

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CWP No.6978 of 2024

Date of decision: 19.07.2024

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Shanker Singh Verma & Ors.

...Petitioners.

Versus

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State of H.P. & Anr.

...Respondents.

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*Coram:*

***Ms. Justice Jyotsna Rewal Dua, Judge.***

*Whether approved for reporting?<sup>1</sup> Yes*

For the petitioners : Mr. H.K.S. Thakur, Advocate.

For the respondents : Mr. Y.P.S. Dhaulta, Additional  
Advocate General, for  
respondent No.1/State.

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**Jyotsna Rewal Dua, Judge**

Taking note of the pendency of civil litigation between the contesting parties over validity of the Will and the mutation attested on that basis as well as the interim order passed by learned Civil Court, the revenue authorities have rejected petitioners' prayer to quash the mutation order with the observation that the Civil Court decision shall prevail. Not satisfied, petitioners have instituted this writ petition.

**2. Facts.**

**2(i).** On the basis of a registered Will bearing No.151 dated 15.07.2021 executed by late Sh. Hari Singh, Mutation No.60 was attested on 14.09.2021 in favour of respondent No.2.

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<sup>1</sup> ***Whether reporters of Local Papers may be allowed to see the judgment? Yes***

**2(ii).** Petitioners instituted Civil Suit No.49 of 2021 against respondent No.2, *inter alia*, laying challenge to the registered Will dated 15.07.2021 as also the Mutation No.60 attested on the basis of the registered Will. Petitioners setup another Will dated 20.08.2018 alleged to have been executed in their favour by late Sh. Hari Singh.

**2(iii).** It appears that respondent No.2 also filed a separate civil suit questioning validity of the Will propounded by the petitioners.

**2(iv).** Besides challenging the mutation before the Civil Court, the petitioners filed an appeal under Section 14 of the Himachal Pradesh Land Revenue Act, 1954, against Mutation No.60 before the Collector on 30.12.2021. The Collector noticed the institution of civil suit by the petitioners and their challenge therein to the registered Will No.151 dated 15.07.2021 as also to the Mutation No.60 attested on that basis, and dismissed the appeal on 03.04.2023 with the observation that attestation of mutation was only for updation of revenue record.

**2(v).** Feeling aggrieved against the order passed by the Collector, the petitioners instituted revision petition before

the Financial Commissioner. The Financial Commissioner dismissed the revision petition on 08.02.2024 holding that final order of Civil Court will prevail.

In the above background, petitioners have now come up in this writ petition against the orders passed by the Revenue Authorities.

**3. Learned counsel for the petitioners** contended that if a mutation entry is sought to be made on the basis of a Will, then the party claiming right on the basis of the Will, has to approach the Civil Court to get his rights crystallized and it is only thereafter, on the basis of decision of the Civil Court, necessary mutation entry can be made. Reliance in support of this submission was placed upon following paragraph from the decision rendered by the Hon'ble Apex Court in ***Jitendra Singh vs. The State of Madhya Pradesh & Ors.***<sup>2</sup>:-

*“5. We have heard Shri Nishesh Sharma, learned Advocate appearing for the petitioner. 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*

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<sup>2</sup>SLP (C) No.13146/2021 decided on 06.09.2021

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

**4. Consideration.**

For the following reasons, I do not find any merit in petition:-

**4(i)** In *Jitender Singh's* case<sup>2</sup>, relied upon by the learned counsel for the petitioners, the Will was presented for attestation of mutation during lifetime of the testator. The parties disputing the Will had not assailed the Will before the Civil Court. In that factual matrix, the High Court held that the remedy available to the petitioner would be to file a civil suit for crystallizing his rights and only thereafter, the

necessary consequence shall follow. The judgment of the High Court was affirmed by the Hon'ble Apex Court.

