Mannu vs The State Of Madhya Pradesh on 14 February, 2025

Author: Sushrut Arvind Dharmadhikari

Bench: Sushrut Arvind Dharmadhikari

I N T H E H I G H C O U R T O F M A D H YA P R A D E S H
AT J A B A L P U R
BEFORE
HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE VIVEK JAIN
WRIT PETITION No. 3499 of 2022

ANAND CHOUDHARY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WITH
WRIT PETITION No. 7492 of 2022

NITA BHATTACHARYA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT APPEAL No. 667 of 2024

VIJAY SINGH YADAV AND OTHERS
Versus
SMT KRISHNA YADAV AND OTHERS

WRIT APPEAL No. 680 of 2024

MANNU AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT APPEAL No. 1561 of 2024
MANNU
Versus

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THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Dr. Rashmi Pathak along with Shri Pranay Pathak, Shri D.K. Tr
Himanshu Mishra along with Shri Ruchir Jain and Shri Vipin Ya
counsel for the petitioner in their respective cases.

Shri Naman Nagrath, learned Senior Advocate along with Shri U
Sonkar, Shri Sanjeev Kumar Mishra, Shri R.K. Sanghi learned S
along with Shri Raghav Sanghi, Shri Saket Anand Tiwari and Ms
Manucha, learned counsel for respondents in their respective

Shri Swapnil Ganguly, learned Deputy Advocate General for res

ORDER

(Reserved on: 21/01/2025) (Pronounced on:14/02/2025) Per: Hon'ble Shri Justice Vivek Jain The matter relates to mutation on agricultural land on the basis of Will. A Single Bench of this Court vide order dated 07/10/2023 has referred the matter for consideration by a Larger Bench of this Court on the following question:-

> "As to whether, Tehsildar can reject the application of mutation, at threshold, on the ground that it is based upon 'Will' taking aid from the decisions previously rendered without considering the provisions of Rules viz. Madhya Pradesh BhuRajsav Sanhita (Bhu- Abhilekhon Mein Namantaran) Niyam, 2018 framed by the State Government vis-a-vis mutation."

2. The requirement of reference has been necessitated on the basis of position that there are divergent opinions of different benches of this Court in the matter of mutation on the agricultural land to be made on the basis of Will, without the Will being proved in a Court of law or without getting a Probate or Letter of Administration for the said Will issued in terms with relevant provisions of Indian Succession Act, or without the will being subjected to a declaratory suit.

3. The Hon'ble Supreme Court in the case of Jitendra Singh Vs. State of M.P. reported in (2021) SCC OnLine SC 802 has taken a view that mutation on the basis of Will cannot be ordered by Revenue Authorities and that revenue record entry does not confer title on a person whose name appears in record of rights. It has been held that entries in revenue records or Jamabandi have only fiscal purpose i.e. payment of land revenue and no ownership is conferred on basis of such entries. Ultimately the Supreme Court held that the propounder of the Will has to approach the appropriate Civil Court to crystallize his rights on the basis of alleged Will and the view taken by the High Court was upheld by the Supreme Court. It was a case where the application for mutation was filed by the beneficiary of a will in the lifetime of testator and even the names of legal heirs were neither

disclosed nor impleaded while the application for mutation was pressed on basis of a will. In that case, the Tehsildar recorded evidence of attesting witnesses as to validity of the will and carried out mutation.

4. Prior to the aforesaid order and also after the aforesaid order was passed, in a series of judgments, a view has been taken by the Single Benches and Division Benches of this Court that mutation on the basis of Will cannot take place by Revenue Authorities in any manner and that without the Will being proved before the Civil Court either in a civil suit or in probate/letter of administration proceedings, the propounder of the Will cannot maintain proceedings for mutation on agricultural land on the basis of Will. In this line of judgments, view has been taken by a Single Benches of this Court in WP No.11871/2021 (Rajkumar Sharma and others Vs. Manjesh Kumar), MP No.23/2021 (Kusum Bai Kori Vs. Ummedi Bai), MP No.5345/2019 (Avnish Kumar Vs. Satyaprakash), WP No.2578/2022 (Geeta Paliwal Vs. Sitaram) and by the Division Benches of this Court in WP No.16413/2024 (Bhagone @ Bhagwan Singh Patel (deceased) Through LRs and others Vs. State of M.P. and others), WA No.1466/2024 (Arun Kumar Sharma Vs. State of M.P.) and in the case of Harprasad Bairagi Vs. Radheshyam reported in 2022(1) MPLJ 414. In all the aforesaid judgments, it has been held that the Revenue Authorities cannot carry out mutation on the basis of Will and for a Will to constitute basis for mutation in revenue records, the parties propounding the Will and claiming rights on the basis of Will on the lands have to get the Will proved before the Civil Court by filing a civil suit or probate/letter of administration proceedings and only thereafter mutation can be carried out on the basis of Will. Further it has been held that in case where dispute is there as to validity or genuineness of the Will, then the Revenue Authorities deciding the matter of mutation on the basis of Will have no jurisdiction to decide the genuineness or validity of the Will by taking evidence as to validity of the Will. The same is purely in the province of Civil Court.

5. On the other hand in some judgments it has been held by other Benches of this Court that mutation can be made on the basis of Will. In MP No.6597/2019 (Dr. Rajdeep Kapoor Vs. Mohd. Sarwar Khan and another), it has been held that mutation can be made on the basis of Will so also in the case of Rajnesh Sahu Vs. Jagannath (2013) SCC Online MP 2724, WP No.16920/2021 (Lokmani Jain Vs. Akhilesh Kumar Jain and another) and WP No.9755/2021 (Late Shri Quazi Saluddin and others Vs. State of M.P. & others) same view has been taken that Tahsildar has jurisdiction to mutate the name in revenue record on the basis of Will. In all the aforesaid cases it has been held that mutation can be made on the basis of Will and in some of the cases reliance has been made on the Rules for Mutation framed by State of M.P. by exercising powers under Section 258 of M.P. Land Revenue Code, 1959 (for short hereinafter referred to MPLRC), as the said Mutation Rules do recognize Will as a document on basis of which mutation can be carried out.

6. On the contrary, as already discussed above, in some of the judgments passed by Single Benches of this Court even the 2018 Rules have been taken into consideration and it has been held that Will for the purpose of 2018 Mutation Rules would mean a Will which has been duly proved in a Court of Law i.e. before the Civil Court. While in some cases, reliance on the judgment of the Supreme Court in the case of Jitendra Singh (supra) has been doubted inter-alia on the ground that the said judgment of the Supreme Court does not take into consideration the Mutation Rules of the year 2018 and that the matter before the Supreme Court arose from the year 2011 when there were no

Mutation Rules of 2018 and therefore, the judgment passed without considering the Mutation Rules of 2018 cannot be relied upon in view of the specific provisions in the Mutation Rules of 2018 to carry out mutation on the basis of Will.

7. The counsel for the respective parties have argued their respective cases at length. The arguments to uphold that mutation can be made on the basis of Will without the Will being previously proved before the Civil Court were led by Shri Naman Nagrath, Senior Advocate and supplemented by Shri Vipin Yadav, Advocate and Shri D.K. Tripathi, Advocate, etc. The learned counsel supporting the view to carry out mutation on the basis of Will have argued at length that if the Scheme of Section 109 & Section 110 of MPLRC is seen, it will be clear that acquisition of Rights has to be reported by any person lawfully acquiring any right or interest in the land within 6 months of such acquisition of rights and that as per Section 109 (3) any person whose rights, interests or liabilities are required to be or have been entered in any record or register under this Chapter, shall be bound on the requisition in writing of any Revenue Officer, to furnish or produce for his inspection, all such information or documents needed for the correct compilation or revision thereof. And also that under Section 109 (4), a person neglecting to furnish such information is liable to penalty and further that after receiving such information, the concerned Officer in terms of Section 109 (5) shall deal with the information received after such prescribed period in accordance with Section 110. It is further argued that as per Section 110 (4), there is a provision that the Tahsildar shall pass orders relating to mutation within thirty days of registration of case, in case of undisputed matter, and within five months, in case of disputed matters and thereafter make necessary entry in the revenue and land records/khasras. It is argued that under Section 110, the Tahsildar shall only record a 'right' and shall not record a 'title'. Thus, while it may be true that Tahsildar may not be having competence to deal with title, yet the Tahsildar is having competence to record a 'right' which is for fiscal purpose only and for no other purpose. Thus, the contention of the petitioners that mutation will create a title in the land is utterly misplaced and not made out from the scheme of MPLRC and by the law settled so far.

8. It was further argued that the State of Madhya Pradesh has framed Mutation Rules of 2018 known as Madhya Pradesh Bhu-Rajasv Sanhita (Bhu-Akhilekhon Mein Namantaran) Niyam, 2018 (for short hereinafter referred to as Mutation Rules 2018). It was vehemently argued that as per Rule 3 of the Mutation Rules, it has been provided that right or interest acquired in land under Section 109(1) shall be made in different forms i.e. Form-I to Form-V. It is argued that Form-I relates to acquisition of Bhumiswami right or interest and that the said Form-I relates to 10 modes of acquisition of Bhumiswami rights out of which at Sr. No.2, the entry made is 'by Will' and required document is self attested copy. Thus, it is argued that once the Government has framed Rules to carry out the provision of Sections 109 and 110 of MPLRC and has recognized Will as a valid document of mutation then the view taken in the case of Jitendra Singh (supra) by the Supreme Court is per incuriam in as much as the said judgment does not take into consideration the Mutation Rules 2018. Though, the said Rules were in the statute book and in any event the said matter related to in mutation application of the year 2011 while the Mutation Rules have come into force from the year 2018. The learned counsel for the respondents have also vehemently relied on the judgment of the Division Bench of High Court of Punjab and Haryana reported in the case of Jagjeet Singh Vs. Divisional Commissioner, Patiala 2012 SCC Online P&H 13153, wherein the

Division Bench of Punjab and Haryana High Court has held that mutation in revenue records is only for a fiscal purpose and that no title is transferred on the basis of mutation entry. The proceedings are summary in nature and in the exercise of administrative functions and therefore, such proceedings do not create or extinguish any right or title in the land and the right or title in the property is to be decided by the Civil Court. The Division Bench of Punjab & Haryana High Court was dealing with the case where mutation was sought on the basis of Will and the Division Bench further held that mutation can be effected on the basis of Will even during pendency of civil suit because mutation proceedings cannot be kept in abeyance during the pendency of civil suit before the Civil Court and Revenue Officers are duty bound in terms of the statute to enter mutation in exercise of their administrative functions.

9. Learned counsel for the respondents have also relied on judgment of Division Bench of this Court reported in 1998 ILR MP 689 (Phool Singh Vs. Kosa Bai), wherein it has been held by Division Bench of this Court that in the State of Madhya Pradesh there is no necessary requirement to take probate or letter of administration of a Will and that compulsory requirement of probate or letter of administration in case of a Will is applicable only in the territory which was subject to the Lieutenant Governor of Bengal or within the local limits of ordinary original civil jurisdiction of High Courts of Madras and Bombay when the Indian Succession Act, 1925 was enacted. The entire area of State of Madhya Pradesh being outside such territories, there is no mandatory requirement to obtain probate/letter of administration of a Will. On the same lines, reliance was also placed on judgment of the Supreme Court in the case of Kanta Yadav Vs. Om Prakash Yadav reported in (2020) 14 SCC 102, which was a case arising from Delhi and the Supreme Court in the aforesaid case has also held on similar lines that as was held by Division Bench of this Court in the case of Phool Singh (supra). The Supreme Court in the case of Kanta Yadav (supra) has held as under:

> 11. The statutory provisions are clear that the Act is applicable to wills and codicils made by any Hindu, Buddhist, Sikh or Jain, who were subject to the jurisdiction of the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay -- [clause (a) of Section 57 of the Ac]. Secondly, it is applicable to all wills and codicils made outside those territories and limits so far as relates to immovable property within the territories aforementioned, clause (b) of Section 57. Clause (c) of Section 57 of the Act relates to the wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which provisions are not applied by clauses (a) and (b). However, sub-section (2) of Section 213 of the Act applies only to wills made by Hindu, Buddhist, Sikh or Jain where such wills are of the classes specified in clauses (a) or (b) of Section 57. Thus, clause (c) is not applicable in view of Section 213(2) of the Act.
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> 12. In view thereof, the wills and codicils in respect of the persons who are subject to the Lieutenant Governor of Bengal or who are within the local limits of ordinary original civil jurisdiction of the High Court of Madras or Bombay and in respect of the immovable properties situated in the above three areas. Such is the view taken in the number of judgments referred to above in the States of Punjab and Haryana as

well as in Delhi as also by this Court in Clarence Pais [Clarence Pais v. Union of India, (2001) 4 SCC 325].

