

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2610 (M/S) of 2013

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| Rajkumar Maurya S/o Late Sri Gayadeen | -Petitioner |
| Versus | |
| Subhash Chandra and others | -Respondents |

Hon'ble B.S. Verma, J. (Oral).

Heard Sri Lokendra Dobhal, Advocate, appearing on behalf of the petitioner.

By means of this petition the petitioner has sought a writ in the nature of certiorari for quashing the order dated 16-10-2007 passed by Naib Tehsildar, Vikas Nagar, Dehradun in mutation Case No. 4337/2007, Subhash Chandra and others vs. Gayadeen and others, as well the order dated 13-6-2013, passed by Additional Collector (Administration), Dehradun, contained in Annexure Nos. 14 and 17 respectively to the writ petition.

The writ petition has been preferred arising out from the mutation proceedings U/S 34/35 of the U.P. Land Revenue Act. The proceedings are summary in nature and the petitioner has an alternate remedy to file regular suit U/S 40-A of the U.P. Land Revenue Act, which quoted below:-

'40-A. Saving as to title suits- no order passed under Section 33, Section 35, Section 39, Section 40, Section 41 or Section 54, shall bar any suit in a competent court for relief on the basis of a right in a holding'.

The contention of learned counsel for the petitioner to the effect that no order of mutation can be passed on the basis of a will to adjudicate the title, is misconceived, since general order of succession U/S 171 of the Z.A. and L.R. Act is subject to provision of Section 169 of the Act and a Bhumidhar can bequeath his holding by way of a will.

Since the order has been passed in a summary proceedings, and regular suit for declaration of title is not barred in view of Section 40-A of Land Revenue Act mentioned above, therefore, the writ petition

is dismissed on the ground of alternate remedy available to the petitioner to file a suit in a court of competent jurisdiction.

(B.S. Verma, J.)
31-10-2013

ISB