

A.F.R.

Neutral Citation No. - 2023:AHC-LKO:78639

**Reserved On 31.05.2023**

**Delivered On 30.11.2023**

**Court No. - 11**

**Case :- WRIT - C No. - 1679 of 2023**

**Petitioner :- Shravan Kumar And Another**

**Respondent :- Addl. Commissioner (Judicial) Ayodhaya Division,  
Ayodhaya And Others**

**Counsel for Petitioner :- Ravi Shanker Tewari, Sheo Pal Singh**

**Counsel for Respondent :- C.S.C., Ajay Kumar Pandey, Vijai  
Bahadur Verma**

**Hon'ble Saurabh Lavania, J.**

1. Heard learned counsel for the petitioners, Sri Vijai Bahadur Verma, who put in appearance on behalf of opposite party No.3-Harihar Bux and Sri Hemant Kumar Pandey, learned counsel for the State.

2. In view of order proposed to be passed, notice to opposite parties is hereby dispensed with.

3. By means of present petition, petitioners have assailed the order passed in the mutation proceedings.

4. The main relief sought in the present petition on reproduction reads as under:-

*"(i) To issue writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 19.01.2023 passed by the Ld. Opp. Party No.1*

*in Revision No. 00378/2021 [C202104000000378] (Smt. Kalawati Vs Harihar Bux & Ors) u/s 229 of the U.P. L.R. Act and the judgment & order dated 15.02.2021 passed by the Ld. Opp. Party No.2 in Case No. 5382/2014 [Computer No. 20140412055382] u/s 34/35 of the U.P. L.R. Act (Smt. Kalawati Vs Tauqeer Ahmed & Ors) contained in **Annexure No.1 & 2** respectively to the Writ petition."*

5. As per record as also the submissions advanced by the learned counsel for the petitioners the orders aforesaid have been assailed, broadly, on following grounds:-

(i) limitation for preferring an application for mutation under Section 34 of U.P. Land Revenue Act, 1901 (in short "Act of 1901").

(ii) the jurisdiction of Tehsildar and other authorities under the Act of 1901 while dealing with the mutation cases.

6. Learned counsel for the parties, proposed the following questions, which are to be answered by this Court:-

*"A. As to whether an application u/s 34 of the L.R. Act, 1901 can be moved in case of transfer at any point of time or within a reasonable period of time after reporting the possession as provided u/s 34(1) of the Act?*

*B. As to whether if the possession is not be reported to the Tehsildar of the Tehsil concerned within three months from the date of obtaining possession upto what time the application can be entertained after levying fine as the same is not provided even u/s 38 of the Act?*

*C. As to whether in a local law where no limitation is provided section 29(2)(b) of the Limitation Act would be made applicable and as such as per residuary Article 137 the limitation would be three years?*

*D. As to whether in a summary proceedings when rival claims are setup the Tehsildar is entitled to decide the title or the same should be referred to the*

*Court of original jurisdiction to decide the title as has been held by the full bench of Karnatka High Court in the case of **Smt. Jayamma & 3 Ors. Versus the State of Karnatka & 3 Ors.**, reported in **AIR Online 2020 KAR 108 (Full Bench).**"*

7. Before entering into the factual aspect of the case as also the issue that as to whether in the facts of the case the present petition is liable to be entertained, this Court finds it appropriate to deal with the aforesaid questions.

8. For coming to the conclusion on the questions aforesaid as also on the issue of entertainability of present petition, it would be apt to refer some statutory provisions and relevant paragraphs of some pronouncements.

9. Section(s) 33A, 34, 35, 38, 40 and 40-A of the Act of 1901 being relevant, are extracted herein under:-

*"[33A. Correction of annual registers in cases of uncontested successions. - (1) Where a person obtains possession of any land by succession, tire Kanungo shall make such enquiry as may be prescribed and if the case is not disputed record the same in the annual registers.]*

*[(2) The provisions of sub-section (1) shall mutatis mutandis apply -*

*(i) to a person, who has been admitted as a sirdar of any land under Section 195 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 before tire commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 or as a bhumidhar with non-transferable rights under tire said section after such commencement, or as an asami of any land under Section 197 of the first mentioned Act.*

*(ii) to every settlement of land made under sub-section (3) of Section 27 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960.]*

**34. Report of succession or transfer of possession.**  
*- [(1) Every person obtaining possession of any land*

*by succession or transfer (other than a succession or transfer which has already been recorded under Section 33-A), shall report such succession or transfer to the Tahsildar of the Tahsil in which the land is situate.]*

*(2) [\* \* \*]*

*(3) [\* \* \*]*

*(4) If the person so succeeding, or otherwise obtaining possession, is a minor or otherwise disqualified, the guardian or other person who has charge of his property shall make the report required by this section.*

*(5) No Revenue Court shall entertain a suit or application by the person so succeeding or otherwise obtaining possession until such person has made the report required by this section.*

*[Explanation. - For tire purposes of this section, the word 'transfer' includes -*

*(i) a family settlement by which the holding or part of the holding recorded in tire record-of-rights in tire name of one or more members of that family is declared to belong to another or other members; or*

*(ii) an exchange of holding or part thereof under Section 161 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.*

***[35. Procedure on report*** -On receiving a report of succession or transfer under Section 34, or upon facts otherwise coming to his knowledge, the Tahsildar shall make such inquiry as appears necessary, and if the succession or transfer appears to have taken place, he shall direct the annual registers to be amended accordingly.]

***38. Fine for neglect to report.*** - Any person neglecting to make the report required by Section 34 within three months from the date of obtaining possession under a [\* \* \*] lease, or from the date of the succession or other transfer, shall be liable to a fine not exceeding five times the amount of the fee which would otherwise have been payable under Section 37, or when no fee is leviable, then not exceeding such amount as the [State Government] may by rule prescribe.