10. Thus, by placing reliance on the aforesaid two judgments of the Division Bench and of the Hon'ble Supreme Court, it has been argued that probate/letter of administration being not compulsory in Madhya Pradesh, it cannot be read into the provisions of Mutation Rules, 2018 and provisions of MPLRC, that a person needs to approach Civil Court and obtain probate before seeking mutation on the basis of Will.

11. It was further argued that looking to the bare language of Section 110(4), whereby the Tahsildar has to carry out mutation in disputed as well as undisputed cases within different time limits of one month and five months respectively, the clear intention of legislature in enacting these provisions of MPLRC is that the Tahsildar can even adjudicate disputed cases and even if there is a dispute as to validity of Will or genuineness of the Will, the Tahsildar can very well dwell upon the same and even take evidence because the Tahsildar is a Revenue Officer as defined in Section 11 of MPLRC and in terms of Section 31 of MPLRC, he is a Revenue Court while deciding any question between parties to the proceedings.

12. Arguments were also advanced on behalf of the State Government by Shri Swapnil Ganguly, learned Deputy Advocate General, who also supported the view that the Tahsildar can carry out mutation on the basis of Will without the Will being subjected to be proved before the Civil Court and also that the Tahsildar can also decide the cases of disputed Will. The State, therefore, in sum and substance has supported the arguments led by Shri Naman Nagrath, Senior Advocate.

13. Per contra, the arguments for the other side were led by Shri R.K. Sanghi, Senior Advocate and by Smt. Rashmi Pathak, Advocate. They argued vehemently that on the basis of Will no mutation can be carried out without the Will being subjected to proof before the Civil Court. It was argued that a person should necessarily approach the Civil Court before seeking mutation on the basis of Will and the judgment of the Supreme Court in Jitendra Singh (supra) though does not take into consideration the Mutation Rules of 2018, but is still binding. It was argued that there are many cases in the State whereby on the basis of forged and fraudulent Wills, mutations have been carried out without even noticing the actual legal representatives of deceased landowner/Bhumiswami and thereafter such persons after getting mutation done in summary proceedings for mutation under Section 109/110 MPLRC then even sale the land or mortgage the land which puts the actual legal heirs to great jeopardy. It is argued that the procedure before the Revenue Authority i.e. Tahsildar for mutation is summary procedure and if the mutation Rules 2018 are interpreted in the manner as suggested by the other side, then merely on the basis of photocopy of a Will or self attested copy of a Will any person can get mutation on the land of any deceased Bhumiswami without even the original being produced before the Revenue Court. Even otherwise, Revenue Court is not well equipped nor legally trained to take evidence in the matter of proof of a document and therefore, the disputed Wills cannot be subjected to adjudication before the Revenue Court. It is argued that as per Section 63 of Indian Succession Act, a Will is necessarily required to be attested by two or more witnesses and as per Section 68 of Indian Evidence Act (now section 67 of Bhartiya Sakshya Adhiniyam, 2023), a document which is required to be attested cannot be used as evidence until one

attesting witness atleast has been called for the purpose of proving its execution. Thus, it is argued that Will cannot be proved even on the admission of the parties and it is required to be proved by evidence of atleast one attesting witness. Therefore, the Tahsildar cannot carry out mutation on the basis of Will without it being proved before the Civil Court because without the Will being ratified in evidence by one atleast attesting witness, it cannot be used as evidence. Therefore, the view taken by various Single Benches and Division Benches of this Court that no mutation on the basis of Will can be carried out without the Will being subjected to proof before the Civil Court is correct and deserves to be upheld. It is further contended that suit is not required to be instituted by the person who is doubting the genuineness of the Will, rather the correct view is that suit is required to be instituted by the propounder of a Will and get the Will proved before the Civil Court and only then Will will be a document of mutation in terms of Mutation Rules of 2018 and not before that. Thus, it is contended that the question be answered by this Court in that manner. It is further argued that though there are series of judgments of this Court and of the Hon'ble Supreme Court that mutation entries are only for fiscal purpose, but the fact remains that under the Scheme of MPLRC, a record of right carries with it not only the fiscal duty to pay land revenue but also a number of rights which almost amount to proprietory rights and it cannot be said that mutation is only for fiscal purpose in State of Madhya Pradesh looking to the scheme of MPLRC. Thus, it is contended that the legal question referred to this Full Bench be answered negating mutation applications on the basis of Will without the Will being subjected to rigors of it being proved before the Civil Court.

14. It was further argued that in the referral Order passed by the Single Bench in Writ Petition No.3499/2022, the learned Single Judge has laid great emphasis on the plight of person claiming on the basis of will and has raised questions that if a person who is claiming his right on the basis of will has to necessarily approach the Civil Court in every case then it will lead to a grave injustice to such person. It is argued that on the other hand, the plight of a true legal heir should also be seen that before that will getting authenticated, validated and tested before the Civil Court, the Tahsildar effects a mutation and then, the true legal heir would be caught in maze of legal proceedings for decades together before getting such mutation set aside by the Civil Court and in the intervening time, looking to the rights granted to recorded Bhumiswami, drastic consequences will ensue.

15. It is argued that as per the scheme of M.P.L.R.C., the land may be sold, the land may be mortgaged, it may be succeeded and so many other things can be done under the Scheme of M.P.L.R.C. which gives a number of rights to the Bhumiswamis. The person on the basis of a doubtful will, shall enjoy the rights to property for a number of years and will create innumerable third party interests.

16. It is argued that most often it is seen that immediately after getting mutation on the basis of will, the first thing which a person does is to alienate the land and in this manner, creates third party rights leading to a loss and great prejudice to the true legal heirs and even in cases where the will has been forged, he enjoys the rights on basis of mutation. Only because some provision has been engrafted in the mutation rules by the State of Madhya Pradesh, the true legal heirs will be put to a great jeopardy and prejudice. Thus, it is prayed that legal issue be answered against the mutation on the basis of will before it being proved before the Civil Court.

17. Heard.

18. To appreciate the relevant contentions of the rival parties, we first proceed to examine the rights which a Bhumiswami gets on the basis of mutation because it has been vehemently argued that mutation is only a fiscal entry and does not create a title in the land and on the contrary, it was argued that mutation in fact gives a number of rights to the recorded Bhumiswami though technically, it may not be a title of proprietary right in the land.

19. As per Section 164 of M.P.L.R.C. it is provided that interest of Bhumiswami shall on his death pass by inheritance, survivalship or bequest as the case may be, subject to his personal laws. Thus, it is clear that a person getting Bhumiswami right which though may not be title, but on his death, the land will devolve on his own legal heirs. Section 164 of M.P.L.R.C. is as under:-

> "164. Devolution - Subject to his personal law the interest of Bhumiswami shall, on his death, pass by inheritance, survivorship or bequest, as the case may be."

20. As per Section 178-A, a Bhumiswami can partition the land in his own lifetime amongst his own legal heirs. The said provision is as under:-

> "178 (A). Partition of land in life time of Bhumiswami.-(1) If any Bhumiswami wishes to partition his holding assessed for purpose of agriculture under Section 59 or any part thereof amongst his legal heirs during his life time, he may apply for partition of such holding or part thereof to the Tahsildar.
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> (2) The Tahsildar may after hearing the legal heirs divide the holding or part thereof and apportion the assessment in accordance with the rules made under this Code."

21. As per Section 168 of M.P.L.R.C., a Bhumiswami has been given a power to induct lessee and thus, charge lease rent, premium and create lease hold rights of the third party in the land. Section 168 (1) of M.P.L.R.C. is as under:-

> "168. Leases.-(1) A Bhumiswami may lease any land comprised in his holding which has been assessed for the purpose of agriculture under Section 59, for any period not exceeding five years at a time."

22. As per Section 167, right has been given to the Bhumiswami to exchange the land by mutual agreement of whole or any part of its holding in the following manner:-

> "167. Exchange of land.-Subject to the provisions of Section 165 Bhumiswami may exchange by mutual agreement the whole or any part of their holding for purpose of consolidation of holdings or securing greater convenience in cultivation."

23. Section 165 (9) gives power to the Bhumiswami to mortgate the land to secure a loan. The said provision is as under:-

"1[(9) Nothing in this section shall-

(i) Prevent a Bhumiswami from transferring any right in his land by way of mortgage to secure payment of an advance made to him by co-operative society subject to the condition that the land shall not be sold to secure recovery, without exhausting the procedure prescribed in Section 154-A; or

(ii) Affect the right of any such society to secure recovery of any advance made to him, in accordance with the provisions of Section 154-A."

24. As per Section 250, a Bhumiswami upon getting his name mutated as a Bhumiswami can seek possession of the land. The relevant provision is as under:-

"250. Reinstatement of Bhumiswami improperly dispossessed. - (1) The Tahsildar shall-

(a) on application of a Bhumiswami or his successor-in-interest who has been improperly dispossessed, issue a show cause notice to the person occupying Bhumiswami's land to explain the grounds of his possession and make such enquiry as he thinks fit, or

(b) on coming to know that a Bhumiswami has been improperly dispossessed, on his own motion start proceedings under clause (a).

(2) If after the enquiry the Tahsildar finds that the Bhumiswami has been improperly dispossessed, he shall order the restoration of the possession to the Bhumiswami and also put him in possession of the land.

(3) The Tahsildar may, at any stage of the enquiry, pass an interim order to the person occupying the land to hand-over its possession to the Bhumiswami, if he finds that the Bhumiswami was dispossessed by opposite party within six months prior to the submission of the application or commencement of suo motu proceedings under this section.

(4) The person against whom an interim order has been passed under sub-

section (3) may be required by the Tahsildar to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of land until the final order is passed by the Tahsildar and if the person executing a bond is found to have entered into or taken possession of the land in contravention of the bond, the Tahsildar may forfeit the bond in whole or in part and may recover such amount as an arrear of land revenue.

(5) Where the Tahsildar orders restoration of possession of land to the Bhumiswami under sub-section (2), the Tahsildar shall also award compensation to be paid to the Bhumiswami by the

opposite party for the period of his unauthorised possession and such compensation shall be calculated at the pro rata rate of ten thousand rupees per hectare per year. The compensation awarded under this section shall be recoverable as an arrear of land revenue.

(6) When an order has been passed under sub-section (2) for the restoration of possession of land to the Bhumiswami, the Tahsildar may require the opposite party to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of the land in contravention of the order.

(7) Where an order has been passed under sub-section (2) for the restoration of the possession of land to the Bhumiswami, the opposite party shall also be liable to fine which may extend to fifty thousand rupees.

(8) If any person continues in unauthorised occupation or possession of land for more than seven days after the date of order for restoration of possession under sub-section (2) or sub-section (3), then without prejudice to the compensation payable under sub-section (5) or the fine under sub section the Sub- Divisional Officer shall cause him to be apprehended and shall send him with a warrant to be confined in a civil prison for a period of fifteen days in case of first order for restoration of possession and shall cause him to be apprehended and shall send him with a warrant to be confined in such prison for a period of three months in case of second or subsequent orders for restoration of the possession to such Bhumiswami:

> Provided that no action under this section shall be taken unless a notice is issued calling upon such person to appear before the Sub-Divisional Officer on a day to be specified in the notice and to show cause why he should not be committed to the civil prison:
>
> Provided further that the Sub-Divisional Officer may order the release of such person from detention before the expiry of the period mentioned in the warrant if he is satisfied that the unauthorised possession has been vacated.

