

(2025) 04 OHC CK 1377

In the Orissa High Court

Case No : Writ Petition (C) No. 8781 Of 2025

Umesh Chandra Samanta

APPELLANT

Vs

State Of Odisha, Represented Through Its Secretary Revenue
And Disaster Management Department, Bhubaneswar And
Others Vs

RESPONDENT

Date of Decision : 16-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Indian Succession Act, 1925 — Section 57 Orissa Survey and Settlement Act, 1958 -
Section 15(b)

Citation : (2025) 04 OHC CK 1377

Hon'ble Judges : A.C. Behera, J

Bench : Single Bench

Advocate : S.K. Dash, G. Mohanty

Final Decision : Disposed Of

Judgement

A.C. Behera, J

1. This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioner praying for setting aside an order dated 06.12.2024 (Annexure-5) passed in Mutation Case No.1220 of 2024 by the Tahasildar, Muniguda (Opposite Party No.2).

2. The factual backgrounds of this writ petition, which prompted the petitioner for filing of the same is that, one Goura Chandra Samanta, recorded owner of Plot Nos.75/3-103, 79, 78, 83 and 84 Ac.1.7500, Ac.3.5300, Ac.1.4500, Ac.5.3400 and Ac.0.8700 decimals under Khata No.22/7 in Mouza-Gouda Balijodi under Muniguda Tahasil in the district of Rayagada bequeathed the properties of said Plot Nos.75/3-103, 79, 78, 83 and 84 in favour of his son, i.e., petitioner executing and registering a Will vide Will No.8102 dated 03.07.2006.

When the said Testator of the aforesaid Will, i.e., Goura Chandra Samanta died

on dated 13.11.2006, then, the petitioner possessed the aforesaid bequeathed properties and filed a mutation case vide Mutation Case No.1220 of 2024 before the Tahasildar, Muniguda(Opposite Party No.2) for the mutation of the said properties to his names on the basis of that registered Will No.8102 dated 03.07.2006.

As per an order dated 06.12.2024(Annexure-5), the Tahasildar, Muniguda(Opposite Party No.2) rejected that Mutation Case No.1220 of 2024 filed by the petitioner assigning reasons that,

“since the willnama is not probated, it cannot be mutated in favour of the applicant. Hence, this case is rejected”

So, the petitioner challenged that (Annexure-5) passed by the Tahasildar, Muniguda (Opposite Party No.2) by filing this writ petition on the ground that,

“When the properties covered under the Will No.8102 dated 03.07.2006 executed in favour of the petitioner is situated in the district of Rayagada and the said Will has been executed in the District of Rayagada, which is outside the area specified in the Clauses of Section 57 of the Indian Succession Act, 1925 and when Rayagada District was under the ex-princely State, then, the question of probation of that Will does not arise. For which, The Tahasildar, Muniguda(Opposite Party No.2) should not have dropped the said mutation case as per Annexure-5”.

3. I have already heard from the learned counsel for the petitioner and learned Standing Counsel for the State(Opposite Parties).

4. It is the settled propositions of law that, when a Will in question is executed in the Districts, which were coming under the ex-princely State like Mayurbhanj, Bolangir, Koraput, Dhenkanal, Ganjam, Sundargarh, Sambalpur, Angul, Keonjhar, Rayagada, Jharsuguda, Malkanagiri and others, no probate of Will is necessary. In the said Districts, Revenue Authorities and Tahasildars can proceed with the mutation cases on the basis of un-probated Wills.

5. On this aspect, it has already been clarified by the Hon'ble Courts in the ratio of the decisions reported in

(I) 1972(2) C.W.R.-1451, Amrutlal Majhi and others vrs. Japi Sahuani and others. (II) AIR 1973 Orissa-112, Balaram Tripathy and another vrs. Lokanath Tripathy.(III) 48(1979) CLT-211 (Para-8), Mst. Radha Hota vrs. Dutika Satpathy and another, (IV) 2008(I) OLR-729, Sailabala Satpathy vrs, Parbati Satpathy and others. (V) 2009(II) CLR-155, Aparna Sahu and others vrs. Raghunath Biswal and others. (VI) 2012(II) OLR-394, Kunjabihari Sahu vrs. State of Orissa and others. (VII) 2015(II) CLR-1075 & 2015(II) OLR-1025, Ritesh Kumar Patel @ Ritesh Patel vrs. Kishore Chandra Patel and others. (VIII) W.P.(C) No.24927 of 2021, Subrat Purohit vrs. State of Orissa and others. (IX) W.P.(C) No.33187 of 2021, Ratnamala Mishra vrs. State of Orissa and others. (X) W.P.(C) No.5216 of 2023, Fatik Bala and others vrs. State of Odisha and others. (XI) 2023(I)

CLR-621, Amrita Pandey vrs. State of Orissa and another that,

"If the Wills are executed in a place either outside the areas specified in the clauses of Section 57 of the Indian Succession Act, 1925 or in respect of the immovable properties situated beyond the territories specified in clauses of Section 57 of the Indian Succession Act, 1925, those areas/territories were under the ex-princely State called as Gadajat Wills, probate of such Wills are not required under law. The Revenue Authorities in the said areas can proceed with the mutation cases on the basis of un-probated Wills."