***40. Settlement of disputes as to entries in annual register.*** - (1) All disputes regarding entries in the

*annual registers shall be decided on the basis of possession.*

*(2) If in the course of inquiry into a dispute under this Section the [Tahsildar] is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property and shall put such person in possession.*

*(3) [\* \* \*]*

*Explanation. - The term 'possession' in this Section means possession based on succession or transfer.*

*[40A. 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.]"*

10. Section 214 of the U.P. Revenue Code, 2006 (in short "Code of 2006"), being also relevant, is extracted herein under:-

***"214. Applicability of Code of Civil Procedure, 1908 and Limitation Act, 1963.- Unless otherwise expressly provided by or under this Code, the provisions of the Code of Civil Procedure, 1908 and the Limitation Act, 1963 shall apply to every suit, application or proceedings under this Code."***

11. In the case of **Vishwa Nath and Another vs. Board of Revenue, U.P., Lucknow and Others; 2004 (4) AWC 3141**; this Court considered the statutory provisions related to mutation proceedings and as per observations made in this judgment the mutation court has jurisdiction to take evidence and also to examine the same to find out that as to whether the transfer or succession had taken place or not. The relevant paras of the judgment, referred above, are as under:-

***"7. Section 34 of U.P. Land Revenue Act, 1901 (hereinafter referred to as Act) provided that every person obtaining possession of any land by succession or transfer shall report such succession or transfer to***

*the Tahsildar of the Tahsil in which the land is situate. Section 35 provides procedure on report. Section 35 of extracted below:—*

*“35. Procedure on report.— On receiving a report of succession or transfer under Section 34, or upon facts otherwise coming to his knowledge, the Tahsildar shall make such inquiry as appears necessary, and if the succession or transfer appears to have been taken place, he shall direct the annual registers to be amended accordingly.”*

*Section 40 provides for settlement of disputes as to entries in annual register. Section 40-A is with regard to saving as title suits. Sections 40 and 40-A of the Act is quoted below:—*

*“40. Settlement of disputes as to entries in annual register.— (1) All disputes regarding entries in the annual registers shall be decided on the basis of possession.*

*(2) If in the course of inquiry into a dispute under this section the (Collector or the Tahsildar) is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property and shall put such person in possession.*

*Explanation.— The term “possession” in this section means possession based on succession or transfers.*

*40A. Saving as 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.”*

*Section 234 of the Act empowers the Board to make rules with the previous sanction of the State Government. In exercise of powers under Section 234 of the Act Rules have been framed. Chapter A-XXXVII was inserted vide Notification dated 14th January, 1966 regarding mutation of names due to succession or transfer under Sections 34, 35 of the Act. Rule A-378(b) which is relevant in the present as is extracted below:—*

*“A-378(b). If the succession is disputed, the tahsildar shall make a summary enquiry in accordance with Section 40 and shall record such evidence as the parties may produce and also take into consideration such other evidence as may otherwise be placed before*

*him for determining the dispute. If the succession is found to have taken place and it is in accordance with the provisions of the ZA and LR Act, 1950, he shall order it to be recorded in the Annual Register.”*

*Rule A-378(b), as quoted above, provides that if the succession is disputed, the tahsildar shall make a summary enquiry in accordance with Section 40 and shall record such evidence as parties may produce. Section 40, as extracted above, provides that disputes shall be decided on the basis of possession and if in course of enquiry Collector or Tahsildar is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property.*

**8.** *Rule 381 relied by counsel for the petitioner as contained in Chapter XXXVII of U.P. Revenue Court Manual was rule relating to mutation prior to insertion of Chapter A-XXXVII. Rule 381(c) is with regard to disputed case which itself contemplate making of summary inquiry and taking evidence. Rule 381(c) is extracted below:—*

*“381. Procedure on completion of enquiry required by Section 35.— Upon the completion of the inquiry required by Section 35 the tahsildar shall—*

*(a) and (b).....*

*(c) In a disputed case, under Section 35 the tahsildar shall only make a preliminary enquiry to determine the dispute and its nature before referring the case to the Collector for disposal as required by the section. The Collector shall then make a summary enquiry himself and shall take such further evidence as the parties may desire to produce and as may be necessary in his opinion for completing the enquiry. He may also take into consideration in his opinion for completing the enquiry. He may also take into consideration the evidence, if any, recorded by the Tahsildar or a qualified Naib-Tahsildar.”*

**9.** *From perusal of Rule A-378(b) of the U.P. Revenue Court Manual as well as Rule 381 and Section 40 of the Act, it is clear that in a disputed case of succession, the inquiry is contemplated and in the said inquiry the Tahsildar/Collector is also entitled to take evidence of the parties. Furthermore, Section 35 of the Act provides for making such inquiry as appears necessary and the relevant words used in Section 35*

are, “if the succession or transfer appears to have taken place, he shall direct the annual registers to be amended accordingly.” The inquiry, thus, is for finding out if the succession or transfer appears to have taken place. However, inquiry is summary in nature and the order passed there in has no bearing in title suit in which relief is claimed on the basis of right in a holding. Section 40-A of the Act specifically provides that no order passed under Section 35 of the Act shall bar any suit in a competent Court for relief on the basis of a right in a holding.

10. The question posed is as to whether if a registered Will or any registered document is filed before a mutation Court whether it is obligatory for the mutation Court to direct for mutation on the said basis and whether in any circumstances the mutation Court has jurisdiction to ignore the said document. When statute gives power to Court to conduct an inquiry to find out as to whether transfer or succession has taken place or not, the Court will have all necessary power to arrive at a decision. In case it is held that mutation Court has to always direct for mutation on the basis of registered document, the power of the Court under the aforesaid section Will be hedged with restriction, which cannot be read in the statutory scheme. The interpretation as canvassed by counsel for the petitioners will put restraint on exercise of jurisdiction by the mutation Court, which is not envisaged in the provisions, and the Rules. The provisions of U.P. Revenue Court Manual, as quoted above, provide taking of evidence by the Court. When the Court take evidence it has jurisdiction to decide the issue raised. The report of mutation can be given on the basis of a transfer. Let us take an example that a sale deed is claimed to be executed by a person, which is registered document produced before the mutation Court. An objection is filed to the application that person claiming to have executed the sale deed is dead or the person was not present in the district at the time of execution and the sale deed is by an impostor. Obviously the Court is empowered to take evidence and decide the objection. In case interpretation is taken that the sale deed is to be always accepted if one of the attesting witnesses comes and proves the execution that will be fettering the power of the Court. The Court is empowered to take evidence of both the par-ties and decide the



*dispute as to whether deed was executed by person claimed to have executed the deed or not, same can be an example with regard to a Will also. In a case of registered Will if an objection is taken that Will was not executed by the person claims to have executed the Will, the Court can take evidence and decide the issue. The mere that one of the attesting witness comes and proves the Will does not oblige the Court to accept the Will in all circumstances. It is, however, relevant to note that for ignoring the registered document there has to be valid reasons and a registered document cannot be ignored on insufficient grounds.*

