivileged will. Section 68 of the Evidence Act postulates the mode and manner of proof

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*of execution of document which is required by law to be attested. It in unequivocal terms states that execution of will must be proved at least by one attesting witness, if an attesting witness is alive subject to the process of the court and capable of giving evidence. A will is to prove what is loosely called as primary evidence, except where proof is permitted by leading secondary evidence. Unlike other documents, proof of execution of any other document under the Act would not be sufficient as in terms of Section 68 of the Evidence Act, execution must be proved at least by one of the attesting witnesses. While making attestation, there must be an *animus attestandi*, on the part of the attesting witness, meaning thereby, he must intend to attest and extrinsic evidence on this point is receivable.*

33. *The burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the*

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onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. (See Madhukar Jayaraja Shetty.) Subject to above, proof of a will does not ordinarily differ from that of proving any other document.

34. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

- (i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;*
- (ii) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;*
- (iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.*

(See H. Venkatachala Iyengar V. B.N. Thimmajamma and Management Committee, T.K. Ghosh's Academy V. T.C. Palit.)

35. We may not delve deep into the decisions cited at the Bar

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as the question has recently been considered by this Court in B.Venkatumuni v. C.J. Ayodhya Ram Singh, wherein this Court has held that the court must satisfy its conscience as regards due execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved."

This Court in similar circumstances in the case of **Kusum Bai (Supra)** has held as under:-

"(12) From the perusal of the aforesaid provisions it is apparently clear that the acquisition of right is a crucial important aspect which is required to be kept in mind while deciding the application under section 110 of M.P. Land Revenue Code. The Tahsil Court who has dealing with the application under section 110 of M.P. Land Revenue Code has no jurisdiction to deal with the rights and title of the property in question. The Tahsildar has no jurisdiction to consider and decide the genuineness of the Will."

Considering the aforesaid, the order passed by the Authorities is bad in law, accordingly, the same is hereby quashed. It is also settled position that *Will* is to be proved by leading cogent evidence and the heavy burden is on the propounder of the *Will*. In such circumstances,

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the liberty is extended to respondent to get the *Will* checked by initiating the proceedings before the trial Courts.

With the aforesaid observations, the petition is disposed off. No order as to costs.

(Vishal Mishra)
Judge

LJ*/-