

Prasanta Biswanath @ Prasanta Kumar Biswanath Vs State Of Odisha, Represented Through Its Collector, Rayagada And Another

Court: Orissa High Court

Date of Decision: Jan. 31, 2025

Acts Referred: Constitution of India, 1950 " Article 226, 227
 Specific Relief Act, 1963 " Section 57

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

Bench: Single Bench

Advocate: Budhiram Das, 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 25.10.2024 (Annexure-3) passed in Mutation Case No.411 of 2024 by the Tahasildar, Bisamkatak (Opposite Party No.2).

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

of the properties in Mouza-Buxisirapur under Khata No.31/70 Bisamkatak Tahasil of Rayagada district bequeathed the properties of said Khata

No.31/70 in favour of her son, i.e., petitioner executing and registering a will vide Will No.174 dated 28.02.2008.

When the said Testator of the aforesaid Will, i.e., Ghasiani Biswanath died on dated 20.11.2009, then, the petitioner possessed the aforesaid

bequeathed properties and filed a mutation case vide Mutation Case No.411 of 2024 before the Tahasildar, Bisamkatak(Opposite Party No.2) for the

mutation of the said properties to his name on the basis of that registered Will No.174 dated 28.02.2008.

As per the order dated 25.10.2024(Annexure-3), the Tahasildar, Bisamkatak(Opposite Party No.2) dropped that Mutation Case No.411 of 2024 filed

by the petitioner assigning reasons that,

“as per Indian Succession Act, 1925, a Will, either registered or unregistered will have evidentiary value only after its adjudication by the court

of law and The Tahasildar court is only the executing court, not the court of law as defined in Indian Succession Act, 1925. Hence, the mutation case filed by the

petitioner is dropped with a request to the petitioner/applicant to file a declaratory suit seeking relief under Section 34 of the Specific Relief Act, 1963.

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

that,

“When the properties covered under the Will No.174 dated 28.02.2008 executed in favour of the petitioner 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, Bisamkatak (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 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 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)

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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 thereof 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.411 of 2024), because the said Will dated 28.08.2008 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 Bisamkatak Tahasil, then, at this

juncture, order dated 25.10.2024(Annexure-3) passed by the Tahasildar, Bisamkatak (Opposite Party no.2) to drop the Mutation Case No.411 of 2024,

requesting him (petitioner) 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 25.10.2024 (Annexure-3) passed by the Opposite Party No.2 (Tahasildar, Bisamkatak) in Mutation Case No.411 of 2024 is to

be quashed.

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