*11. From the foregoing discussions, it is clear that it is in the jurisdiction of the mutation Court on the basis of evidence brought before it to either accept the Will or not accept the Will.*

*12. The counsel for the petitioners has placed reliance on Appendix-10 Note 10 of U.P. Revenue Court Manual which is extracted below:—*

*“10. But cases do arise e.g., when the Collector has taken charge of an estate immediately on the death of the owner, when the dispute must be decided on a summary inquiry into title. The difficulty in such cases arises on the interpretation of the word ‘summary’, vide Board's letter No. 13/Judl. 384-B of June 2, 1930. If only all Courts would get this word fixed in their minds the Board feel that mutation work will be enormously reduced, perhaps by half. It is the fear of having a case returned for further hearing, that forces the majority of Sub-Division Officers to convert themselves into extra civil Courts. At the same time the Board must enter a caveat; the word ‘summary’ does not mean ‘scamped’; it is not to be used as a cloak for the delinquencies of the idle officer. It is impossible to avoid entering into points of civil law in discussing questions of title; and the rules of civil law must be observed. It is difficult to give instructions which will cover all cases; but a few illustrations of cases in which time can be saved may help :*

*(i) If the deceased has executed a deed of adoption which has been duly registered, it should be left to the opposite party to prove in the civil Courts that the adoption was invalid or for any reason.*

(ii) *If a transfer is made with all due formality including as assertion that possession has been given, and a prompt application for mutation is challenged by the transferor on the ground that the consideration has not been paid, it should be for the transferor to go to the civil Courts.*

(iii) *If the transferor, a recorded proprietor, admits the transfer and delivery of possession inter vivos no third party should be allowed to challenge the possession of the transferee.*

(iv) *If a Muslim woman produces a formal nikahnama signed by her husband, duly registered that is sufficient evidence for the Revenue Court that she is duly married.*

(v) *If a properly executed registered Will in favour of some one other than the heir is produced, it is not for Revenue Courts to decide as to the competence of the testator.*

(vi) *Ordinarily civil Courts dakhnama in pursuance of a decree should not be questioned.”*

*13. Reliance has been placed on Note 10(v) which provide that if a property executed registered Will in favour of some one other than the heir is produced, it is not for Revenue Court to decide as to the competence of the testator. It is not necessary to examine the submission any further since the present case is a case in which Will is executed in favour of two sons who are admitted heirs under the provisions of U.P. Zamindari Abolition & Land Reforms Act. Thus Note 10(v) is not attracted strictly in the present case.*

*14. Now coming to the cases cited by counsel for the petitioners, the first case relied is Roop Narain's case (1973 All LJ 599) (supra). The aforesaid case was a case which lay down that if the property is bequeathed under the valid Will, the provisions of Sections 171 and 172 of U.P. Zamindari Abolition & Land Reforms Act will not be attracted. The said judgment further lay down principle for construing a Will. In the present case, it is not the case of the respondents that Will could not have been executed by the deceased. With regard to principle of construing a Will since findings given in the mutation proceedings are only summary subject to decision by competent Court, it is open to the petitioners to establish their right on the basis of Will in competent Court. The*

said case was not a case arising out of mutation proceedings nor the question of jurisdiction of mutation Court has been considered in the said case, hence the said case is not attracted. Another case relied on by petitioners is Rudra Pratap's case (AIR 1975 All 125) (supra). In the aforesaid case, the learned single Judge took the view that Board of Revenue decided the title of the parties in a mutation proceedings, hence the petitioners can seek assistance of High Court to remove the shadow on its title. The said case was a case on its own fact. The learned single Judge for taking the said view has placed reliance on a Division Bench judgment in Jaipal Minor v. The Board of Revenue. U.P., Allahabad, 1956 All LJ 807 : (AIR 1957 All 205). Following was laid held in paragraph 2 of the judgment of learned single Judge:—

“2.....In support of this contention he has placed reliance upon a decision of this Court in Jaipal Minor v. The Board of Revenue, U.P., Allahabad 1956 All LJ 807 (1) : AIR 1957 All 205. In that case no doubt it was held that mutation proceedings ordinarily relate to the question of possession and do not decide the question of title for which there is a separate remedy by way of a suit and as such the High Court should not interfere in the order passed in mutation proceedings. But it was also observed in that case that this consideration should not be applied in cases where the question of title is also decided in mutation proceedings. In my opinion the present case belongs to that category of cases inasmuch as the Board of Revenue has proceeded to decide the question of title.....”

In Jaipal Minor's case (supra), the Division Bench did not lay down that whenever the question of title is decided in mutation proceeding, the writ petition can be entertained. Following was laid down by the Division Bench in Jaipal Minor's case (supra):—

“The contention of learned counsel for the petitioner is that the Board of revenue in passing this order exceeded its jurisdiction. It has however been the consistent practice of this Court not to interfere with orders made by the Board of Revenue in cases in which the only question at issue is whether the name of the petitioner should be entered in the record of rights. That record is primarily maintained for revenue

purposes and an entry therein has reference only to possession. Such an entry does not ordinarily confer upon the person in whose favour it is made any title to the property in question, and his right to establish his title thereto is expressly reserved by Sec. 40(3) of the Act. The only exception to this general rule is in those cases in which the entry itself confers a title on the petitioner by virtue of the provisions of the U.P. Zamindari Abolition & Land Reforms Act. This petition does not fall in that class and we think therefore this Court should not entertain it. It is accordingly dismissed with costs.”

From above, it is clear that this Court does not interfere with the order made by Board of Revenue regarding recording of names. Only one exception was noted i.e., cases in which the entry itself confers a title on the petitioner by virtue of the provisions of the U.P. Zamindari Abolition & Land Reforms Act. No such proposition was laid down by the Division Bench that whenever any decision on title is given, this Court may interfere. However, from the scheme of the Act and the Rules, it is clear that the decision of the dispute by Tahsildar on necessary inquiry and evidence has to be only with regard to prima facie title when he is unable to decide possession. Findings in summary proceedings have no bearing on the adjudication of title by the competent Court nor the findings given in mutation proceedings can be treated to findings establishing any title. The case of Rudra Pratap (AIR 1975 All 125) (supra), thus, does not help the petitioners in the present case. Other judgments relied by counsel for the petitioners, namely, Chandra Kanta Medhi's case (AIR 1976 Gauhati 94) (supra), Bala Prasad's case (supra), Smt. Pitmo's case (AIR 1978 All 301) (supra) and Awadesh's case (1962 Rev Dec SOC 26) (supra) were all on Indian Succession Act, 1925 with regard to registered Will. There is no dispute with regard to principles laid down for proof of Will under Succession Act. The above cases does not consider the jurisdiction of a mutation Court not are cases in which nature of jurisdiction under Section 35 of the Act was considered. The said cases, thus, do not support the contention of the petitioners in any manner.

