

## Anil Kumar Majhi Vs State Of Odisha, Represented Through Principal Secretary, Revenue And Disaster Management Department And Another

**Court:** Orissa High Court

**Date of Decision:** Jan. 31, 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)

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

**Bench:** Single Bench

**Advocate:** S. Dwibedi, Babita Kumari Sahu

**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 12.10.2023 (Annexure-2) passed in a Mutation Case No.330 of 2023 by the Tahasildar, Naktideul (Opposite Party No.2).

2. The factual backgrounds of this writ petition, which prompted the petitioner for filing of the same is that, one Adikanda Majhi, recorded owner of

the properties in Mouza-Badbil under Khata No.2 of Amar Jasprit Dungdung Tahasil under Rairakhol Police Station in the district of Sambalpur

bequeathed the properties under the aforesaid Khata No.2 in favour of his wife and children, i.e., the petitioners executing and registering a Will vide

Will No.31641600154 dated 31.05.2016.

When the said Testator Adikanda Majhi died, then, the petitioners possessed the aforesaid bequeathed properties and filed a mutation case vide

Mutation Case No.330 of 2023 before the Tahasildar, Naktideul (Opposite Party No.2) for the mutation of the properties covered under the Will to

their names on the basis of that registered Will No.31641600154 dated 31.05.2016.

As per the order dated 12.10.2023 (Annexure-2), the Tahasildar, Naktideul (Opposite Party No.2) dropped that Mutation Case No.330 of 2023 filed by

the petitioner assigning reasons that,

“the Will has not been probated. Hence, the case is dropped due to incomplete documents”

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

that,

“When the properties covered under the Will dated 31.05.2016 executed in favour of the petitioners are situated under Rairakhol Police Station in the district of

Sambalpur and the said Will has also been executed under the jurisdiction of Rairakhol Police Station in the District of Sambalpur, which is outside the areas specified

in the Clauses of Section 57 of the Indian Succession Act, 1925 and when Sambalpur District was under the ex-princely State, then, the question of probate of that

Will dated 31.05.2016 does not arise. For which, The Tahasildar, Naktideul (Opposite Party No.2) should not have dropped the said mutation case as per Annexure-

2.

3. I have already heard from the learned counsel for the petitioner and learned Additional Government Advocate 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.

Koshore, Chandra, Patel, and others, : reported in, 2015(II) OLR- 102, 5 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 the 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 petitioners (applicants in Mutation Case No.330 of 2023), because, the said Will dated 31.05.2016 has been executed under the jurisdiction of

Rairakhol Police Station in the District of Sambalpur, which was under the ex-princely State, then at this juncture, order dated 12.10.2023(Annexure-

2) passed by the Tahasildar, Naktideul (Opposite Party no.2) to drop the Mutation Case No.330 of 2023 on the ground of non-probation of that Will

cannot be sustainable under law.

For which, order dated 12.10.2023 (Annexure-2) passed by the Opposite Party No.2 (Tahasildar, Naktideul) in Mutation Case No.330 of 2023 is to be

quashed.

Therefore, the writ petition filed by the petitioner is allowed. The order dated 12.10.2023 (Annexure-2) passed in Mutation Case No.330 of 2023 by

the Opposite Party No.2(Tahasildar, Naktideul) is quashed.

12. The Tahasildar, Naktideul (Opposite Party No.2) is directed to consider the mutation case vide Mutation Case No.330 of 2023 afresh and to

[illegible]