
(2013) 07 MP CK 0107
In the Madhya Pradesh High Court
Case No : Writ Petition 1587 of 2013

Smt Prema Bai and Others

APPELLANT

Vs

Sultan Singh and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 109, 110

Citation : (2013) 07 MP CK 0107

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : B.B. Shukla, for the Appellant; N.K. Gupta, Advocate for respondent No. 1 and Shri Manish Sayal, Advocate for respondents 2 to 6, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.—Heard finally. The petitioners have filed this petition challenging the order dated 7/2/2013 passed by the Board of Revenue (Annexure P/1), order dated 27/2/2012 passed by the Additional Collector, Gwalior (Annexure P/2) and the order dated 14/9/2011 passed by the Sub Divisional Officer, Gwalior (Annexure P/3).

2. Respondent No. 1 Sultan Singh submitted an application for mutation before the Tahsildar on the ground that he had purchased the land having an area 0.433 hectare situated at village Badagaon, Gwalior, vide registered sale deed, hence, his name be mutated against the aforesaid land in the revenue record as the owner. He also filed copy of the sale deed dated 14/9/2009 alongwith his application for mutation. Present petitioners objected to the mutation proceedings and they submitted that they did not execute the sale deed as claimed by respondent No. 1 and a fraud was played with them. They are illiterate persons and they were called on the pretext that a partition of the property would be held and thereafter their signatures were obtained. When they came to know about the execution of the sale deed, complaints were submitted to the Collector and Superintendent of Police. The Tahsildar after observing that

objectors have objected that they did not execute the sale deed and their signatures were obtained by fraud, refused to order mutation. Against the aforesaid order of Tahsildar, an appeal was filed by respondent No. 1 before the Sub Divisional Officer. The Sub Divisional Officer partly allowed the appeal and remanded the matter back to Tahsildar with a direction to pass orders of mutation on the basis of registered sale deed in accordance with sections 109 and 110 of the MP Land Revenue Code (for brevity, the "Code"). Against the order of the Sub Divisional Officer, a revision was preferred before the Additional Collector, Gwalior, but that has been dismissed and second revision before the Board of Revenue also stood dismissed vide order Annexure P/1.

3. Learned counsel for the petitioners has submitted that Tahsildar has passed the order in accordance with law and in accordance with the provisions of section 110 of the Code and the rules made thereunder, hence, the order passed by the Sub Divisional Officer and other authorities are illegal.

4. Per contra, learned counsel appearing on behalf of respondent No. 1 has submitted that the order passed by the Sub Divisional Officer is in accordance with law.

5. Respondents 2 to 6 have supported the case of the petitioners.

6. Respondent No. 1 claimed mutation on the basis of registered sale deed (Annexure P/5) dated 14th September, 2009. The petitioners objected to the mutation proceedings and they pleaded that they did not sign the registered sale deed and their signatures were obtained by playing fraud with them because they are illiterate persons and were called on the pretext that there would be a partition of the property. They further stated that thereafter complaints were submitted to the Collector and Superintendent of Police. The Tahsildar accepted the objections and refused to order mutation. Presently, respondents No. 2 to 6 who are also the executants of the sale deed supported the petitioners. That apart, the petitioners have filed a civil suit for declaration and permanent injunction and it is pending for adjudication. The Sub Divisional Officer only remanded the case on the ground that because a registered sale deed was executed hence, it is obligatory on the part of Tahsildar to pass order of mutation. In my opinion, the reasoning put forth by the Sub Divisional Officer and other authorities are contrary to law.

7. Section 110 of the Code prescribes a procedure of mutation. It thus reads:

[110. Mutation of acquisition of right in Field Book and other relevant land records.--(1) The Patwari shall enter into a register prescribed for the purpose every acquisition of right reported to him u/s 109 or which comes to his notice from intimation from Gram Panchayat or any other source.

(2) The Patwari shall intimate all the reports regarding acquisition of right received by him under sub-section (1) to the Tahsildar within thirty days of the receipt thereof by him.

(3) On receipt of the intimation from patwari under sub-section(2), the Tahsildar shall have it published in the village in the prescribed manner and shall also give written intimation thereof to all person appearing to him to be interested in the mutation and also to such other person and authorities as may be prescribed.

(4) The Tahsildar shall after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry, as he may deem necessary, make necessary entry in the Field Book and other relevant land record.]

8. Under the aforesaid section, rules have also been framed in regard to Preparation of Record of Rights. Rule 32 reads thus:

Disputes shall be decided summarily by the Tahsildar on the basis of title and not possession. Any transfer by a person whose name is not recorded in the Khasra shall not be admitted in mutation by the Tahsildar. The order shall contain the names of the parties and witnesses and a brief summary of the evidence produced by either side together with the Tahsildar findings thereon.

9. In accordance with the aforesaid rule, the Tahsildar has power to decide summarily the disputes on the basis of title.

10. In the instant case, the Tahsildar has decided the dispute. He held that prima facie he found that the sale deed could not be accepted because there were objections about the execution of the sale deed. Hence, he rightly refused the mutation. The finding of the Sub Divisional Officer that on the basis of registered sale deed the Tahsildar has to order mutation is contrary to the provisions of the rules.

11. Hence, this petition is allowed. Impugned orders - dated 14/9/2011 passed by the Sub Divisional Officer, Gwalior (Annexure P/3), dated 27/2/2012 passed by the Additional Collector, Gwalior (Annexure P/3) and the order dated 7/2/2013 passed by the Board of Revenue (Annexure P/1) are hereby quashed. No order as to costs. It is hereby clarified that the findings given by this Court are primary and are subject to decision of the civil suit.