15. In the present case all the three Courts have not accepted the registered Will as claimed by the respondents. The Naib Tahsildar has noted various

*suspicious circumstances. The appellate Court has also accepted the contention of Naib Tahsildar regarding holding of Will suspicious. The revisional Court has also held that burden to explain the suspicious circumstances was on the respondents in which they did not succeed. The revisional Court accepted the findings of the trial Court which found the Will suspicious and not proved. All the three Courts having held the Will as suspicious after appreciating the evidence on record, it cannot be held that they exceeded in their jurisdiction in deciding the mutation application. As observed above, the mutation Court has jurisdiction to examine, the evidence to find out as to whether transfer or succession had taken place or not. The orders passed by mutation Court cannot be held to be without jurisdiction or in excess of jurisdiction under the provisions of the U.P. Land Revenue Act, 1901. However, findings recorded by mutation Courts are findings only in summary proceedings and have no bearing when the title is adjudicated by competent Court on the basis of right claimed by the petitioners. In view of the proposition laid down in Lal Bachan's case (2001 All LJ 2950) (supra), I do not find it a fit case to be entertained under Art. 226 of the Constitution it being arisen out of summary proceedings of mutation under Section 34 of U.P. Land Revenue Act, 1901."*

**12. This Court in the case of Rudra Mani Shukla vs. Subhash Kumar and Others; 2017 SCC OnLine All 4603, observed as under:-**

*"11. Under Section 34 of the Land Revenue Act, 1901 every person obtaining possession of any land by succession or transfer (other than a succession or transfer which has already been recorded under Section 33-A); shall report such succession or transfer to the Tehsildar of the Tehsil in which the land is situate.*

*12. Section 35 of the Land Revenue Act, provides that on receiving a report of transfer or succession or upon facts otherwise coming to his knowledge, the Tehsildar shall make such inquiry as appears necessary, and if the succession or, transfer appears to have taken place, he shall direct the annual registers to be amended accordingly. Section 40 provides that all*

*disputes regarding entries in the annual registers shall be decided on the basis of possession. Sub-section (2) of Section 40 provides that if in the course of inquiry into a dispute under this Section, the Tehsildar is unable to satisfy himself as to which party is in possession. He shall ascertain in summary inquiry who is the person best entitled to the property and shall put such person in possession?*

**13.** *In the present case, the transfer was reported by the Sub Registrar also to the Tehsildar on 21.03.2015, whereon a proclamation was issued, whether it was in terms of Rules or not is a separate matter which need not be gone into at this stage. Consequent to the proclamation two persons namely Karuna Karit and Rudramani Shukla filed objections. The procedure to be followed in such mutation proceedings has been laid down in Rule A-366 to A-384, of Part 3 of Chapter A-XXXVII of the U.P. Revenue Court Manual. Rule A-367 deals with the report to be submitted to the Tehsildar under Section 34 and its requisite contents. As per Rule A-372 no report shall be deemed to be invalid merely for reason of some of the particulars required to be specified having been omitted or having been incorrectly stated. In such cases the Tehsildar shall ascertain from the person making the report or from any other source considered convenient, such particulars as may be necessary to complete or correct the report.*

**14.** *As per Rule A-373 upon the receipt of such a report under section 34 or on facts otherwise coming to his knowledge the Tehsildar shall cause a proclamation to be issued free of charge in the manner provided in Section 197 of the Land Revenue Act, notifying that proceedings for mutation of names have been started. This rule further provides that “without waiting for the issue of proclamation, the Tehsildar shall make necessary enquiries about the existing entries in the relevant papers and other details pertaining to the land in question from the office of the Registrar Kanungo and from the Halqa Lekhpal also, if necessary”. Rule A-374 deals with the proclamation and its contents. Rule A-375 which is relevant for present case says that “the proclamation shall also require the person who has obtained possession also any other persons who may wish to file objection to attend on the date to be specified in*

the proclamation and for producing such evidence as may be in his possession in support of his objection”.

**15.** As this court is concerned with the maintainability of the objection in the proceedings under Section 34 of the Act, 1901 for which orders were reserved on 26.12.2016 and ultimately pronounced on 02.01.2017 the aforesaid Rule A-375 makes it very clear that any other person who may wish to file objection can do so and he can also produce evidence in support of his objection. In the present case on a reading of objections filed by the petitioner and considering the provisions contained in Rule A-375, it cannot be said that objection on his part was not maintainable. Moreover the order having been reserved for pronouncement on maintainability of the objection, the issue which should have been decided was such maintainability, instead, the Tehsildar decided the merits of the controversy itself as also the validity of the objections on merits and ordered the mutation of the name of respondent No. 1 in place of respondent No. 2. This in the opinion of this court was not the correct procedure adopted by him. There was no necessity for such a hurry in the matter. No doubt the rule speaks of such enquiry on his part as may be necessary but even in matters where a discretion is vested it should be used judiciously. Moreover, in this context Rule A-379 which pertains to proceedings under Section 34 based on “transfer” is relevant as it says that in all cases of transfer where an objection is filed under Rule A-375, the Tehsildar shall record necessary evidence adduced by the parties. He may also ask for evidence about it, if he has reasons to believe that declaration made in the affidavit under Rule A-376 is not sufficient and in order. On completion of the enquiry, he shall submit a report along with connected file to the Collector after having given a date to the parties to appear in that Court. The Collector may make such further enquiry as he may consider necessary and he shall dispose of the matter after giving an opportunity to the parties to be heard. This part of the rule requiring the Tehsildar to send a report to the Collector is no longer in operation, though still on statute book, as, under the substantive provision contained in Sections 34 and 35 etc. it is the Tehsildar who is competent to pass a final order in such mutation proceedings but nevertheless the use of word “on completion of the

enquiry” are important as they are indicative of an enquiry to be conducted by the Tehsildar in terms mentioned in Rule A-379 read with section 35 and 40, as the case may be.