**4(ii).** Facts of the instant case are different from the facts in *Jitender Singh's* case<sup>2</sup>.

In the present case, Mutation No.60 stood already entered and attested on 14.09.2021 in favour of respondent No.2 on the basis of the registered Will dated 15.07.2021. Civil Suit was instituted thereafter by the petitioners on 24.09.2021 laying challenge to the registered Will dated 15.07.2021 as also to the Mutation No.60 attested on that basis. The petitioners in their Civil Suit have also setup a counter Will allegedly executed by the deceased in their favour on 20.08.2018. The Will propounded by the petitioners is prior in time to the execution of registered Will set up by respondent No.2. Mutation No.60 has been attested on the basis of later Will. It was also disclosed during hearing that a counter civil suit has also been filed by respondent No.2 against the petitioners challenging the Will setup by the petitioners.

**4(iii).** It is also a fact that in the civil suit instituted by the petitioners, learned Civil Court has already ordered the

parties to maintain *status quo* qua the nature, possession, construction and alienation of the suit property till the final disposal of the suit. The interest of the parties are therefore duly protected.

**4(iv).** In ***Suraj Bhan & Ors. vs. Financial Commissioner & Ors.***<sup>3</sup>, there was dispute concerning validity and genuineness of the Will and also about a mutation attested on the basis of disputed Will. Hon'ble Apex Court held that validity and genuineness of the Will can only be decided by a Competent Civil Court. By entering name of the respondent (therein) in the record-of-rights on the basis of disputed Will, no illegality was committed by the Tehsildar. An entry in the revenue record does not confer title on a person, whose name appears in the record-of-rights. Such entries have only fiscal purpose, i.e. payment of land revenue and no ownership is conferred on the basis of such entries. Title to the property can only be decided by a Competent Civil Court. Relevant paras from the judgment are as under:-

*“7. We have heard learned counsel for the parties. We have also perused the relevant record.*

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<sup>3</sup>(2007) 6 SCC 186

*From the record, it is clear that the main question relates to genuineness or otherwise of Will dated April 14, 1989 said to have been executed by Ratni Devi in favour of respondent No. 5. The validity and genuineness of the Will can only be decided by a competent Civil Court. A suit had already been instituted in a Civil Court and though it was dismissed, the order is subject matter of appeal pending in the appellate court. It is, therefore, neither desirable nor advisable to express any opinion on that question and as and when the matter will come up for hearing, it will be decided on its own merits by the High Court where it is pending.*

8. *So far as mutation is concerned, it clear that entry has been made and mutation has been effected in Revenue Records by Tehsildar on the basis of an application made by respondent No.5 herein and his name has been entered in Record of Rights on the basis of the Will said to have been executed by Ratni Devi. In our opinion, therefore, it cannot be said that by entering the name of respondent No. 5 in Revenue Records, any illegality had been committed by Tehsildar. It is true that no notice was issued to the appellants but the Tehsildar had taken the action on the basis of Will said to have been executed by deceased Ratni Devi in favour of respondent No. 5. The said order has been confirmed by the Collector as also by Financial Commissioner. When the grievance was made against the said action by filing a Writ Petition, the High Court also confirmed all the orders passed by Revenue Authorities under the Act. We see no infirmity so far as that part of the order is concerned.*

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 and Ors., AIR 1994 SC 1653). As already noted earlier, Civil Proceedings in regard to genuineness of Will are pending with 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."*

It is well settled that mutation entry does not confer or convey any title. Attestation of mutation is only a ministerial act to keep the revenue record straight and updated. It will be the order passed by the Civil Court that will have the binding effect over the orders passed by the Revenue Authorities. Mutation No.60 attested in favour of respondent No.2 on the basis of registered Will dated 15.07.2021 will certainly abide by the judgment and decree that would be passed by the Civil Court in Civil Suit No.49/2021 instituted by the petitioners against respondent No.2. Once the Will, on the basis of which the mutation in question was attested, is the subject matter of the civil suit, there is no point in seeking to set aside that mutation as that relief has already been prayed for before the learned Civil Court and it is the order of the Civil Court that would be



binding. For protecting the interest of the parties, learned Trial Court has already directed the parties to maintain *status quo* qua nature, possession, construction and alienation of the suit property.

No other point was urged.

**5.** The result of above therefore is that there is no error in the impugned orders. Hence, finding no merit in the petition, the same is dismissed. Pending miscellaneous application(s), if any, shall also stand dismissed.

19<sup>th</sup> July, 2024  
(Pardeep)

**Jyotsna Rewal Dua**  
**Judge**