25. Most importantly, a Bhumiswami has been given a right to transfer the land. Thus, the Bhumiswami can sale, gift, mortgage and in every other manner, transfer his interest in the land. This is only subjected to some restrictive provisions in other sub clauses of Section 165 which restrict the rights to transfer where the Bhumiswami is a member of aboriginal Tribe or vulnerable section of society or where the land is held in leasehold rights of the State Govt. Therefore, subject to other restrictive provisions of Section 165, a Bhumiswami has been given the right of transfer the land. Section 165 is as under:-

> "165. Rights of transfer.-1[(1) Subject to the other provisions of this Section, provisions of the proviso to sub-section (3) of Section 158 and provisions of Section 168, a Bhumiswami may transfer any interest in his land.[(2) Notwithstanding anything contained in sub-section (1)-

(a) no mortgate of any land by a Bhumiswami shall hereafter be valid unless atleast five acres of irrigated or ten acres of unirrigated land is left with him free from any encumbrance or charge;

(b) subject to the provisions of clause (a), no usufructuary mortgage of any land by a Bhumiswami shall hereafter be valid if it is for a period exceeding six years and unless it is a condition of the mortgage that on the expiry of the period mentioned in the mortgage deed, the mortgage shall be deemed, without any payment whatsoever by the Bhumiswami to have been redeemed in full and the mortgagee shall forthwith re-deliver possession of the mortgaged land to the Bhumiswami;

(c) if any mortgagee in possession of the land mortgaged does not hand over possession of land after the expiry of the period of the mortgage of six years whichever expires first the mortgagee shall be liable to ejectment by the orders of the Tahsildar as trespasser and the mortgager shall be placed in possession of the land by the Tahsildar.

2[Provided that nothing in this sub-section shall apply in the case of a mortgage of any land held by a Bhumiswami for non-agricultural purpose.] (3) Where a Bhumiswami effects a mortgage other than a usufructuary mortgage of his land pursuance of the provisions of sub-section (2), then notwithstanding anything contained in the mortgage deed, the total amount of interest accruing under the mortgage shall not exceed half the sum of the principal amount advanced by the mortgagee.

(4) Notwithstanding anything contained in sub-section (1), no Bhumiswami shall have the right to transfer any land-

(a) in favour of any person who shall as a result of the transfer become entitled to land which together with the land, if any, held by himself or by his family will in the aggregate exceed such ceiling limits as may be prescribed;

(b) 3[* * *]

(i) nothing in this sub-section shall apply-

(a) (i) in the case of transfer in favour of an institution established for a public, religious or charitable purpose or a transfer for industrial purpose or a transfer by way of mortgage;

(ii) in the case of transfer in favour of co-operative society for industrial purpose or a transfer by way of mortgage subject, however, to the condition that no mortgage for agricultural purposes shall authorize sale for recovery of an advance in contravention of clause (b) of Section 147;

(b) in the case of a transfer of land held for non-agricultural purposes;]

(ii) 1[* * * *].

(5) Notwithstanding anything to the contrary in any other enactment for the time being in force, no land of a Bhumiswami shall, in execution of a decree or order of a court, be sold to any person who as a result of such sale shall become entitled to land which together with the land, if any, held by himself or by his family will in the aggregate exceed such ceiling limits as may be prescribed;

3[Provided that nothing in this sub-section shall apply in the case of a co- operative society where any land is to be sold in execution of a decree or order passed in favour of such society after exhausting the procedure prescribed in Section 154-A. 1[(6) Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall-

(i) in such areas as are predominantly inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferrable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;

(ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.

2[(6-a) Notwithstanding anything contained in sub-section (1), 3[the right of a Bhumiswami other than a Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section(6), in the land excluding the agricultural land] shall not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing;

Provided that every such transfer effected 4[after the 9 th day of June, 1980 but before the 20th April, 1981] which is not in accordance with the provisions herein contained shall unless such transfer is ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.

(6-b) Notwithstanding anything contained in the Limitation Act, 1963 (No.36 of 1963), the Collector may on his own motion at any time or on an application made in this behalf within three years of such transaction in such form as may be prescribed, make an enquiry as he may deem fit, and may, after giving reasonable opportunity of being heard to the persons affected by the transfer, pass an order ratifying the transfer or refusing to ratify the transfer.

(6-c) The Collector shall in passing an order under sub-section (6-a) granting or refusing to grant permission or under sub-section (6-b) ratifying or refusing to ratify the transaction shall have due regard to the following:-

(i) whether or not the person to whom land is being transferred is a resident of the Scheduled Area;

(ii) the purpose to which land shall be or is likely to be used after the transfer;

(iii) whether the transfer serves, or is likely to serve or prejudicate the social, cultural and economic interest of the residents of the Scheduled area;

(iv) whether the consideration paid is adequate
(v) whether the transaction is spurious or ben
(vi) such other matters as may be prescribed.

The decision of the Collector granting or refusing to grant the permission under sub-section (6-a) or ratifying or refusing to ratify the transaction of transfer under sub-section (6-b), shall be final, notwithstanding anything to the contrary contained in this Code.

(6-d) On refusal to grant the permission under sub-section (6-a) or ratification under sub-section (6-b), the transferee, if in possession of the land shall vacate the possession forthwith and restore the possession thereof to the original Bhumiswami.

(6-e) If the Bhumiswami for any reason whatsoever fails or is unable to take possession of the land of which the right of possession stands restored to him under sub-section (6-d), the Collector shall cause the possession of land to be taken and case the land to be managed on behalf of the Bhumiswami subject to such terms and conditions as may be prescribed till such time as the original Bhumiswami enters upon his land:

Provided that if any resistance is offered in restoring possession, the Collector shall use or cause to be used such force as may be necessary.

1[(6-ee)2[* * *].] (6-f) The provisions of sub-section (6-a) to 1[(6-e)] shall have effect, not withstanding anything to the contrary contained in this Code or any other law for the time being in force.] (7) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force-

2(a) where the area of land comprised in a holding or if there be more than one holding the aggregate area of all holdings of a Bhumiswami is in excess of five acres of irrigated or ten acres of unirrigated land, then only so much area of land in his holding or holdings shall be liable to attachment or sale in execution of any decree or order as is in excess of five acres of irrigated or ten acres of unirrigated land;]

(b) no land comprised in a holding of a Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) shall be liable to be attached or sold in execution of any decree or order;

(c) no receiver shall be appointed to manage the land of a Bhumiswami under Section 51 of the Code of Civil Procedure, 1908 (V of 1908) nor shall any such land vest in the court or any receiver under the Provincial Insolvency Act, 1920 (V of 1920)* contrary to the provisions of clause (a) or clause (b):

> Provided that nothing in this sub-section shall apply where a charge has been created on the land by a mortgage;
>
> 3[(7-a) Notwithstanding anything contained in sub-section (1), no Bhumiswami specified in Section 33 of the Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968 (No.28 of 1968) shall have the right to transfer any interest in his land specified in the said section without the permission of the 4[Collector].] 5[(7-b) Notwithstanding anything contained in sub-section (1), 6[a person who holds land from the State Government or a person who holds land in Bhumiswami rights under sub-section (3) of Section 158] or whom right to occupy land is granted by the State Government or the Collector as a Government lessee and who subsequently becomes Bhumiswami of such land, shall not transfer such land without the permission of a revenue officer not below the rank of a Collector, given for reasons to be recorded in writing.] (8) Nothing in this section shall prevent a Bhumiswami from transferring any right in his land to secure payment of, or shall affect the right of the State Government to sell such right for the recovery of an advance made to him under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists Loans Act, 1884 (XII of 1884).
>
> 1[(9) Nothing in this section shall-
>
> (i) prevent a Bhomiswami from transferring any right in his land by way of mortgage to secure payment of an advance made to him by co-operative society subject to the condition that the land shall not be sold to secure recovery, without exhausting the procedure prescribed in Section 154-A; or
>
> (ii) affect the right of any such society to secure recovery of an advance made to him, in accordance with the provisions of Section 154-A.] 2[(9-A) Nothing in this section shall prevent a Bhumiswami who is a displaced person from transferring any right in his land to secure payment of an advance made to him by the Dandakaranya Development Authority or shall affect the right of that Authority to sell such right for the recovery of such advance.

3[(9-b) Nothing in this section shall prevent a Bhumiswami from transferring any right in this land to secure payment of an advance made to him by a Commercial Bank for purpose of agriculture or improvement of holding or shall affect the right of any such Bank to sell such right for the recovery

of such advance.] (10) Notwithstanding anything contained in the Indian Registrations Act, 1908 (XVI of 1908), no officer empowered to register documents thereunder shall admit to registration any document which purports to contravene the provisions of this section.

(11) Nothing in this section shall-

(a) invalidate any transfer which was validly made; or

(b) validate any transfer which was invalidly made;

Before the coming into force of this Code."

26. Further, it cannot be lost sight by this Court that in the case of rural agricultural ancestral properties that have not been subjected to a transaction which is necessarily registerable under the provisions of Indian Registration Act, 1908 so far since 1908, there may not be any other registered document of title but only mutation entry. The State of Madhya Pradesh has framed Registration Rules in terms of Registration Act, 1908 which are known as M.P. Registration Rules, 1939. As per Rule 19 (n) of M.P. Registration Rules 1939, a document of transfer of agricultural land is required to be presented with the latest computerized Khasra of one year issued by the Revenue Department. Thus, without a copy of Revenue khasra, no registered deed will be executed in respect of the land. Rule 19 relates to return of documents not accompanied with requisite material and Rule 19 (n) relates to return of document if not presented alongwith copy of computerized khasra which is as under:-

> 19. Return of document for correction, etc.- The following documents may be returned for amendment, correction, or supply of omissions -

(n) A document required to be registered under the provisions of section 17 of the Act pertaining to agricultural land, which is not presented along with the up-to-date computerized khasra of one year issued by the Revenue department.

27. We, in this reference have been called upon to adjudicate the matter in view of Mutation Rules, 2018 and great reliance has been placed on Form 1 of the Rules of 2018. The said Form relates to report of acquisition of Bhumiswami rights or interest in the land. The said Rules alongwith Form 1 are as under:-

> "In exercise of the powers conferred by clause (xxiii) of sub-section (2) of Section 258 of the Madhya Pradesh Land Revenue Code, 1959 (No 20 of 1959) read with Section 109 and Section 110 of the said Code and in supersession of this Department's Notification no. 2498-VII-N-1 dated 10th June, 1965, published in the Madhya Pradesh Rajpatra, dated 2nd July, 1965, the State Government, hereby, makes the Madhya Pradesh Bhu-Rajasv Sanhita (Bhu-Abhilekhon Mein Namantaran) Niyam, 2018, the same having been previously published, as required by sub-section (3) of Section 258 of the said Code: -

1. Short title and commencement.

(1)These rules may be called The Madhya Pradesh Bhu-Rajasv Sanhita (Bhu- Abhilekhon Mein Namantaran) Niyam, 2018.

(2)They shall come into force from the date of publication in the Madhya Pradesh Gazette.

2. Definitions.-

(1)In these rules, unless the context otherwise requires-

(a)'Code' means Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959);

(b)'Form' means Forms appended to these rules;

(c)'Section' means a section of the code.

(2)The words and expressions used in these rules but not defined in these rules and defined in the Code, shall have the same meaning respectively as assigned to them in the Code.