**16.** As far as succession is concerned the relevant rules in this regard are A-378(a) and A-378(b). The two rules relate to two different situations of undisputed succession and disputed succession but as far as the present case is concerned it being based on transfer through Gift deed the relevant rule is as aforesaid Rule A-379.

**17.** In the present case as already observed earlier the Tehsildar should have decided the maintainability and thereafter proceeded to hold enquiry as aforesaid. In matters of mutation based on transfer the rule does not make any distinction between a disputed case and an undisputed case as is evident from the use of word “in all cases of transfer”.

**18.** Mutation proceedings are important proceedings as, entries based thereon in the record of rights (Khatauni) are presumed to be correct under Section 35 of the Land Revenue Act, 1901 as also Section 40 of the U.P. Revenue Code, 2006 and practically all transaction are made after perusing such entries. No doubt in matters of sale the purchaser is required to make due inquiry with diligence as to the real owner and any dispute in respect thereof but if the name is recorded in the revenue records, sale transaction etc., are easily made. True it is that Revenue records are not documents of title by themselves and are for purposes of realization of revenue but in view of the presumption attached to them especially in view of the contents of Khatauni as prescribed in Section 31 of the Revenue Code, 2006 their importance in practical terms hardly needs to be emphasized. It is easy to say that an aggrieved party may establish his title in regular proceedings but the fact is that such proceedings go on for years together, therefore, judicious application of mind in mutation proceedings, even though they are summary proceedings, can at times prevent injustice and prolonged litigation. This is not to suggest that interference in such matters should be made in a routine manner."

**13.** As per the observations of this Court in the judgment passed in the case of **Madhav Pandey and others vs. Board of**



**Revenue and others, (2002) 2 AWC 1311;** the mutation proceedings are summary in nature and writ petitions arising out of the mutation proceedings are not entertainable under Article 226 of the Constitution of India except where there is lack of jurisdiction. In paragraph No. 29 of the said judgement, it has been categorically held as under:-

*"29. The last submission of the counsel for the Petitioner is that the revenue court cannot interfere with the finding of fact and the revisional court i.e., the Board of Revenue has wrongly exercised the jurisdiction , hence this court may set aside the order of the board of revenue. As noticed above, there is difference between lack of jurisdiction and erroneous exercise of jurisdiction in a case. The present proceedings arising out of the mutation proceedings which is summary proceeding and the writ petitions against the summary proceedings are not entertained under Article 226 of Constitution of India. There is no need to consider the question as to whether the revisional court has committed any error in exercise of jurisdiction. Assuming for argument sake that there is some error in exercise of jurisdiction by the Board of Revenue, the said error will not make the order without jurisdiction. As held above, the writ petition arising out of the summary proceedings, can be entertained only when there is lack of jurisdiction. It being not a case of lack of jurisdiction, no interference is called for in the impugned order on the basis of the above submission of the counsel for the petitioners."*

14. In the case of **Faqrudin v. Tajuddin (2008) 8 SCC 12** the Hon'ble Apex Court has held that the revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. It is well settled that an entry in revenue record is not a document of title. Revenue authorities cannot decide the question of title.

15. In the case of **Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186**, the Hon'ble Apex Court has held that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is the settled law that 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. So far as the title to the property is concerned, it can only be decided by a competent Civil Court.

16. It would not be out of place to indicate that the Hon'ble Apex Court in the judgment passed in the case of **Jitendra Singh vs. State of Madhya Pradesh and Others; 2021 SCC OnLine SC 802**; observed that the question of title can only be decided by competent civil court. The relevant paras of the same on reproduction read as under:-

*"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; Faquddin 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."*

17. In the case of **Bhimabai Mahadeo Kambekar (D) through L.R. Vs. Arthur Import and Export Company & Ors. (2019) 3 SCC 191**; the Hon'ble Apex Court has held that mutation in revenue records does not create or extinguish the title over the land nor it has any presumptive value on the title. Relevant paragraph Nos. 6 and 7 are extracted here as under:-

*"6. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarni (Smt.) vs. Inder Kaur, (1996) 6 SCC 223, Balwant Singh & Anr. Vs. Daulat Singh(dead) by L.Rs. & Ors., (1997) 7 SCC 137 and Narasamma & Ors. vs. State of Karnataka & Ors., (2009) 5 SCC 591).*

*7. The High Court while dismissing the writ petition placed reliance on the aforementioned law laid down by this Court and we find no good ground to differ with the reasoning and the conclusion arrived at by the High Court. It is just and proper calling for no interference."*

18. It would also be appropriate to refer the judgment passed by this Court in the case of **Kalawati vs. Board of**

Revenue; 2022 SCC OnLine All 193; wherein, this Court after considering the various pronouncements observed as under:-

*"40. Having regard to the foregoing discussion the exceptions under which a writ petition may be entertained against orders passed in mutation proceedings would arise where:*

*(i) the order or proceedings are wholly without jurisdiction;*

*(ii) rights and title of the parties have already been decided by a competent court, and that has been varied in mutation proceedings;*

*(iii) mutation has been directed not on the basis of possession or on the basis of some title deed, but after entering into questions relating to entitlement to succeed the property, touching the merits of the rival claims;*

*(iv) rights have been created which are against provisions of any statute, or the entry itself confers a title by virtue of some statutory provision;*

*(v) the orders have been obtained on the basis of fraud or misrepresentation of facts, or by fabricating documents;*

*(vi) the order suffers from some patent jurisdictional error i.e. in cases where there is a lack of jurisdiction, excess of jurisdiction or abuse of jurisdiction;*

*(vii) there has been a violation of principles of natural justice."*

19. From the aforesaid, it is apparent that it is settled law that the revenue records do not confer title and even if the entries in the revenue record of rights carry value that by itself would not confer any title upon the person claiming on the basis of the same. The mutation proceedings being of a summary nature do not decide any right or title between the parties; rather they are drawn only for fiscal purposes and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit.

Mutation in revenue records neither creates nor extinguishes title of the person nor it has any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Entry in the revenue records does not confer title to a person whose name appears in the records-of-rights, which is maintained for revenue purpose. The mutation proceedings do not adjudicate the rights of the parties and orders passed in mutation proceedings are always subject to adjudication by competent Court.

20. Furthermore, the order passed in mutation proceedings are always subject to declaration of rights which may be sought by the parties concerned by instituting a regular suit.

