



2026:AHC:52103

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 1379 of 2025

Dalbir And 3 Others

.....Petitioner(s)

Versus

Board Of Revenue Prayagraj And 18 Others

.....Respondent(s)

Counsel for Petitioner(s) : Atipriya Gautam, Ishir Sripat,
Prashant Kumar Tripathi, Sr.
Advocate

Counsel for Respondent(s) : Kartikeya Saran, Bhola Nath Yadav,
C.S.C., Kamal Krishna Roy, Kamal
Singh, Rakesh Kumar Yadav, Sunil
Kumar Singh

AFR

Court No. - 55

Reserved On.- 20.2.2026

Delivered On.-16.3.2026

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Mr. Ishir Sripat, learned counsel for the petitioners, Sri Bhola Nath Yadav, learned counsel for respondent nos.7, 8, 9 & 10, learned standing counsel for the State-respondents and Mr. Sunil Kumar Singh, learned counsel for the respondent-gaon sabha.

2. Brief facts of the case are that one Nathu Singh, predecessor of the petitioners, was recorded over plot nos.1246M, 1249, 1256 of khata no.538, total area 8.4270 hect. Sri Nathu Singh has died on 10.1.1968. In place of Nathu Singh, name of petitioners and other family members were recorded on the basis of succession. A suit under Section 229-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "U.P. Z.A. & L.R. Act") was filed in the year 2012 by the legal heirs of one Todi Singh (father of respondent no.7) with the prayer that they may be declared co-sharer of $\frac{1}{2}$ share of the plot in question. The aforementioned suit was dismissed by the trial court vide judgment

dated 19.5.2016. Against the dismissal of suit, one appeal was filed before the Commissioner which was dismissed vide judgment dated 2.4.2019 which has attained finality. Respondent No.19/Sanjay moved an application for mutation on 24.6.2016 on the basis of photocopy of the sale deed dated 18.2.1970, alleged to be executed by Sri Nathu Singh in his favour. The aforementioned mutation application was dismissed by the Tehsildar vide order dated 12.4.2018. Other private respondents except respondent no.19 who were plaintiffs of suit under Section 229-B of the U.P. Z.A. & L.R. Act also filed a mutation application dated 18.7.2017 on the basis of sale deed alleged to be executed on 27.2.1968 by Sri Nathu Singh which was registered as Mutation Case No.3143/2018. The Tehsildar vide order dated 24.1.2019 allowed the Mutation Case No.3143/2018. Against the order of Tehsildar dated 1.2.2019, petitioners and other co-sharers filed appeal under Section 35(2) of the U.P. Revenue Code, 2006 which was allowed vide order dated 27.8.2019, setting aside the order dated 24.1.2019, passed by the Tehsildar. Against the order of the S.D.O. dated 27.8.2019, respondent nos.17 and 18 along with their mother Smt. Rajeshwati filed two revision under Section 210 of the U.P. Revenue Code, 2006 before the Commissioner. The aforementioned revisions were heard by the Additional Commissioner and the same was dismissed vide judgment and order dated 18.3.2020. Against the order of the Additional Commissioner dated 18.3.2020, time barred restoration application was filed which was heard and dismissed vide order dated 9.11.2022. Against the orders dated 18.3.2020 and 9.11.2022, respondent nos. 7 to 10 filed revision under Section 210 of the U.P. Revenue Code, 2006 before the Board of Revenue which has been allowed under the impugned order dated 2.4.2025, setting aside the order of the S.D.O. and the Additional Commissioner as well as matter was sent back before S.D.M. to decide the appeal afresh. Hence, this writ petition on behalf of the petitioners for the following relief:-

"Issue a writ of certiorari, quashing the order dated 2.4.2025 (Annexure No.1), passed in Revision No.228/2023, under Section 210 of the U.P. Revenue Code, 2006 by the Hon'bnle Board of Revenue at Prayagraj"

3. This Court entertained the matter on 15.4.2025 and stayed the

further proceeding before the S.D.M. In pursuance of the order of this Court, parties have exchanged their pleadings.