Part - A Report of acquisition of rights and payment of fee

3. (1)Report of a right or interest acquired in land by a person under sub- section (I) of Section 109 shall be made in -

(a)Form I, in case of acquisition of Bhumiswami right or interest;

(b)Form II, in case of acquisition of leasehold right or interest;

(c)Form III, in case of a minor Bhumiswami or minor lessee attaining majority;

(d)Form IV, in case of acquisition of any right or interest other than (a) to (c); and

(e)Form V, in case of application for common proceeding for mutation and partition of holding in case of land assessed for the purpose of agriculture.

(2)The report under sub-rule (1) may be made by any one of the means specified in the Explanation III under sub-section (1) of section 109 or by an electronic system whenever such system is introduced.

(3)Where such right or interest in land is acquired on a part of a survey number or block number or plot number, a pre-mutation sketch shall be prepared in accordance with the directions issued by the state Government from time to time and attached with the report in sub-rule (1).

(4)The party acquiring a right or an interest shall pay fees for the mutation in land records as may be notified by the State Government:

Provided that no fee shall be payable till such notification is issued:

Provided further that any fee or penalty required to be paid under Section 109 or 110 or these rules, if not paid shall be recoverable as an arrear of land revenue.

(5)A written acknowledgment of the report made in sub-rule (1) shall be given.

4. The intimation under sub-section (2) of section 109 shall be sent by the Registering Officer to the Tahsildar in Form VI along with a pre-mutation sketch prepared in accordance with the directions issued by the State Government from time to time within a period of ten days of registration of a document. The Registering Officer shall cause the fee payable under sub-rule (4) of rule 3 deposited from the person acquiring a title or interest in land for mutation in land records and give the details thereof in Form VI. Copy of the intimation made in. Form VI shall also be given to the parties to the deed.

5. The register to be maintained under sub-section (1) of Section 110 for reporting acquisition of rights or interests shall be in Form VII.

6. The intimation regarding acquisition of right shall be submitted to the Tahsildar under sub-section (2) of section 110 in Form VIII.

Part - B Proceedings in cases for mutation in land records.

7. (1)The Tahsildar shall issue notice under clause (b) of sub-section (3) of Section 110 in Form IX to all persons interested including the following persons and authorities-

(a)in case the land has been given on lease or on licence by the Government- to the district head of the concerned department or where there is no such district head - to the Secretary of the Department;

(b)in case the land has been given on lease or on licence by any Local Body- to the chief executive officer of the concerned Local Body;

(c)in case the land has been given on lease or on licence by an authority established or controlled by the State Government-to the District Head of such authority or where there is no such district head - to the chief executive officer of such authority.

(2)The Tahsildar shall display a public notice relating to the proposed mutation in Form X on the notice board of his office and of the concerned Gram Panchayat or urban local body, as the case may be, and publish it in the concerned village or sector.

(3)During the enquiry if existence of any interested person other than those to whom notices have been issued under aforesaid sub-rule (1) comes to the knowledge of the Tahsildar, he shall issue notice to such interested person also.

8. (1)After the date of passing order under sub-section (4) of section 110, the Tahsildar shall fix a date not later than thirty days for the delivery of certified copies of the order and updated land records free of cost as provided under sub- section (5) of section 110.

(2)On the date so fixed certified copies of the order and updated Khasra and maps shall be delivered to the parties. The Tahsildar shall make necessary entries in the Bhu-Adhikar Pustika or, if required, issue new Bhu-Adhikar Pustika to the parties.

(3)If any party so desires or if any party does not appear on the date fixed under sub-rule (1) the certified copies of the order and updated Khasra and map shall be sent to the party by registered post or by such other means as may be directed by the State Government.

9. Quarterly report of pending cases under sub-section (7) of section 110 shall be sent to the Collector in Form XI by the tenth day of the next quarter. The State Government may set up an electronic system for monitoring to generate such reports automatically.

Part-C Common proceedings for mutation and partition of holding in case of land assessed for the purpose of agriculture

10. A party acquiring a right or interest in land assessed for the purpose of agriculture under section 59 may apply for effecting the mutation of a right or interest in land records under section 110 and partition of holding under section 178 in a common proceedings.

11. (1)If an application is made under rule 10, the Tahsildar shall register a case for mutation of rights in land records under section 110 and partition of holding under section 178 and proceed to hear and pass a common order.

(2)The provisions of these rules and of section 178 and rules made thereunder shall be followed in the proceedings under sub-rule (1).

(3)Where any objection relating to partition is raised, the Tahsildar shall pass an order for mutation in land records and direct the parties, who wish to partition the holding, to apply under section 178 separately.

Form-I (See Rule 3) Report of Acquisition of Bhumiswami Right or Interest To, Tahsildar/Additional Tahsildar/Naib Tahsildar ..... Tahsil .....

District ..... M P Part-I I/We, ...(Name), ...hereby, report acquisition of Bhumiswami right or interest in land and request for mutation in land records under Section 110 of the Madhya Pradesh Land Revenue Code, (No 20 of 1959).

1. Particulars of persons acquiring right or interest:-

S. No	Name and Address	Name of Father/Mother / Husband / Guardian	Gender	Age	Mobile phone number	Scheduled Tribe/ Other	Descrip and No. identit documen
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

2. Particulars of persons by whom right/interest/claim is transferred/ assigned/renounced:-

S. No	Name and Address	Name of Father/Mother / Husband / Guardian	Gender	Age	Mobile phone number	Scheduled Tribe/ Other	Descrip and No. identit documen
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

3. Particulars of land and right/interest-

Patwari Halke No/ Sector No.	Name of Village/ Block No/ Urban area	Survey No./ Area (in hectare / sq.mtr.) Plot No. Area (in hectare /sq.mtr.)	Area of land over which Bhumiswami right/interest has been acquired	Share	Nam per acq rig int
(1)	(2)	(3)	(4)	(5)	(6)

4. Mode of acquisition of Bhumiswami right/interest:-

Required Document(Self attested copies to Please tick (☐S.No Mode be attached)) if attached (1) (2) (3) (4)

1. Death Certificate or suitable proof of 1 By inheritance death of the deceased Bhumiswami2.

Family tree/List of heirs and their shares 2 By will Will 3 By purchase Registered sale deed 4 By gift Registered Gift deed By exchange of 5 Registered deed of exchange land 6 By decree of Court Decree of the Court 7 By land acquisition Award passed 8 By land allotment Order of the land allotment By renouncing 9 Release deed claims in land By any other mode 10 (not mentioned Relevant document above)

5. Details of fee deposited-

(in Rupees) Amount in figures Amount in words Details of the receipt of the fee deposited (1) (2) (3) DECLARATION

1. I/we ..... son/daughter/wife of ..... address (full mailing address) ....., mobile No ..... hereby, declare (s) that the information given by me/us. is true and correct to the best of my/our knowledge and belief and nothing has been concealed by me/us. I/we also understand that in case of incorrect information submitted by me/us, legal action may be taken against me/us.

2. I/we. request that mutation in land records be made as per the information provided by me/us in this report.

Date .....

Place .....

Signature

Name .....

.(Person making repo

_____

_____ Mandatory Enclosures:-

(1)Copy of khasra.

(2)Copy of pre-mutation sketch (where applicable) (3)Copy of proof of address of persons acquiring right or interest (4)Copy of proof of identity of persons acquiring right or interest (5)If person making report is other than the person acquiring right or interest, a letter of authority signed by the person acquiring right or interest along with proof of address and proof of identity of the person making report shall be furnished. (6)In case of juristic person-

(1) a document establishing the identity of the juristic person such as PAN card, GST registration number, CIN number issued by the Registrar of Companies, Registration certificate issued by the registering authority such as Registrar of Firms and Societies, Registrar Public Trusts etc. or Bank Account passbook etc.;

and (2) a letter of authorization to act on behalf of such juristic person issued by competent body or person shall be attached.

(7) Copy of the documents specified in para 4 of the report above (8) Copy of receipt of fee Notes. - (1) Self attested copies of the documents shall be attached with this Form.

(2) Proof of identity may be self attested copy of Aadhar Card or its equivalent, PAN Card, Voter ID, Passport, Driving License, Passbook of any Bank, or any Photo ID- issued or certified by any Gazetted Officer of the State Government or the Central Government.

Part-II Acknowledgement To, Shri/Smt./Ku .....

Son/Daughter/Wife of .....

Address .....

The report submitted in Part-I above is hereby acknowledged.

Seal Date.....

Place .....

Name and designation of Receiving Authority Tahsil .....

District .....

28. Mutation, as per Section 109 and 110 takes place in Bhumiswami rights. The Rules of 2018 leave no doubt that upon mutation, a person will get Bhumiswami rights. Therefore, upon a mutation being effected in terms of Rules of 2018, read with substantive provisions of Sections 109 and 110 of M.P.L.R.C., a person after his name being mutated on the basis of will or in any other manner, will

be able to sell the land, mortgage the land, gift the land, exchange the land, partition it among his legal heirs. These all are almost all transactions that a title holder of the land can perform. Therefore, under the scheme of M.P.L.R.C. and the Rules framed thereunder, it cannot be said that mutation entry would be entry only for a fiscal purpose.

29. There seems to be substance in the argument of the petitioners that if the mutation entry was only for a fiscal purpose, then it would not have given rise to so many litigations before the Revenue Courts. There is actually no competition amongst people and citizens to pay land revenue and be disciplined citizens, but actually to gain the rights to exchange, sale, mortgage, lease, seek possession, etc. of the land on the basis of mutation entry of bhumiswami rights.

30. The concept of Bhumiswami has to be construed in terms of Sections 57 and 158 of M.P.L.R.C. Section 57 of M.P.L.R.C. declares the State Govt. to be the owner of all lands in the State. Section 57 of M.P.L.R.C. is as under:-

> "57. State ownership in all lands - (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government:"

31. A private person can only get Bhumiswami Rights in terms of Section 158 and he shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under M.P.L.R.C. Therefore, Bhumiswami rights are the best rights a private person can get on agricultural lands in the State of Madhya Pradesh and upon being mutated as Bhumiswami of the land, a person will enjoy all the rights as narrated above under the M.P.L.R.C., it will be subject to certain restrictions as laid down in various provisions of M.P.L.R.C., as narrated above. Therefore, this Court discards the argument that mutation entries are purely for fiscal purpose only because in the State of Madhya Pradesh, as per the scheme of M.P.L.R.C., mutation entry brings alongwith it various other rights and interests in the land including most importantly, the right to transfer the land.

32. The plea has been raised before this Court that in view of Sections 109 and 110 of M.P.L.R.C., it is the duty of the Revenue authority and the Revenue Courts to carry out mutation and that as per Section 110, Revenue Courts can even carry out mutation in disputed cases. Sections 109 and 110 are quoted herein below for reference:-

> 109. Acquisition of rights to be reported.-(1)Any person lawfully acquiring any right or interest in land shall report his acquisition of such right within six months from the date of such acquisition in the form prescribed -
>
> (a)to the Patwari or any person authorized by the State Government in this behalf or Tahsildar, in case of land situated in non-urban area;

(b)to the Nagar Sarvekshak or any person authorized by the State Government in this behalf or Tahsildar, in case of land situated in urban area:

Provided that when the person acquiring the right is a minor or is otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Patwari or Nagar Sarvekshak or the person authorised or the Tahsildar. Explanation I. The right mentioned above does not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882 (No. IV of 1882).

Explanation II. A person, in whose favour a mortgage is redeemed or paid off or a lease is determined, acquires a right within the meaning of this section.

Explanation III. Intimation in writing required to be given under this section may be given either through a messenger or handed over in person or may be sent by registered post or by such other means as may be prescribed.

Explanation IV. For the purpose of this section, "otherwise disqualified" includes the "person with disability" as defined in clause (5) of section 2 of the Rights of person with Disabilities Act, 2016 (No. 49 of 2016) (2)When any document purporting to create, assign or extinguish any title to or any charge on land used for agricultural purposes, or in respect of which a khasra has been prepared, is registered under the Indian Registration Act, 1908 (No. 16 of 1908), the Registering Officer shall send intimation to the Tahsildar having jurisdiction over the area in which the land is situated in such Form and at such times as may be prescribed.