21. Section 40A of the U.P. Land Revenue Act, 1901, (now repealed) as also Section 39 of U.P. Revenue Code, 2006, which is applicable w.e.f. 11.02.2016, make it clear that no mutation order shall debar any person from establishing his rights in the land by means of a regular suit. Mutation of a property in revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue.

22. It would not be out of place to mention here that it is trite law that the power to issue prerogative writs under Article 226 is plenary in nature and the discretion of the Writ Court to entertain or not to entertain the writ petition depends

upon the facts and circumstances of each particular case. One of the self imposed restrictions on the exercise of the power under Article 226 of the Constitution that has evolved through judicial precedents is that the High Court should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 of the Constitution has not pursued would not oust the jurisdiction of the High Court and render a writ petition 'not maintainable' as observed by the Hon'ble Apex Court in the case of **M/s. Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and others; 2023 SCC OnLine SC 95.**

23. In the light of nature of mutation proceedings and the settled principles of law that rights/title over the property/land in issue in mutation proceedings can be adjudicated/crystallized in a regular suit before competent court of jurisdiction, the consistent view of this Court is that normally the writ petitions challenging the orders passed in mutation proceedings should not be entertained in exercise of discretionary power conferred under Article 226 of the Constitution of India except under the conditions as formulated by this Court in cases mentioned above.

24. Now, coming to question Nos. A to C. These questions broadly relate to limitation for preferring an application for mutation under Section 34 of the Act of 1901

and in this regard, reference has been made to Section 29 of the Limitation Act, 1963 (in short "Act of 1963") which reads as under:-

**"29. Savings.—**

*(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).*

*(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.*

*(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.*

*(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."*

25. Issue related to Applicability of Section 29(2) of the Act of 1963 has already been settled by the Hon'ble Apex Court in the judgment passed in the case of **Ganeshan vs. Commissioner, Tamil Nadu Hindu Religious and Charitable Movement Board and others; (2019) 7 SCC 108**. In this case, the Hon'ble Apex Court formulated four questions i.e. (1) Whether the Commissioner while hearing the appeal under [Section 69](#) of Act, 1959, is a Court? (2) Whether applicability of [Section 29\(2\)](#) of Limitation Act is with regard to different

limitation prescribed for any suit, appeal or application to be filed only in a Court or [Section 29\(2\)](#) can be pressed in service with regard to filing of a suit, appeal or application before statutory authorities and tribunals provided in Special or Local Laws? (3) Whether the Commissioner while hearing the appeal under [Section 69](#) of Act 1959 is entitled to condone a delay in filing an appeal applying the provisions of [Section 5](#) of the Limitation Act, 1963? (4) Whether the statutory scheme of Act 1959 indicate that [Section 5](#) of Limitation Act is applicable to proceedings before its authorities? and after considering the various pronouncements, concluded as under:-

*"58. We have already noticed that Mukri Gopalan [Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5] was held to be not a good law by this Court in M.P. Steel [M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] on the ground that it has not noticed the earlier three-Judge Bench judgments and also in view of the subsequent three-Judge Bench judgment, the said case is not a good law. As far as Anshuman Shukla case [State of M.P. v. Anshuman Shukla, (2014) 10 SCC 814] is concerned we have already noticed the issue, in the said case, of applicability of Section 5 of the Limitation Act in the revision filed in the High Court, the High Court being a court, the Limitation Act was fully applicable and the said judgment does not support the proposition that in an application not before a court, Section 5 shall automatically be applicable.*

*59. The ratio which can be culled from the abovenoted judgments, especially judgments of three-Judge Benches, as noted above, is as follows:*

*59.1. The suits, appeals and applications referred to in the Limitation Act, 1963 are suits, appeals and applications which are to be filed in a court.*

*59.2. The suits, appeals and applications referred to in the Limitation Act are not the suits, appeals and*



*applications which are to be filed before a statutory authority like Commissioner under the 1959 Act.*

**59.3.** *Operation of Section 29(2) of the Limitation Act is confined to the suits, appeals and applications referred to in a special or local law to be filed in court and not before statutory authorities like Commissioner under the 1959 Act.*

**59.4.** *However, special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of the Limitation Act which can be decided only after looking into the scheme of particular, special or local law.*

**60.** *We, thus, answer Questions (2) and (3) in the following manner:*

**60.1.** *The applicability of Section 29(2) of the Limitation Act is with regard to different limitations prescribed for any suit, appeal or application when to be filed in a court.*

**60.2.** *Section 29(2) cannot be pressed in service with regard to filing of suits, appeals and applications before the statutory authorities and tribunals provided in a special or local law. The Commissioner while hearing of the appeal under Section 69 of the 1959 Act is not entitled to condone the delay in filing appeal, since, provision of Section 5 shall not be attracted by strength of Section 29(2) of the Act.*

#### **Question (4)**

**61.** *A special or local law can very well provide for applicability of any provision of the Limitation Act or exclude applicability of any provision of the Limitation Act. The provisions of the Limitation Act including Section 5 can very well be applied in deciding an appeal by statutory authority which is not a court by the statutory scheme of special or local law. We, thus, need to notice the provisions of the 1959 Act as to whether the scheme under the 1959 Act shows that enactment intended to apply Section 5 of the Limitation Act.*

**62.** *Section 110 provides for procedure and powers at inquiries under Chapters V and VI. The Commissioner hears appeals under Section 69 which is under Chapter V of the Act. Section 110 of the Act is as follows:*

**“110. Procedure and powers at inquiries under Chapters V and VI.—**(1) Where a Commissioner or a Joint Commissioner or a Deputy Commissioner makes an inquiry or hears an appeal under Chapter V or Chapter VI, the inquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) to the trial of suits or the hearing of appeals, as the case may be.

(2) The provisions of the Indian Evidence Act, 1872 (Central Act 1 of 1872) and the Indian Oaths Act, 1873 (Central Act 10 of 1873), shall apply to such inquiries and appeals.

(3) The Commissioner or a Joint Commissioner or a Deputy Commissioner holding such inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (Central Act 18 of 1850).”

**63.** The mere fact that a statutory authority is empowered to follow the procedure as nearly as may be in accordance with procedure under CPC to the trial of suits or hearing of appeals, the statutory authority shall not become a court. There is nothing under Section 110 which indicates that the Limitation Act is also made applicable in hearing of the appeal.