6. Government of Orissa has issued a Letter vide letter No.23734 dated 13.08.2019 to the Collector, Mayurbhanj (which district was also coming under the ex-princely State) on the basis of the decision of this Hon'ble Courts in a case between Ritesh Kumar Patel @ Ritesh Patel vrs. Kishore Chandra Patel and others : reported in 2015(II) OLR- 1025, modifying the previous Letter No.16449 dated 07.05.2018 that,

"probate of a Will is not required in the District of Mayurbhanj and the Revenue Authorities can proceed with the mutation case, if the same is filed for mutation on the basis of un-probated Will. Because, initiation of probate proceeding for probation of a Will is not necessary in the district of Mayurbhanj. For which, the restriction for mutation of the properties on the basis of an un-probated Will in the district of Mayurbhanj as directed earlier in Para No.6 of Letter No.16449 dated 07.05.2018 of the Government stands modified."

7. In view of the ratio of the aforesaid decisions of the Hon'ble Courts as well as Letter No.23734 dated 13.08.2019 of Government of Odisha, "no probate is necessary in respect of "Gadajat Wills" and the revenue courts including Tahasildars in such areas of the Districts in the State shall entertain mutation cases on the basis of un-probated Wills.

8. As per law, it is beyond the jurisdiction of the revenue authorities to decide the disputed matters concerning the Wills, if dispute arises before the revenue authorities either in respect of the genuineness of the Will in question or in respect of the properties covered under the Will.

9. On this aspect, the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

(i) In a case between Pradeep Kumar Singh and another vrs. State of Uttar Pradesh Through Secy. Revenue Lko. and others : reported in 2022(4) Civil Court Cases-455(Allahabad) that, in a mutation case, where Will is still subject to scrutiny of appropriate civil Court, then finding of civil Court will be binding on mutation court. (Para-15)

(ii) In a case between Noor Ahmad @ Chand vrs. Board of Revenue and others : reported in 2022(1) Civil Court Cases-391(Allahabad)— Legality of Will, cannot be tested in mutation proceedings and could have been tested only in a regular proceedings.(Para-6)

(iii) In a case between Ashok Kumar Pati and another vrs. State of Orissa and others : reported in 2021(I) OLR-655—Contentious issue of title claim based on a Will cannot be decided by a Revisional Authority under Section 15(b) of OSS Act, 1958—Amount to exercise of excess jurisdiction—Issue of title can only be decided by a Civil Court.

(iv) In a case between Jitendra Singh vrs. State of Madhya Pradesh and others : reported in 2021(4) Civil Court Cases(S.C.)-29—Mutation—When an application for mutation is filed on the basis of Will, if dispute is with respect to title and more particularly, when mutation is sought on the basis of Will, such party has to get his rights crystalized by Civil Court and only thereafter on the basis of decision of Civil Court, necessary mutation entry can be made.(Para-5)

10. It is the clarified propositions of law according to the principles of law enunciated in the ratio of the above decisions of the Hon'ble Courts and Apex Court as well as Letter No.23734 dated 13.08.2019 of the Government of Orissa that, "Mutation cases in the areas inside the State of Odisha, those were coming under the ex-princely State, on the basis of un-probated Wills are entertainable by the Revenue Authorities and Tahasildars, but, if after initiation of mutation proceedings on the basis of un-probated Wills, any dispute either in respect to the genuineness of such un-probated Wills in question or any dispute concerning the properties covered under the said Wills is raised, then, the Revenue Authorities and Tahasildars have no other option, but, to drop the mutation proceeding directing the parties to crystalize their rights by the Civil Court and only thereafter on the basis of the decision of the Civil Court, necessary mutation entry can be made. Because, in a mutation proceeding, Revenue Authorities and Tahasildars have no jurisdiction to decide any contentious issue based on a Will.

11. As per the discussions and observations made above, when, it is held that, there is no requirement for probaton of the Will executed in favour of the wit petitioner (applicant in Mutation Case No.1220 of 2024), because, the said Will dated 03.07.2006 has been executed in the District of Rayagada, (which was under the ex-princely State remaining with undivided Koraput District) in respect of the properties under Gunpur Tahasil, then, at this juncture, order dated 06.12.2024(Annexure-5) passed by the Tahasildar, Muniguda (Opposite Party no.2) rejecting the Mutation Case No.1220 of 2024 of the petitioner cannot be sustainable under law.

For which, order dated 06.12.2024 (Annexure-5) passed by the Opposite Party No.2 (Tahasildar, Muniguda) in Mutation Case No.1220 of 2024 is to be quashed.

Therefore, the writ petition filed by the petitioner is allowed. Order dated 06.12.2024 (Annexure-5) passed in Mutation Case No.1220 of 2024 by the Opposite Party No.2(Tahasildar, Muniguda) is quashed.

12. The Tahasildar, consider the mutation and to proceed with Muniguda (Opposite Party No.2) is directed to case vide Mutation Case No.1220 of 2024 afresh the same as per law following the formulated guidelines of this Court in

the judgment between Prasanta Biswanath @ Prasanta Kumar Biswanath vrs. The State of Odisha, represented through its Collector, Rayagada and another in W.P.(C) No.51 of 2025 decided on dated 31.01.2025 within a period of three months from the date of communication of this judgment.

13. So, with the aforesaid findings, observations, clarifications and guidelines, this writ petition filed by the petitioner is disposed of finally...

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