(3)Any person whose rights, interests or liabilities are required to be or have been entered in any record or register under this Chapter, shall be bound on the requisition in writing of any Revenue Officer, Revenue Inspector, Nagar Sarvekshak or Patwari engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof, as may be within his knowledge or in his possession or powers. A written acknowledgment of the information furnished or document produced shall be given to the person.

(4)Any person neglecting to make the report required by sub-section (1) or furnish the information or produce the documents required by sub-section (3) within the period specified therein shall be liable, at the discretion of the Tahsildar, to a penalty not exceeding five thousand rupees.

(5)Any report regarding the acquisition of any right under this section received after the specified period shall be dealt with in accordance with the provisions of section 110.]

110. [Mutation of acquisition of right in land records:-

(1)The Patwari or Nagar Sarvekshak or person authorised under section 109 shall enter into a register prescribed for the purpose every acquisition of right reported to him under section 109 or which comes to his notice from any other source.

Note.- Provisions of Sub-section (1) substituted by M.P. Act 14 of 2020, w.e.f. 12-02-2020, but new provisions are same as already applicable hence we avoid substitution.

(2)The Patwari or Nagar Sarvekshak or person authorised, as the case may be, shall intimate to the Tahsildar, all reports regarding acquisition of right received by him under sub-section (1) in such manner and in such Form as may be prescribed, within thirty days of the receipt thereof by him.

(3)On receipt of intimation under section 109 or on receipt of intimation of such acquisition of right from any other source, the Tahsildar shall within fifteen days, -

(a)register the case in his Court;

(b)issue a notice to all persons interested and to such other persons and authorities as may be prescribed, in such Form and manner as may be prescribed; and

(c)display a notice relating to the proposed mutation on the notice board of his office, and publish it in the concerned village or sector in such manner as may be prescribed;

(4)The Tahsildar shall, after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry as he may deem necessary, pass orders relating to mutation within thirty days of registration of case, in case of undisputed matter, and within five months, in case of disputed matter, and make necessary entry in the village khasra or sector khasra, as the case may be, and in other land records.

(5)The Tahsildar shall supply a certified copy of the order passed under sub-section (4) and updated land records free of cost to the parties within thirty days, in the manner prescribed and only thereafter close the case:

Provided that if the required copies are not supplied within the period specified, the Tahsildar shall record the reasons and report to the Sub-Divisional Officer.

(6)Notwithstanding anything contained in section 35, no case under this section shall be dismissed due to the absence of a party and shall be disposed of on merits.

(7)All proceedings under this section shall be completed within two months in respect of undisputed case and within six months in respect of disputed case from the date of registration of the case. In case the proceedings are not disposed of within the specified period, the Tahsildar shall report the information of pending cases to the

> Collector in such Form and manner as may be prescribed.] (8) Notwithstanding anything contained in this section, the Tansildar shall make entries in appropriate column of Khasra, within three days from the date of receipt of intimation from-
>
> (a) any bank or financial institution established and regulated under the provisions of the Reserve Bank of India Act, 1934 (No.2 of 1934) or the Banking regulation Act, 1949 (No.10 of 1949) regarding mortgage or hypothecation, as the case may bee, including its period, against the advances given or to be given by it to the tenure-holder; or
>
> (b) any Court regarding-
>
> (I) any charge, penalty or any liability created or imposed by it upon tenure-holding; or
>
> (ii) any decree or order passed by it;

and after making such entries, the Tahsildar shall inform the Bhumiswami, who, may object against such entries and may apply for its correction before the Tahsildar. The Tahsildar may after making such enquiry, as he may deem fit, make such correction as he may consider necessary.

Explanation.- For the purpose of clause (b) of sub-section (8), "Court" means any Civil, Criminal or Revenue Court.

33. In terms of Section 110(4), it was argued that the Tahsildar is having a power to decide disputed cases also and therefore, he can even take evidence as to validity of a document of title where mutation is sought on the basis of document of title or validity of will where mutation is sought on the basis of will.

34. The said argument seems to be very attractive in first flush because looking to Section 11 of M.P.L.R.C., Tahsildar is named as one of the Revenue Officers and as per Section 31 of M.P.L.R.C., when the Revenue Officer decides any question between the State Government and any person or between parties to any proceedings, such Revenue Officer will be a Revenue Court. Further, as per Section 30(3) of M.P.L.R.C., Revenue Officers are given the power to require attendance of persons, production of documents and receive evidence. Sections 31 and 32 are as under:-

> "31. Conferral of status of Courts on Board and Revenue Officers.-The Board of a Revenue Officer, while exercising power under this Code or any other enactment for the time being in force to enquire into or to decide any question arising for determination between the State Government and any person or between parties to any proceedings, shall be a Revenue Court.
>
> 32. Inherent power of Revenue Courts.-Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as

> may be necessary for the ends of justice or to prevent the abuse of the process of the Court."

35. However, there are various issues that have to be determined by Revenue Courts under the Scheme of M.P.L.R.C. We are not deliberating on the issue in this order, whether the while exercising powers under various other provisions of MPLRC apart from mutation, Revenue Courts are "Courts" or not, because that is not within the scope of question referred to us. We are restricting ourselves to the nature of jurisdiction exercised by the Tehsildar while deciding mutation applications.

36. Under M.P.L.R.C., various functions are given to Revenue Courts like mutation, demarcation, partition, removal of obstruction, assessment of land revenue, recovery of land revenue, consolidation of holdings, eviction from land, enforcement of private easements, etc. many of which are adjudicatory functions, including various issues that fall under exclusive jurisdiction of Revenue authorities in terms of Section 257 of M.P.L.R.C. Though, the nature of exclusive jurisdiction has been subjected to judicial interpretation from time to time and the nature of exclusivity is not a term of reference in the present case and we refrain from commenting on that. Section 257 is being quoted only for the purpose of the diverse nature of jurisdictions which the Revenue Courts or Revenue Officers exercise. Section 257 is as under:-

> "257. Exclusive jurisdiction of revenue authorities.-Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:-
>
> (a) any decision regarding any right under sub-section (1) of Section 57 between the State Government and any person;

(a-1) any decision regarding the purpose to which land is appropriated under Section 59;

(b) any question as to the validity or affect of the notification of a land survey;

(c) any claim to modify a decision determining abadi made by a (District Survey Officer) or Collector;

(d) any claim against the State Government to hold land free of land revenue, or at less than the fair assessment, or to be assigned in whole or in part the land revenue assessed on any land;

(e) the amount of land revenue assessed or reassessed under this Code or any other enactment for the time being in force;

(f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended.

(g) any question regarding the demarcation of boundaries or fixing of boundary marks under Chapter X;

(h) any claim against the State Government connected with or arising out of, the collection of land revenue or the recovery of any sum which is recoverable as land revenue under this Code or any other enactment;

(i) any claim against the State Government or against a Revenue Officer for remission or suspension of land revenue, or for a declaration that crops have failed in any year;

(j) any decision regarding forfeiture in cases of certain transfer under Section 166;

(k) ejectment of a lesser of a Bhumiswami under sub-section (4) of Section 168;

(l) any claim to set aside transfer by a Bhumiswami under sub-section (1) of Section 170 and clauses (a) and (b) of sub-section (2) of Section 170-A. [(1-1) any matter covered under Section 170-B;]

(m) ejectment of a Government lessee under Section 182;

(n) 3[* *] * (o) 4[* * *]

(p) 5[* * *]

(q) 6[* * *]

(r) 7[* * *]

(s) 8[* * *]

(t) 1[* * *] (u) 2[* * *]

(v) amount payable as compensation under subsection (3) of Section amount pamation of the scheme for consolidation of holdings under Section 210, transfers of rights in carrying out the scheme under Section 213 and assessment and apportionment of costs of consolidation of holdings under Section 215;

(w) any claim to modify any entry in the Nistar Patrak;

((w-1) any decision regarding penaltyanunder Section 248, for unauthorisedly taking possession of land;

[(x) any decision regarding reinstatement of a Bhumiswami improperly dispossessed and confinement in civil prison under Section 250;] (x-i) 5[* *] 6(x-ii) any decision regarding delivery of actual possession of land to the Bhumiswami or the Government Lessee under Section 250-B.] (y) any decision regarding vesting of tanks in State Government under Section 251 and any claim against the State Government arising thereunder;

(z) any claim against the State Government to set aside or modify any premium, penalty, cess or rate imposed or assessed under the provisions of this Code or any other enactment for the time being force;

(z-1) 7[* * *] (z-2) any claim to compel the performance of any duty imposed by this Code on any Revenue officer or other officer appointed under this Code."

37. From a perusal of the aforesaid Scheme of M.P.L.R.C., it is clear that the jurisdiction of Revenue Officers and Courts is not restricted to mutation. Mutation is contemplated under Section 109 and 110 only and the most important provision for this purpose is Section 111 of M.P.L.R.C. which infact, is an exception or proviso to Sections 109 and 110 of M.P.L.R.C., though not named as proviso in the Code. Section 111 of M.P.L.R.C. is as under:-

> "111. Jurisdiction of Civil Courts.-The Civil Courts shall have jurisdiction to decide any dispute to which the State Government is not a party relating to any right which is recorded in the recorded-of-rights."

38. It is well settled in law that jurisdiction of Civil Court is an inherent jurisdiction in every matter unless it is barred under a law. Section 9 of Civil Procedure Code is as under:-

> 9. Courts to try all civil suits unless barred.--

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I.-- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II.-- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

39. The issue that the Civil Court has jurisdiction to try every suit, unless it is specifically barred, is no longer res integra and Section 9 of C.P.C. has been interpreted time and again by the Supreme Court and by various other Courts. In Sahebgouda v. Ogeppa, (2003) 6 SCC 151, it was held that section 9 of the Code of Civil Procedure clearly lays down that the civil court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or

impliedly barred. It is well settled that the civil court has jurisdiction to try all suits of civil nature and the exclusion of jurisdiction of the civil court is not to be lightly inferred.

In ITI Ltd. v. Siemens Public Communications Network Ltd., (2002) 5 SCC 510, it was held that the jurisdiction of the civil court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the civil courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference the same should be in favour of the jurisdiction of the court rather than the exclusion of such jurisdiction.

In Dwarka Prasad Agarwal v. Ramesh Chander Agarwal, (2003) 6 SCC 220, it was held that where a dispute between the parties iss eminently a civil dispute, section 9 of the Code of Civil Procedure confers jurisdiction upon the civil courts to determine all disputes of civil nature unless the same is barred under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision seeking to bar jurisdiction of a civil court requires strict interpretation. The court, it is well settled, would normally lean in favour of construction, which would uphold retention of jurisdiction of the civil court.

40. Once, the jurisdiction of Civil Court was not being barred in M.P.L.R.C. in the matter of mutation, there was no reason to insert Section 111 in M.P.L.R.C., because even if Section 111 of M.P.L.R.C. had not been there, then also, Civil Court would still have jurisdiction in the matter of any entry in the record of rights. However, by enacting Section 111 in M.P.L.R.C., the legislature has consciously carved out an exception to Sections 109 and 110 of M.P.L.R.C. The Civil Courts have been specifically given jurisdiction to decide any dispute to which the State Govt. is not a party relating to a right which is recorded in the record of rights. A dispute as to validity of will or a dispute as to validity of sale deed or a dispute as to any of the documents as enumerated in Form-1 of Mutation Rules of 2018 would create a dispute relating to any right which is recorded in the record of rights because mutation/change of entry would be a dispute relating to right which is recorded.