**64.** Section 115 deals with limitation. It only provides that in computing the period of limitation prescribed under the 1959 Act for any proceeding, suit, appeal or application for revision against any order or decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded.

**65.** The provision of Section 69 of the 1959 Act also indicates that legislature never contemplated applicability of Section 5 of the Limitation Act in proceedings before the Commissioner. Section 69(2) noted above provides that any order passed by the Joint Commissioner or the Deputy Commissioner, as the case may, in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed

by the Joint Commissioner or the Deputy Commissioner, as the case may be.

**66.** Thus, Section 69(2) gives suo motu power to the Commissioner to call for and examine the records of the proceedings of Joint Commissioner or the Deputy Commissioner in respect of which no appeal has been preferred within the period specified in sub-section (1). Thus, in case appeal is not filed within 60 days against the order of Joint Commissioner or the Deputy Commissioner, the Commissioner is vested with suo motu power to call for and examine the records. The suo motu power has been given to the Commissioner to correct the orders of Joint Commissioner or the Deputy Commissioner even if no appeal has been filed within 60 days. Giving of suo motu power to the Commissioner is with the object to ensure that an order passed by the Joint Commissioner or the Deputy Commissioner may be corrected when an appeal is not filed within time under Section 69(1). The scheme of Section 69 especially sub-section (2) also reinforces our conclusion that the legislature never contemplated applicability of Section 5 in Section 69(1) for condoning the delay in filing an appeal by applying Section 5 of the Limitation Act.

**67.** The learned counsel for the respondent has referred to two Rules framed under Section 116 of the 1959 Act, namely, the Application and Appeal Rules dated 30-8-1961 and the Holding of Inquiries Rules dated 30-8-1961. The Application and Appeal Rules provide for procedures and details of filing application, affidavits, memorandum of appeal, application for revision, etc. The said Rules, in no manner, support the contention of the learned counsel for the respondent that Section 5 of the Limitation Act is applicable. Similarly, the Holding of Inquiries Rules provide for procedure of holding of inquiries, issue of notice, etc. The above Rules also do not throw any light on the applicability of Section 5 of the Limitation Act.

**68.** The above provision clearly indicates that provision for only computation of limitation has been made applicable to the proceedings under the 1959 Act. Section 115 cannot be read in a manner as to providing applicability of Section 5. There is no other provision in the scheme from which it can be inferred

*that the 1959 Act intended applicability of Section 5 of the Limitation Act to proceedings of appeal before the Commissioner. We, thus, conclude that Section 5 of the Limitation Act is not applicable as per the scheme of the 1959 Act."*

26. Upon due consideration of aforesaid observation of the Hon'ble Apex Court in the case of **Ganeshan (Supra)** and the above quoted provisions particularly Section 38 of the Act of 1901, which says that any person neglecting to make the report required by Section 34 within three months from the date of obtaining possession under a lease, or from the date of the succession or other transfer, shall be liable to a fine not exceeding five times the amount of the fee which would otherwise have been payable under Section 37, or when no fee is leviable, then not exceeding such amount as the State Government may by rule prescribe and Section 214 of Code of 2006, this Court finds that no limitation has been prescribed for preferring an application for mutation under Section 34 of the Act of 1901 and applying the literal rule of interpretation of statute as also taking note of nature of mutation proceedings and purpose of mutation, this Court is of the opinion that an application for mutation can be moved by a person after payment of requisite fees in terms of Section 38 of the Act of 1901 even if he failed to make report as required under Section 34 of the Act of 1901 within three months from the date of obtaining possession under a lease, or from the date of succession or other transfer. The question Nos. A to C, framed above, are answered accordingly.

27. Regarding question No. D, it is to be noted that the issue is no more res-integra. Tehsildar is not empowered to decide the issue of title. In other words, the Revenue authorities dealing with the mutation proceedings cannot decide the issue of title. However, to ascertain the genuineness of claim based upon Succession/Will/Transfer Deed, as the case may be, the concerned authority/mutation court for the purposes of mutation proceedings, which are summary in nature, is empowered to take evidence and providing opportunity to adduce evidence to the parties as also has jurisdiction to examine the evidence to find out as to whether transfer or succession had taken place or not. It is in view of the provisions, indicated above, particularly Section 40 of the Act of 1901 as also the observations made by this Court in the judgments, referred above. The Question No. D, framed above, is answered accordingly.

28. Now coming to the facts of the case. The facts, as stated in the petition and indicated by the counsel for the parties present before this Court and which are relevant for coming to the conclusion as to whether the present petition is liable to be entertained, are as under:-

(i) One Mushir Ahmad S/o Late Nazir Ahmad resident of Village & Pargana-Siddhaur, Tehsil-Haidargarh, District-Barabanki, was the owner in possession and recorded tenure holder of Gata No.1609 Ka area 0.280 hect.

(ii) Mushir Ahmad expired in the year 1987 leaving behind his four sons namely Zahir Hasan, Zamir Hasan, Tauqeer Ahmad and Tanvir Ahmad.

(iii) The names of legal heirs of Mushir Ahmad namely Zahir Hasan, Zamir Hasan, Tauqeer Ahmad and Tanvir Ahmad, were duly recorded in PA Form-11 in terms of Section 33 of the Act of 1901 vide order dated 20.05.1987 passed by the Revenue Inspector.

(iv) Mushir Ahmad during his life time and after his death his sons were cultivating the land in question.

(v) One Smt. Kalawati W/o Mangal Prasad (mother of the petitioners) had purchased 1/4th share of the land indicated above, from one of the co-sharers namely Tauqeer Ahmad S/o Mushir Ahmad through registered sale deed dated 22.07.2009 and thereafter moved an application for mutation, which was allowed vide order dated 14.09.2009 by the Court of Naib Tehsildar, Siddhaur, Barabanki and her name was also mutated in the relevant records.

(vi) To establish the possession of Smt. Kalawati over 1/4th share of Gata No.1609Ka area 0.280 hect., a copy of the khasra of the fasli year 1419-1426 (C.E. 2012-2019) has been filed through supplementary affidavit dated 06.04.2023.