4. Learned counsel for the petitioners submitted that filing of mutation application under Section 34 of the U.P. Revenue Code, 2006 after more than 45 years is total abuse of the process of law. He submitted that suit under Section 229-B of the U.P. Z.A. & L.R. Act filed by the private respondents on the basis of possession was dismissed, as such, filing of mutation application on the basis of sale deed alleged to be executed about 45 years before, cannot be entertained and allowed by the court, exercising the summary jurisdiction. He submitted that the S.D.O. has rightly allowed the appeal filed by the petitioners under Section 35(2) of the U.P. Revenue Code, 2006, setting aside the order of mutation passed by the Tehsildar on the basis of sale deed executed about 45 years before. He submitted that the Additional Commissioner has rightly dismissed the revision filed by the private respondents but the Board of Revenue has allowed the revision filed by the private respondents and remanded the matter in the court of S.D.O. to decide the appeal afresh which is abuse of process of law. He submitted that after dismissal of suit under Section 229-B of the U.P. Z.A. & L.R. Act by the revenue court, the mutation application filed after more than 45 years from the date of execution of the alleged sale deed, cannot be entertained. He submitted that the impugned order passed by the Board of Revenue should be set aside and the order passed by the S.D.O. and the Additional Commissioner be maintained.

5. On the other hand, learned counsel for respondent nos. 7, 8, 9 and 10 submitted that no interference is required against the impugned order of remand passed by the Board of Revenue in the mutation proceeding. It is further submitted that under the impugned order, the S.D.O. will decide the appeal afresh after affording opportunity of hearing to both the parties, as such, no interference is required in the matter. He further submitted that there is no limitation of filing of mutation application, as such, there is no illegality in initiating the proceeding of mutation on the basis of sale deed executed in favour of the party concerned. He further submitted that the writ petition against the order passed in mutation proceeding should not be entertained. He placed reliance upon the following judgments of the

Hon'ble Apex Court and that of this Court in support of his arguments:-

- "1. 2024 (163) RD 87, Zakir Hasan and Others vs. Board of Revenue, U.P. at Lucknow and Others;**
- 2. 2019 (10) SCC 412, Sita Ram vs. Bharat Singh;**
- 3. Order dated 22.1.2026, passed in Civil Appeal No.6640 of 2010, Hemlatha vs. Tekaram;**
- 4. 2022 (4) ADJ 578, Kalawati vs. Board of Revenue;**
- 5. 2016 (131) RD 52, Ram Kishan vs. Board of Revenue;**
- 6. 2013 (121) RD 812, Chanakyapuri Cooperative Housing Society vs. Kanpur Development Authority;**
- 7. 2020 (147) RD 711, Shyam Vilas Verma vs. Additional Commissioner;**
- 8. 2017 (134) RD 563; Krishna Bihari vs. Smt. Urmila Devi and Others;**
- 9. 1976 RD 220 (FB), Ram Nath vs. Smt. Munna;**
- 10. 2024 (164) RD 232, Gagan Mishra vs. State of U.P."**

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that mutation applications filed in the years 2016 and 2019 by the private respondents on the basis of sale deed alleged to be executed in the years 1968/1970, have been allowed by the Tehsildar but in appeal filed by the petitioners, the order of mutation has been set aside. There is also no dispute about the fact that revision filed by the private respondents was dismissed by Additional Commissioner but the Board of Revenue has allowed the revision and remanded the matter back before the Sub Divisional Officer to decide the appeal afresh.

8. It is material to mention that mutation application have been filed by the private respondents after more than 45 years on the basis of sale deed alleged to be executed in their favour which should not be

allowed although there is no limitation for filing the mutation application but the filing of mutation application after more than 45 years, creates doubt about the document in question.