41. The legislature, therefore, in our considered opinion has consciously omitted to give any right to the Revenue Courts or Revenue Officers to decide a disputed matter of mutation because otherwise it will be encroachment on the province of Civil Court which is better equipped and better trained to take evidence as to validity of a document. Neither the Mutation Rules 2018, nor the M.P. Bhu Rajasva Sanhita (Rajasv Nyayalayon Ki Prakriya) Niyam 2019 lay down procedure for trial exactly like a civil suit. The mutation proceedings are summary proceedings and Revenue Courts and Officers are neither equipped nor trained to conduct trial like a civil suit. The legislature has consciously omitted to give any jurisdiction to the Revenue Courts to dwell upon and take evidence as to validity of will or validity of any document on the basis of which entry in record of rights is made or changed. Sections 109 and 110 have to be read alongwith Section 111 M.P.L.R.C. and a bare reading of Section 111 of M.P.L.R.C. leads to only a single conclusion that where-ever rights of private parties are involved, then it will only be for the Civil Court to adjudicate the disputed cases. The jurisdiction of the Revenue Officers in the matters of mutation in Revenue records, is merely administrative.

42. The jurisdiction given to Revenue Officers and Revenue Courts for mutation under Section 109 and 110 is therefore restricted by Section 111 of M.P.L.R.C., which is not in the case of various other provisions of M.P.L.R.C. where the Revenue Courts and Officers can decide disputed cases and where Civil Suit is not barred then also as per Section 9 of Code of Civil Procedure, the orders of Revenue Courts and Officers would be subject to adjudication of rights by the Civil Court. However, in the case of Mutation entries, the position would be different. Here, by exception created under Section 111, only conclusion that arises is that wherever rights of private parties are involved, in case of any dispute, the Revenue Officers and Courts have to lay their hands off and the parties would be at liberty to go to the Civil Court to have their disputes adjudicated. In case where issue of Government interest in land crops up in course of mutation, then the Tehsildar may decide that question in terms of section 111 readwith Section 257 (a) MPLRC, by exercising wider jurisdiction.

43. These disputes may be in the matter of validity of will or the dispute may be in the matter of right of the testator to execute the will questioning testator's title on the land, or some other person having already got a right in the land in any other manner as against the testator. It may also be in the nature of existence of two rival wills of the deceased testator. Therefore, all such disputes have necessarily to be got adjudicated from the Civil Court before the Revenue Courts and Officers adjudicate on the aspect of mutation.

44. Section 110(4) of M.P.L.R.C. also makes it mandatory that the Tahsildar has to afford reasonable opportunity of being heard to the persons interested. This, in the case of will would mean that the Tahsildar would be under obligation to enquire about the legal heirs of the person who has executed the will and to hear them. No mutation on the basis of will would be valid without the Tahsildar inquiring about the legal heirs of the person who has executed the will and giving them opportunity of being heard. In case of any legal heir raising any dispute or any other person raising any dispute as to the validity or competency of will or title of the testator, then the Tahsildar would not have any authority to carry out mutation on the basis of will. The time limit of five months given in case of disputed matters cannot be read to the exclusion of Section 111 of M.P.L.R.C. and it can only be construed to be a time limit for the Tahsildar to arrive at a conclusion whether any dispute exists in the matter and giving opportunity to parties to approach the Civil Court. If there is a dispute in the matter, then the Tahsildar cannot assume the jurisdiction of Civil Court which has not been contemplated under Section 111 of M.P.L.R.C. and decide disputed cases. Therefore, we hold that in all disputed cases, the Tahsildar would have no right to carry out mutation on the basis of will and mutation on basis of will in disputed cases would have to wait till the dispute is adjudicated by the Civil Court, in the manner being set out in detail infra.

45. As per Section 110 (7), when the Tahsildar is not able to decide disputed cases within five months, he has to report the information of pending cases to the Collector. Once a dispute as to validity of a registered document or as to validity of a will has been raised before the Tahsildar during the course of mutation proceedings, then the Tahsildar is not under obligation to decide the dispute and the period of five months as provided would have to be read as a breathing time given to the parties to approach the Civil Court and seek injunction, failing which mutation has to be carried out ignoring the will and giving effect to natural succession and in case of registered non-testamentary title document, in terms of that document. If the parties approach Civil Court,

and get injunction, then Tehsildar can very well inform the Collector under Section 110 (7) about pendency of such a dispute and the matter will wait till Civil Court decides the said dispute.

46. It is settled in law that the Civil Courts have the jurisdiction to decide the validity of will and Revenue Courts have no jurisdiction to decide on the validity of will. The same has been held by the Supreme Court in the cases of Suraj Bhan v. Financial Commissioner, reported in (2007) 6 SCC 186, so also in the case of Jitendra Singh Vs. State of M.P. reported in (2021) SCC OnLine SC 802. We have also considered Section 111 MPLRC and provisions of Indian Succession Act 1925 in detail in this judgement, that also point towards the same conclusion.

47. As per Section 295 of Indian Succession Act, 1925, it is specifically provided that in contentious cases, proceedings shall take as nearly as may be in the form of a regular suit. Therefore, the legislature in its rightful wisdom has provided that in all contentious cases for probate, or for letter of administration under Indian Succession Act, the procedure that will be followed by the District Judge would be the procedure of a regular Civil suit and not the summary procedure under Section 268 of Indian Succession Act. Section 295 of Indian Succession Act is as under :-

295. Procedure in contentious cases.--

In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

48. Aforesaid provision when read alongwith said Section 111 of M.P.L.R.C., leave no room for doubt that the Tahsildar has no jurisdiction to dwell upon the dispute as to will and in cases of contentious and disputed cases as noted above, no mutation can take place even as per Section 110. When even the District Court cannot decide contentious Probate and Letters of Administration cases without following the procedure for regular suit, then obviously the legislature would not have vested greater power in the Tehsildar to decide contentious cases himself as undisputedly the procedure before the Tehsildar is not the procedure of regular suit. The Tahsildar is neither equipped nor trained to try a case as civil suit.

49. We are strengthened in our conclusion by a perusal of Scheme of Indian Succession Act, 1925. Though, it is settled by the Division Bench of this Court in the case of Phool Singh (supra) and by the Supreme Court in the case of Kanta Yadav (supra) that probate is not essential in certain parts of India including Madhya Pradesh, but yet probate is optional and probate is not barred even in these territories. If the procedure for obtaining probate and letter of administration under Indian Succession Act, 1925 is seen, then as per Section 278(b) application for letter of administration has to mention the family or other relatives of the deceased and their respective residences. Section 278 is as under:-

> "278. Petition for letters of administration.-(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating-
>
> (a) the time and place of the deceased's death;
>
> (b) the family or other relatives of the deceased, and their respective residences;
>
> (c) the right in which the petitioner claims;
>
> (d) the amount of assets which are likely to come to the petitioner's hands;
>
> (e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge, and
>
> (f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.
>
> (2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate."

50. The procedure for deciding probate and letter of administration cases is not the regular procedure as applicable to Civil Suits but the provisions of Code of Civil Procedure would apply so far as the circumstances of the case permit. Section 268 of Indian Succession Act, 1925 is as under:-

> "268. Proceedings of District Judge's Court in relation to probate and administration.-The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided; be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908 (5 of 1908)."

As per section 295 of the Act of 1925 as quoted supra, in case of contentious matters, the procedure of regular suit has to be followed "as nearly as may be" in place of "so far as the circumstances of the case permit", which is the language of section 268 in non-contentious cases.

51. We are conscious of position that even District Court cannot grant probate and letter of administration on the basis of admission of the other party and a issue has arisen that whether Tehsildar can allow mutation even in undisputed cases on the basis of will which even the District Court cannot do in probate or letter of administration proceeding. The counsel for the petitioners had argued that as per Section 63(c) of Indian Succession Act will is required to be attested and as per Section 68 of Indian Succession Act, attested document has to be proved in a particular manner i.e. with evidence of at least one attesting witness. Section 63 of Indian Succession Act is as under:-

"63. Execution of unprivileged Wills.--Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:--

(a)The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c)The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

52. Section 68 of Indian Succession Act is as under:-

"68. Witness not disqualified by interest or by being executor.--

No person, by reason of interest in, or of his being an executor of, a Will shall be disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof. "

53. A corresponding provision is to be found in Section 67 of Bhartiya Sakshya Adhiniyam 2003.

54. It was argued that even as per Section 281 of Indian Succession Act a petition for probate is required to be verified under signature of at least one witness to the will without which the application cannot even be filed and otherwise also the will cannot be held to be proved by admission. Will changes the natural course of succession and is a document executed by the testator that comes to light at instance of the propounder and is sought to be enforced after death of testator, therefore, the law places heavy burden on propounder of the will.

55. Section 281 of Indian Succession Act is as under:-

"281. Verification of petition for probate, by one witness to Will.--Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following, namely:--

> "I (C.D.), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (or that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence)."

56. Earlier a view was taken by a Division Bench of High Court of Kerala in the case of Thayyullathil Kunhikannan v. Thayyullathil Kalliani, 1989 SCC OnLine Ker 264 Report in AIR 1990 Ker 226 that Section 58 of Indian Succession Act will override Section 68 of Indian Succession Act. As per Section 58 it is provided that admitted fact need not be proved and once a will is also admitted, it need not be proved in accordance with Section 58 and can form evidence even in absence of it proved in the manner provided under Section 68 of Indian Succession Act. However, subsequently the said issue has been settled by the Supreme Court in the case Ramesh Verma v. Lajesh Saxena, (2017) 1 SCC 257 wherein the supreme Court held as under:-

> 13. A will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the will is called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.
>
> 14. In Savithri v. Karthyayani Amma [Savithri v. Karthyayani Amma, (2007) 11 SCC 621] this Court has held as under : (SCC p. 629, para
>
> 17) "17. ... A will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the will. It is required to be shown that the will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition.

It is also required to be established that he has signed the will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine."

15. It is not necessary for us to delve at length to the facts of the matter as also the evidence adduced by the parties before the High Court. Suffice it to note that the execution of the wills has to be

proved in accordance with Section 68 of the Evidence Act.

57. In Shivakumar v. Sharanabasappa, (2021) 11 SCC 277, the Supreme Court held as under:-

> 12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a will could be broadly summarised as follows:
>
> 12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.
>
> 12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.
>
> 12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed.

This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

58. Further in the case of Jagdish Chand Sharma v. Narain Singh Saini, (2015) 8 SCC 615 the supreme Court has held that Section 63(c) is mandatory and in case of doubt onus is on propounder of the will. The Supreme Court held as under:-

> 22. It cannot be gainsaid that the above legislatively prescribed essentials of a valid execution and attestation of a will under the Act are mandatory in nature, so much so that any failure or deficiency in adherence thereto would be at the pain of invalidation of such document/instrument of disposition of property.
>
> 22.1. In the evidentiary context Section 68 of the 1872 Act enjoins that if a document is required by law to be attested, it would not be used as evidence unless one attesting witness, at least, if alive, and is subject to the process of the court and capable of giving evidence proves its execution. The proviso attached to this section relaxes this requirement in case of a document, not being a will, but has been registered in accordance with the provisions of the Registration Act, 1908 unless its execution by the person by whom it purports to have been executed, is specifically denied.
>
> 22.2. These statutory provisions, thus, make it incumbent for a document required by law to be attested to have its execution proved by at least one of the attesting witnesses, if alive, and is subject to the process of the court conducting the proceedings involved and is capable of giving evidence. This rigour is, however, eased in case of a document also required to be attested but not a will, if the same has been registered in accordance with the provisions of the Registration Act, 1908 unless the execution of this document by the person said to have executed it denies the same. In any view of the matter, however, the relaxation extended by the proviso is of no avail qua a will. The proof of a will to be admissible in evidence with probative potential, being a document required by law to be attested by two witnesses, would necessarily need proof of its execution through at least one of the attesting witnesses, if alive, and subject to the process of the court concerned and is capable of giving evidence.

59. The Supreme Court in the case of H. Venkatachala Iyengar v. B.N. Thimmajamma and others reported in AIR 1959 SC 443 has held as under:

> 18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a

document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature;

the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in Harmes v. Hinkson [(1946) 50 CWN 895] "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the

judicial mind must always be open though vigilant, cautious and circumspect.

