IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1848 of 2025

(In the matter of an application under Article 226 and 227 of the Constitution of India)

1. Ramesh Chandra Sahu .... ***Petitioners***
2. Namita Sahu

-versus-

The State of Odisha, represented through its Secretary Revenue and Disaster Management Department, Bhubaneswar and others .... ***Opposite Parties***

Appeared in this case:-

For Petitioners : Mr. S.K. Dash, Advocate

For Opposite Parties : Mr. G. Mohanty,
Learned Standing Counsel

Appeared in this case:-

CORAM:
JUSTICE A.C. BEHERA

JUDGMENT
Date of hearing : 05.02.2025 / date of judgment : 18.02.2025

A.C. Behera, J. This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioners praying for setting aside an order dated 06.11.2024 (Annexure-3) passed in Mutation Case No.289 of 2024 by the Tahasildar, Gunpur (Opposite Party No.2).

2. The factual backgrounds of this writ petition, which prompted the petitioners for filing of the same is that, one Krushna Sahu, recorded owner of Plot Nos.108/2, 116/2 and 116/4 Ac.0.0900, Ac.0.0190 and Ac.0.2820 decimals under Khata No.58/260 in Mouza-Kapilpur under Gunpur Tahasil in the district of Rayagada bequeathed the properties of said Plot Nos.108/2, 116/2 and 116/4 in favour of his son and daughter-in-law, i.e., petitioners executing and registering a Will vide Will No.31602103132 dated 02.12.2021.

When the said Testator of the aforesaid Will, i.e., Krushna Sahu died on dated 30.04.2022, then, the petitioners possessed the aforesaid bequeathed properties and filed a mutation case vide Mutation Case No.289 of 2024 before the Tahasildar, Gunpur(Opposite Party No.2) for the mutation of the said properties to their names on the basis of that registered Will No.31602103132 dated 02.12.2021.

As per an order dated 06.11.2024(Annexure-3), the Tahasildar, Gunpur(Opposite Party No.2) dropped that Mutation Case No.289 of 2024 filed by the petitioners assigning reasons that,

> "as the applicants failed to produce the probate of the willnama from the competent court, hence mutation case is rejected"

So, the petitioners challenged that (Annexure-3) passed by the Tahasildar, Gunpur (Opposite Party No.2) by filing this writ petition on the ground that,

> "When the properties covered under the Will No.31602103132 dated 02.12.2021 executed in favour of the petitioners are 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, Gunpur(Opposite Party No.2) should not have dropped the said mutation case as per Annexure-3".

3. I have already heard from the learned counsel for the petitioners 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,*
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> "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 probation of the Will executed in favour of the wit petitioners (applicants in Mutation Case No.289 of 2024), because, the said Will dated 02.12.2021 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 06.11.2024(Annexure-3) passed by the Tahasildar, Gunpur (Opposite Party no.2) to drop the Mutation Case No.289 of 2024, requesting them (petitioners) to file a declaratory suit seeking reliefs under Section 34 of the Specific Relief Act, 1963 cannot be sustainable under law.

For which, order dated 06.11.2024 (Annexure-3) passed by the Opposite Party No.2 (Tahasildar, Gunpur) in Mutation Case No.289 of 2024 is to be quashed.

Therefore, the writ petition filed by the petitioner is allowed. Order dated 06.11.2024 (Annexure-3) passed in Mutation Case No.289 of 2024 by the Opposite Party No.2(Tahasildar, Gunpur) is quashed.

12. The Tahasildar, Gunpur (Opposite Party No.2) is directed to consider the mutation case vide Mutation Case No.289 of 2024 afresh and to proceed with the same as per law following the formulated guidelines given in this judgment.

13. In order to avoid the similar nature of litigation in future relating to mutation of records on the basis of un-probated Wills in Gadajat areas of the State of Odisha (those were under ex-princely State), it is pertinent to issue the following guidelines to be followed by the Revenue

Authorities-cum-Tahasildars, for initiation and disposal of mutation cases on the basis of the un-probated Wills i.e.:-

(i) The Revenue Authorities including The Tahasildars and others, those are dealing with the mutation cases in the areas inside the State of Odisha (those were under ex-princely State) cannot refuse to entertain/register mutation cases on the basis of un-probated Wills.

(ii) Soon after, registration of a mutation case, on the basis of an un-probated Will, a report is to be called for from the local Revenue Inspector or from any other authentic source, as it deems fit and proper to ascertain the names and addresses of all the legal heirs of the testator or testators in the natural line of succession.

(iii) After ascertaining the names and addresses of all the legal heirs of the testator or testators in the natural line of succession, notices shall be issued to them along with notices to others, if any, as per law inviting their objection and participation.

(iv) If after receiving such notices, dispute is raised by the invitees of the notices either in respect of the genuineness of the Will in question or in respect of the properties covered under the said Will, then, the Revenue Authorities or Tahasildars shall drop

the mutation proceeding leaving the parties to get their rights crystalized before the civil Court.

(v) After crystallization of their rights before the Civil Court, necessary mutation entry can be made by the Revenue Authorities or Tahasildars on the basis of the decree of the Civil Court.

14. So, with the aforesaid findings, observations, clarifications and guidelines, this writ petition is disposed of finally.

(A.C. Behera)
Judge

Orissa High Court, Cuttack
The 18TH of February, 2025/ Jagabandhu, P.A.