9. This Court in the case reported in **2015 (129) RD 495, Shardul Ranjan and Others vs. Deputy Director of Consolidation and Others** has held that substantial delay in initiating the proceeding for mutation on the basis of will deed, creates doubt about the will deed. Paragraph no.10 of the judgment will be relevant for perusal which is as under:-

"10. Even if the version of the petitioners that Smt. Chiraita Devi died on 23.5.2003, is accepted then also from their own evidence, the Will was surrounded with suspicious circumstances namely (i) The death of executor of the will occurred within a week of the execution of the Will, (ii) The executor was of 90 years old and was seriously ill and she was not in condition even to sit on cot. According to statement of petitioner-2, she was ill at that time for about three months. There is no evidence to show that she was in fit mental condition and executed the Will out of her own free will, without any coercion and undue influence, (iii) From the statement of the witnesses of the petitioners, it was proved that the propounders of the Will had taken active part in execution of the Will inasmuch as he obtained stamp paper on which the Will was executed, called scribe and attesting witnesses of the Will, (iv) If Smt. Chiraita Devi could be taken on car for her treatment, she could have gone to Sub-Registrar Office for registration of the Will (v) Smt. Kamla in her statement has stated that photo affixed on the Will dated 16.5.2003 was not photo of her mother Smt. Chiraita rather it was photo of wife of Suryabali and consolidation authorities found that photo affixed on the Will was not of a ill lady of 90 years old and (vi) Smt. Chiraita Devi died on 23.5.2003 but claim on its basis has been set up by the petitioners on 29.2.2008 i.e. about five years of her death on the basis of unregistered Will. Although no limitation has been provided for mutation but in the case of inheritance on the basis of unregistered Will, delay in disclosing the Will itself create a doubt in respect of its genuineness. In these circumstances the Will was surrounded with suspicious circumstances and the propounders have failed to explain suspicious circumstances. Supreme Court in H. Venkatachala v. B.N. Thimbajamtna, MANU/SC/0115/1958MANU/SC/0115/1958 : AIR 1959 SC 443. S.R. Srinivasa v. S. Padmavathamma, MANU/SC/0285/2010MANU/SC/0285/2010 : 2010 (111) RD 675 (SC) and M.B. Ramesh v. K.M. Veeraje, MANU/SC/0462/2013MANU/SC/0462/2013 : 2013 (120) RD 438 (SC) held that in case, the propounder has taken active part in execution of the Will, then it create a suspicious circumstance."

10. It is also material to mention that suit for declaration under Section 229-B of the U.P. Z.A. & L.R. Act filed by the predecessor of private respondents on the basis of adverse possession, was

dismissed by the trial court and the judgment and decree has attained finality, as such, filing of mutation application on the basis of sale deed, alleged to be executed about 45 years before, cannot be allowed in any manner.

11. The S.D.O. has rightly allowed the appeal of the petitioners, setting aside the order of the mutation passed by the Tehsildar but the Board of Revenue has remanded the matter before the S.D.O. to decide the mutation appeal afresh which is abuse of process of law.

12. Mutation matter cannot be kept pending for unlimited period rather the order should be given finality so that parties can adjudicate the matter before the regular court.

13. In the instant matter, the suit for declaration under Section 229-B of the U.P. Z.A. & L.R. Act filed by private respondents has already been dismissed, as such, impugned judgment/order passed by the Board of Revenue cannot be sustained in the eye of law.

14. Considering the entire facts and circumstances of the case, the impugned revisional judgment and order dated 2.4.2025, passed by the respondent no.1/ Board of Revenue in Revision No.228/2023, under Section 210 of the U.P. Revenue Code, 2006 is liable to be set aside and the same is hereby set aside.

15. **The writ petition stands allowed.** The order dated 27.8.2019 passed by the Sub Divisional Officer is hereby maintained.

16. No order as to costs.

March 16, 2026
C.Prakash

(Chandra Kumar Rai,J.)