29. According to the decisions in Fulton v. Andrew [(1875) LR 7 HL 448] "those who take a benefit under a will, and have been instrumental in preparing or obtaining it, have thrown upon them the onus of showing the righteousness of the transaction".

> "There is however no unyielding rule of law (especially where the ingredient of fraud enters into the case) that, when it has been proved that a testator, competent in mind, has had a will read over to him, and has thereupon executed it, all further enquiry is shut out". In this case, the Lord Chancellor, Lord Cairns, has cited with approval the well-known observations of Baron Parke in the case of Barry v. Butlin [(1838) 2 Moo PC 480, 482] . The two rules of law set out by Baron Parke are:"first, that the onus probandi lies in every case upon the party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator"; "the second is, that, if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court and calls upon it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased". It is hardly necessary to add that the statement of these two rules has now attained the status of a classic on the subject and it is cited by all text books on wills. The will propounded in this case was directed to be tried at the Assizes by the Court of Probate. It was tried on six issues. The first four issues referred to the sound and disposing state of the testator's mind and the fifth to his knowledge and approval of the contents of the will. The sixth was whether the testator knew and approved of the residuary clause; and by this last clause the propounders of the will were made the residuary legatees and were appointed executors. Evidence was led at the trial and the Judge asked the opinion of the jurors on every one of the issues. The jurors found in favour of the propounders on the first five issues and in favour of the opponents on the sixth. It appears that no leave to set aside the verdict and enter judgment for the propounders notwithstanding the verdict on the sixth issue was reserved; but when the case came before the Court of Probate a rule was obtained to set aside the verdict generally and have a new trial or to set aside the verdict on the sixth issue for misdirection. It was in dealing with the merits of the finding on the sixth issue that the true legal position came to be considered by the House of Lords. The result of the decision was that the rule obtained for a new trial was discharged, the order of the Court of Probate of the whole will was reversed and the matter was remitted to the Court of Probate to do what was right with regard to the qualified probate of the will.

30. The same principle was emphasized by the Privy Council in Vellasawmy Servai v. Sivaraman Servai [(1929) LR 57 IA 96] where it was held that, where a will is propounded by the chief beneficiary under it, who has taken a leading part in giving instructions for its preparation and in procuring its execution, probate should not be granted unless the evidence removes suspicion and

clearly proves that the testator approved the will.

31. In Sarat Kumari Bibi v. Sakhi Chand [(1928) LR 56 IA 62] the Privy Council made it clear that "the principle which requires the propounder to remove suspicions from the mind of the Court is not confined only to cases where the propounder takes part in the execution of the will and receives benefit under it. There may be other suspicious circumstances attending on the execution of the will and even in such cases it is the duty of the propounder to remove all clouds and satisfy the conscience of the court that the instrument propounded is the last will of the testator". This view is supported by the observations made by Lindley and Davey, L. JJ., in Tyrrell v. Painton [(1894) P 151, 157, 159] . "The rule in Barry v. Butlin [(1838) 2 Moo PC 480, 482] , Fulton v. Andrew [(1875) LR 7 HL 448] and Brown v. Fisher [(1890) 63 LT 465] , said Lindley, L.J., "is not in my mind confined to the single case in which the will is prepared by or on the instructions of the person taking large benefits under it but extends to all cases in which circumstances exist which excite the suspicions of the court".

32. In Rash Mohini Dasi v. Umesh Chunder Biswas [(1898) LR 25 IA 109] it appeared that though the will was fairly simple and not very long the making of it was from first to last the doing of Khetter, the manager and trusted adviser of the alleged testator. No previous or independent intention of making a will was shown and the evidence that the testator understood the business in which his adviser engaged him was not sufficient to justify the grant of probate. In this case the application for probate made by the widow of Mohim Chunder Biswas was opposed on the ground that the testator was not in a sound and disposing state of mind at the material time and he could not have understood the nature and effect of its contents. The will had been admitted to the probate by the District Judge but the High Court had reversed the said order. In confirming the view of the High Court the Privy Council made the observations to which we have just referred.

33. The case of Shama Charn Kundu v. Khettromoni Dasi [(1899) ILR 27 Cal 522] on the other hand, was the case of a will the execution of which was held to be not surrounded by any suspicious circumstances. Shama Charn, the propounder of the will, claimed to be the adopted son of the testator. He and three others were appointed executors of the will. The testator left no natural son but two daughters and his widow. By his will the adopted son obtained substantial benefit. The probate of the will with the exception of the last paragraph was granted to Shama Charn by the trial Judge; but, on appeal the application for probate was dismissed by the High Court on the ground that the suspicions attending on the execution of the will had not been satisfactorily removed by Shama Charn. The matter was then taken before the Privy Council; and Their Lordships held that, since the adoption of Shama Charn was proved, the fact that he took part in the execution of the will and obtained benefit under it cannot be regarded as a suspicious circumstance so as to attract the rule laid down by Lindley, L.J., in Tyrrell v. Painton [(1894) P 151, 157, 159]. In Bai Gungabai v. Bhugwandas Valji [(1905) ILR 29 Bom 530] the Privy Council had to deal with a will which was admitted to probate by the first court, but on appeal the order was varied by excluding therefrom certain passages which referred to the deed-poll executed on the same day by the testator and to the remuneration of the solicitor who prepared the will and was appointed an executor and trustee thereof. The Privy Council held that "the onus was on the solicitor to satisfy the court that the passages omitted expressed the true will of the deceased and that the court should be diligent and

zealous in examining the evidence in its support, but that on a consideration of the whole of the evidence (as to which no rule of law prescribed the particular kind required) and of the circumstances of the case the onus was discharged". In dealing with the question as to whether the testator was aware that the passages excluded by the appeal court from the probate formed part of the instrument, the Privy Council examined the evidence bearing on the point and the probabilities. In conclusion Their Lordships differed from the view of the appeal court that there had been a complete failure of the proof that the deed-poll correctly represented the intentions of the testator or that he understood or approved of its contents and so they thought that there were no grounds for excluding from the probate the passages in the will which referred to that deed. They, however, observed that it would no doubt have been more prudent and business-like to have obtained the services of some independent witnesses who might have been trusted to see that the testator fully understood what he was doing and to have secured independent evidence that clause 26 in particular was called to the testator's attention. Even so, Their Lordships expressly added that in coming to the conclusion which they had done they must not be understood as throwing the slightest doubt on the principles laid down in Fulton v. Andrew [(1875) LR 7 HL 448] and other similar cases referred to in the argument.

60. The Supreme Court in the case of Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and another, reported in (1974) 2 SCC 600 has held that propounder has to show that the Will was signed by testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free Will, that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. It has also been held that in all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted and the onus is always on the propounder to explain them to the satisfaction of the Court before it could be accepted as genuine.

61. The Supreme Court in the case of Gorantla Thataiah v. Thotakura Venkata Subbaiah and others, reported in AIR 1968 SC 1332 has held as it is for those who propound the Will to prove the same. Same was held in the case of Murthy and others v. C. Saradambal and others, reported in (2022) 3 SCC 209 that intention of testator to make testament must be proved, and propounder of Will must examine one or more attesting witnesses and remove all suspicious circumstances with regard to execution of Will. It has been held as under:

> 31. One of the celebrated decisions of this Court on proof of a will, in H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443] is in H. Venkatachala Iyengar v. B.N. Thimmajamma, wherein this Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under: (AIR p. 451, para 18) "18. ... The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents.

Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law.

Similarly, Sections 59 and 63 of the Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus, the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

32. In fact, the legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will.

33. In the abovenoted case, this Court has stated that the following three aspects must be proved by a propounder: (Bharpur Singh case [Bharpur Singh v. Shamsher Singh, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , SCC p. 696, para 16) "16. ... (i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and

(ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and

(iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other

words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein."

34. In Jaswant Kaur v. Amrit Kaur [Jaswant Kaur v. Amrit Kaur, (1977) 1 SCC 369] , this Court pointed out that when a will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What generally is an adversarial proceeding, becomes in such cases, a matter of the court's conscience and then, the true question which arises for consideration is, whether, the evidence let in by the propounder of the will is such as would satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the will offers cogent and convincing explanation with regard to any suspicious circumstance surrounding the making of the will.

35. In Bharpur Singh v. Shamsher Singh [Bharpur Singh v. Shamsher Singh, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , this Court has narrated a few suspicious circumstance, as being illustrative but not exhaustive, in the following manner: (SCC p. 699, para 23) "23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

> (i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.
>
> (ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.
>
> (iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.
>
> (iv) The dispositions may not appear to be the result of the testator's free will and mind.
>
> (v) The propounder takes a prominent part in the execution of the will.
>
> (vi) The testator used to sign blank papers.
>
> (vii) The will did not see the light of the day for long.
>
> (viii) Incorrect recitals of essential facts."

36. It was further observed in Shamsher Singh case [Bharpur Singh v. Shamsher Singh, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] that the circumstances narrated hereinbefore are not exhaustive. Subject to offering of a reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory requirements of proving the will need not be complied with.

37. In Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao [Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao, (2006) 13 SCC 433] , in paras 34 to 37, this Court has observed as under: (SCC pp. 447-48) "34. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

> (i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;
>
> (ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;
>
> (iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

39. Similarly, in Leela Rajagopal v. Kamala Menon Cocharan [Leela Rajagopal v. Kamala Menon Cocharan, (2014) 15 SCC 570 : (2015) 4 SCC (Civ) 267] , this Court opined as under: (SCC p. 576, para 13) "13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us."

62. The Supreme Court in the case of Bharpur Singh and others v. Shamsher Singh, reported in (2009) 3 SCC 687 has held that it may be true that Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with. In terms of Section 63(c) of Succession Act, 1925 and Section 68, Evidence Act, 1872, the propounder of a Will must prove its execution by examining one or more attesting witnesses and propounder of Will must prove that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free Will.

63. Therefore, it is settled that the onus is on the propounder of the will to prove the same by removing all suspicions surrounding its execution. He must prove that Will was a genuine one by examining at least one of the attesting witnesses as well as by proving the mental status of testator, willingness of testator, understanding of testator etc. All these findings obviously cannot be given by Revenue authorities.

65. However, looking to the provisions of Section 109 and 110 of M.P.L.R.C. so also the Mutation Rules of 2018, we are not able to convince ourselves with the proposition that even in undisputed cases where no dispute is raised by any of the legal heirs, despite being noticed or any other person regarding validity of the will or competence of the deceased to execute the will, mutation cannot be ordered by the Tahsildar. In such cases, looking to the provisions of Section 109 and 110 of M.P.L.R.C. and Rules of 2018, the Tahsildar would be competent to execute mutation where no dispute has been raised by any person whatsoever in the matter of competence of the deceased to execute the will and validity of the will or existence of a later will of the testator that may require proof.

66. While holding above that in undisputed case, the Tehsildar can carry out mutation on the basis of will, we are conscious of the legal position in the matter of proof of will and burden being on propounder. However, as we have already dealt in detail above, the act of mutation under Section 109 and 110 MPLRC is not a quasi judicial or a judicial act of Tehsildar but is only a administrative act because he is having no power to decide disputed cases in view of section 111 MPLRC. Once he is having no power to decide the disputed cases of mutation, therefore, though he may be argued to be a Court under Section 3 of Indian Evidence Act but since in the matters of mutation, the action is merely administrative, therefore, Tehsildar will not be having any power to take evidence or decide dispute in the matter of will which is a testamentary document, or for that matter, any other non-testamentary title document. In view of this, we are of the considered opinion that in undisputed cases the Tehsildar can carry out mutation on the basis of will. However, in those case also Civil Suit will never be barred.

67. Learned counsel for the petitioner has vehemently relied the judgment of the Supreme Court in the case of Jitendra Singh (Supra) to contend that even in undisputed cases the Tehsildar has no jurisdiction to carry out mutation on the basis of will. However, we find that much prior to the aforesaid case an exactly contrary view was taken by Supreme Court in the Case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186. The dispute before the Supreme Court was that mutation had been carried out on the basis of will whereas a civil suit challenging validity of the will had been dismissed and regular appeal was pending before the High Court in the matter of challenge to the will. The Supreme Court upheld mutation on the basis of will even during pendency of the Civil Suit. Leaving it open for the parties to prosecute the civil appeal pending before the High Court in the matter of validity of will. The Supreme Court has held as under:-

> 8. So far as mutation is concerned, it is clear that entry has been made and mutation has been effected in revenue records by the Tahsildar on the basis of an application made by Respondent 5 herein and his name has been entered in record-of-rights on the basis of the will said to have been executed by Ratni Devi. In our opinion, therefore, it cannot be said that by entering the name of Respondent 5 in revenue records, any illegality had been committed by the Tahsildar. It is true that no notice was issued to the appellants but the Tahsildar had taken the action on the basis of will said to have been executed by deceased Ratni Devi in favour of Respondent 5. The said order has been confirmed by the Collector as also by the Financial Commissioner. When the grievance was made against the said action by filing a writ

petition, the High Court also confirmed all the orders passed by the Revenue Authorities under the Act. We see no infirmity so far as that part of the order is concerned.

10. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed. We may, however, clarify that we may not be understood to have expressed any opinion on correctness or genuineness of the will said to have been executed by deceased Ratni Devi in favour of Respondent 5. It was stated at the Bar that against dismissal of the suit by the trial court on the ground of limitation, an appeal is filed by the appellants which is pending before the High Court of Delhi. As and when the said appeal will be taken up for hearing, it will be decided on its own merits without being influenced by observations made by us in this judgment. We may also make it clear that we are not expressing any opinion on the entitlement of compensation said to have been awarded in land acquisition proceedings. All contentions of all parties are kept open and all questions will be decided in appropriate proceedings by competent authorities or courts without being inhibited by the present decision."

68. In the Judgment in the case of Jitendra Singh (supra) the aforesaid order has been taken into consideration by the Supreme Court in paragraph 6 to 8 in the following manner :-

"6. It is not in dispute that the dispute is with respect to mutation entry in the revenue records. The petitioner herein submitted an application to mutate his name on the basis of the alleged will dated 20.05.1998 executed by Smt. Ananti Bai. Even, according to the petitioner also, Smt. Ananti Bai died on 27.08.2011. From the record, it emerges that the application before the Nayab Tehsildar was made on 9.8.2011, i.e., before the death of Smt. Ananti Bai. It cannot be disputed that the right on the basis of the will can be claimed only after the death of the executant of the will. Even the will itself has been disputed. Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.

7. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

> 8. In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqruddin v. Tajuddin, (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70"

69. The Supreme Court in the case of Jitendra Singh (Supra) did not doubt the correctness of the case of Suraj bhan (Supra), nor distinguished the said case, but took the opposite view. In the recent case of NBCC India Ltd. Vs. State of West Bengal, 2025 INSC 25, it has been held by the Supreme Court as under :-

> 27. A decision where the issue was neither raised nor preceded by any consideration, in State of U.P. v. Synthetics and Chemicals Ltd. (1991 (4) SCC
>
> 139) this Court held, "the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority". Further, approving the decision of this Court in Municipal Corporation of Delhi v. Gurnam Kaur (1989 (1) SCC 101), it was held that "precedents sub-silentio and without argument are of no moment"
>
> this Court held that, "a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141". The same approach was adopted in Arnit Das v. State of Bihar (2000 (5) SCC 488) .....".

70. In the case of Jitendra Singh (Supra) it has been mentioned that as per the settled proposition of law if there is any dispute with respect to title and most particularly when the mutation entries sought to be made on the basis of will the party who is claiming title/ right on the basis of will has to approach the appropriate civil court/ court and get his right crystallized and only thereafter on the basis of decision before the Civil Court necessary mutation entry can be made. The Supreme Court in the case of Jitendra Singh (supra) was dealing with the case of disputed will and the comments in the matter of will as appearing in para 6 mention the position that the will is disputed. There is no general proposition laid down in the case of Jitendra Singh (supra) that even in the cases of undisputed will the Revenue Officers cannot exercise their administrative powers and carry out the mutation. The said judgment, as already argued by the respondents, did not take into consideration the Mutation Rules 2018 nor the said rules were placed for consideration before the Supreme Court

in the case of Jitendra Singh (supra).

71. While holding that in cases of dispute the Tehsildar has no power to dwell upon the issue of mutation, we are also emboldened by the provisions of section 117 MPLRC which provides that there is a presumption of correctness as to entries in revenue records, therefore, having noted the drastic consequences of mutation as bhoomiswami which legally may not be ownership or title, but even then, not much short of title, Section 117 MPLRC would raise the presumption of correctness of entries. Thus, in the case of dispute if a person succeeds to have mutation on the basis of disputed will without requiring it to be proved in accordance with provisions of evidence law then the consequences will be drastic. If this is allowed to happen, then unless the mutation entries are held to be illegal on the basis of finding as to title in civil suit, there would be a presumption as to correctness of mutation and in summary enquiry under Section 109 and 110 MPLRC a person succeeding to get mutation order would enjoy the presumption under Section 117 of MPLRC. Section 117 MPLRC is as under:-

> "117. Presumption as to entries in land records.
>
> - All entries made under this Chapter in the land records shall be presumed to be correct until the contrary is proved. "

72. An issue was raised before us that mutation proceeding cannot be kept pending during pendency of dispute before the Civil Court either in the matter of validity of registered documents or in the matter of validity of a will. We are not impressed with this argument looking to the provisions of Section 117 of MPLRC that attach presumption of correctness to mutation entries and the drastic rights that MPLRC confers on a person having his name recorded as bhoomiswami on the basis of mutation. It is in the interest of the parties that mutation entries should wait during pendency of the dispute before the Civil Court as to validity of registered document or competence of will or validity of a will, in the manner set out in detail in para 44 above and para 74 below.

73. Certain concerns were raised before us that since will is not a transfer and the law has been settled in that regard by the Supreme Court including in the case of State of West Bengal Vs. Kailash Chandra Kapoor report in 1997(2) SCC 387 wherein it has been held that there is difference between transfer and will and transfer is between two living persons during life while will take effect after demise of the testator. On this ground a concern was raised that there are certain prohibited transactions in terms of various sub-clauses of section 165 MPLRC which prohibit transactions of lands of vulnerable section of society like ab- original tribe and lands held by government lessee who are given limited bhoomiswami rights. It was raised before us that transfer in such cases is barred but on the basis of will such transfers will take place outside the family. Though the concern may be genuine, but merely on the basis of that concern it cannot be held that mutation on the basis of will cannot take place. Even if it is accepted, in those cases the parties may even get the will proved by filing declaratory suit before the civil Court and then get the name mutated. Insufficiency of law prohibiting will in cases of vulnerable sections of society or land being land allotted under the Scheme of Government will not lead us to interpret the entire law in the manner which has not been contemplated by the legislature. It would be for the legislature to contemplate framing a law in that

regard. We leave this issue at that without any further comments.

74. Now an ancillary question arises for consideration that once a dispute has arisen in the matter of competence of the deceased to execute the will or in the matter of validity or authenticity of the will, then which of the party would be required to approach the Civil Court. As we have already held above that in such cases the Tehsildar would not have the jurisdiction to carry out mutation, and burden is on propounder of document, then obviously the propounder of the will would be required to approach the civil court and get the will proved either by resorting to the proceeding of probate or letter of administration or a civil suit for declaration. However, in cases of registered non-testamentary title documents, in case of dispute, the person raising dispute will be required to approach the Civil Court. If such suit/proceedings before Civil Court/District Court are not instituted within five months or despite institution, no injunction is granted despite occurrence of dispute, then the Revenue authorities may decide those disputed cases by ignoring disputed testamentary documents i.e. will and in case of non- testamentary documents by giving effect to non-testamentary registered title documents. In case of injunction from Civil Court, the proceedings will have to be kept pending and reported to Collector in terms of Section 110 (7) MPLRC. In cases where issue of Government having interest in the land crops up in course of mutation, then the Tehsildar may decide that question in terms of section 111 readwith Section 257 (a) MPLRC by exercising wider jurisdiction and may take evidence, but in those cases also, no enquiry into validity of will or other registered title document can take place before the Tehsildar in Revenue proceedings in view of section 295 of Indian Succession Act and incompetence of the Tehsildar to decide questions of title by enquiring into registered title documents.

75. In view of the aforesaid discussion, we answer the question referred to us in the negative and hold that Tehsildar cannot reject the application for mutation at threshold on the ground that it is based upon will. However, in view of detailed discussion made by us above, it would be appropriate to summarize our conclusions serially as under:-

> 1) The Tehsildar while dealing with cases of mutation under sections 109 and 110 MPLRC between private parties, does not perform judicial or quasi-judicial functions, but only performs administrative functions and therefore, he is not authorized to take any evidence for the purpose of deciding applications for mutation.
>
> 2) The Tehsildar can entertain application for mutation on the basis of will.

However, it would be obligatory upon him to enquire about the legal heirs of the deceased and notice them in view of provisions of section 110(4) MPLRC.

3) Sections 109 and 110 have to be read alongwith Section 111 M.P.L.R.C. and a bare reading of Section 111 of M.P.L.R.C. leads to conclusion that where-ever rights of private parties are involved, then it will only be for the Civil Court to adjudicate the disputed cases. The jurisdiction of the Revenue Officers in the matters of mutation in Revenue records, is merely administrative.

4) A dispute as to validity of will, competence of testator to execute will or existence of two rival wills of testator, or a dispute as to validity of any other non-testamentary registered title document as enumerated in Form-1 of Mutation Rules of 2018 would create a dispute relating to any right which is recorded in the record of rights and arising during either mutation or correction of entry would be such a dispute.

5) In case any dispute as mentioned in para (4) above is raised between private parties, then the Tehsildar would not have any competence to decide the dispute and it would be for the parties to approach the civil court to get the dispute adjudicated, in terms of detailed discussion contained in para-74 above. Such matters will either be disposed or kept pending and reported to the Collector in terms of Section 110(7) MPLRC by the Tehsildar, in the manner discussed in detail in this order.

6) The decision in disputed cases as contemplated under Section 110 (4) M.P.L.R.C. does not give any authority to the Tehsildar to decide such dispute and assume powers of Civil Court by going into the authenticity of will or of any non-testamentary registered title document and that outer time limit has to be read only to determine whether a dispute exists in the matter and granting opportunity to parties to approach the Civil Court. If such approach to Civil Court is not made or despite approach no injunction is granted by Civil Court, then mutation will be carried out on basis of succession by ignoring disputed testamentary document and in case of non-testamentary registered title documents, by giving effect to such document. Once a dispute in the matter of competence of testator, validity of the will (whether registered or not) or into a non-testamentary registered title document or dispute as to title is raised before Civil Court and injunction is granted, then the only course open for the Tehsildar would be not to proceed further and to report the matter to the Collector under Section 110(7) of MPLRC.

7) In case no dispute is raised by any legal heirs of the testator or by any other person in the matter of competence of testator to execute the will and authenticity of the will, then it would be open for the Tehsilder to carry out the mutation in such undisputed cases. However, even in those cases subsequent Civil Suit will not be barred.

8) In case where issue of Government having interest in the land crops up in course of mutation, then the Tehsildar may decide that question in terms of section 111 readwith Section 257 (a) MPLRC by exercising jurisdiction which is wider than administrative one and may take evidence, but in those cases also, no enquiry as to validity of will or of any registered title document can take place before the Tehsildar.

76. After having given our conclusions, let the matter be placed before the appropriate Bench for orders.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(SUSHRUT ARVIND DHARMADHIKARI
JUDGE