(vii) In the year 2014, an application for mutation u/s 34 of the U.P. L.R. Act was filed by one Lalta Bux Singh S/o Harihar Singh and Dwarika Bux Singh S/o Bhagwan Bux Singh alleging therein that one Smt. Kamla Devi D/o Sripal along

with Smt. Vimla Devi D/o Ram Bharose purchased 3/5th share of the property i.e. Gata No.1609Ka area 0.280 hect. and remaining 2/5th share was purchased by Smt. Sushila Devi D/o Bhagwati Prasad through registered sale deed dated 09.03.1981 from its owner Mushir Ahmad S/o Late Nazir Ahmad.

(viii) Thus, entire land i.e. Gata No. 1609 Ka area 0.280 hect. was sold by Mushir Ahmad on 09.03.1981. However, no mutation application was moved by the purchaser of the land in issue before 2014. In records, name of Mushir Ahmad during his lifetime and thereafter name of his legal heirs i.e. four sons continued and on 22.07.2009 one of the sons of Mushir Ahmad namely Tauqeer Ahmad sold his 1/4th share to Smt. Kalawati (mother of the petitioners), which was entered in the revenue records in terms of order dated 14.09.2009 passed by the court of Nayab Tehsildar.

(ix) In the mutation application filed in the year 2014, indicated above, the other purchasers Smt. Vimla Devi D/o Ram Bharose and Smt. Sushila Devi D/o Bhagwati Prasad were impleaded and during pendency of the above case due to death of Smt. Vimla Devi her legatees under the registered will dated 11.05.2015 namely Meera Devi and Padma Dev Wives of Sri Surya Bux Singh and Saroj Kumari W/o Tej Bux Singh were substituted. Similarly upon the death of Sushila Devi her legal heirs Parmesh Kumar, Dinesh Kumar and Om Prakash; all S/o Daya Shankar were also substituted.

(x) One Mohd. Aslam also purchased 1/4th share in the property vide registered deed of sale dated 30.06.2010 and his application for mutation was allowed vide order dated 25.07.2019. However, on an application for recall of the order dated 25.07.2019 in Case No. 201904120502701 (Mohd. Aslam vs. Tanvir Ahmad) preferred by the above named persons, who moved the application for mutation in the year 2014, the order dated 25.07.2019 was recalled vide an order dated 19.12.2019

(xi) One Nisar Ahmad S/o Insan Ali and Ram Prasad S/o Chhotey Lal jointly purchased 1/4th share in the property of Zamir Hasan S/o Mushir Ahmad vide registered deed of sale dated 20.08.2009.

(xii) During pendency of the above case, one Tej Narain Singh S/o Raj Karan Singh, R/o Village-Sersa, Tehsil-Siddhaur, Tehsil-Haidargarh, Distt-Barabanki entered into a registered agreement for sale regarding 3/4th share in Gata No.1609 Ka area 0.210 hectare jointly with (1) Smt. Kalawati (2) Mohammad Aslam (3) Ram Prasad (4) Nisar Ahmad, which was duly registered on 10.05.2019 before the Sub Registrar Haidargarh, Barabanki.

(xiii) Sri Tej Narain Singh S/o Raj Karan Singh after the registered agreement for sale dated 10.05.2019 with the Smt. Kalawati (mother of the petitioners) as well as three other namely Mohd. Aslam, Ram Prasad and Nishar Ahmad, who had purchased part of the property from respective co-sharers, got another registered agreement for sale executed in favour of his



son Shikhar Singh on 02.11.2020 from the purchasers of the property through deed of sale dated 09.03.1981.

(xiv) In the aforesaid factual background of the case, opposite party No.2-Tehsildar (Judicial), Haidergarh, District-Barabanki decided three mutation cases detailed hereinunder, vide impugned order dated 15.02.2021.

(a) Case No. T20140412055382 (Smt. Kalawati vs. Tauqeer Ahmad), (Based upon sale deed dated 22.07.2009 executed by Tauqeer Ahmad S/o Mushir Ahmad).

(b) Case No. 686 (Nisar Ahmad vs. Zamir Hasan), (Based upon sale deed dated 20.08.2009 executed by Zamir Hasan S/o Mushir Ahmad).

(c) Case No. 201904120502701 (Mohd. Aslam vs. Tanvir Ahmad), (Based upon the sale deed dated 30.06.2010 executed by Tanvir Ahmad S/o Mushir Ahmad).

(xv) Impugned order dated 15.02.2021 indicates that the same is based on compromise dated 05.11.2020 supported by an affidavit of Smt. Kalawati W/o Mangal Prasad. The opposite party No.2 by this order dated 15.02.2021 allowed the objections based upon the sale deed dated 09.03.1981.

(xvi) It would be apt to point out that it reflects from the impugned order dated 15.02.2021 that in response to the objection filed by the persons claiming their rights on the basis of registered sale deed dated 09.03.1981, Smt. Kalawati and Others filed reply dated 20.05.2015 and in this reply, it has

been alleged that after 28 years mutation has been claimed on the basis of bogus/forged document.

(xvii) The compromise dated 05.11.2020 supported by an affidavit of Smt. Kalawati is in dispute, as appears from paras 35 and 38 of the petition. It appears from para 38 of the petition that with regard to this compromise, a complaint has been made before Bar Council of U.P. against Sri Brijendra Pratap Singh, Advocate.

(xviii) By means of Revision No. 00378 of 2021, the order dated 15.02.2021 was challenged by Smt. Kalawati, who expired during the pendency of the revision, and thereafter her legal heirs i.e. petitioners were substituted. Another revision No. 00336 of 2021 challenging the order dated 15.02.2021 was filed by Mohd. Aslam.

(xix) Opposite party No.1 (Revisional Authority), vide impugned order dated 19.01.2023 dismissed both the revisions. The order dated 19.01.2023, as appears, has been passed after taking note of the fact that the sale deed dated 09.03.1981 is intact and the compromise was filed before the opposite party No.2.

(xx) Being aggrieved by the order dated 15.02.2021 and the order dated 19.01.2023 passed by the opposite party Nos. 2 and 1, respectively, the present petition has been filed.

29. From the aforesaid, the position which culled out is as under:-

(a) The claim of the petitioners upon 1/4th share of Gata No. 1609Ka area 0.280 is based upon the sale deed dated 22.07.2009 which was executed by Tauqeer S/o Mushir Ahmad (recorded tenure holder) in favour of Smt. Kalawati (mother of the petitioners).

(b) It is to be noted that in the sale deed dated 22.07.2009, above mentioned, executed in favour of Smt. Kalawati (mother of petitioner), it has not been stated that "आराजी मुबैया पर उक्त क़ेती व वारिसान क़ेती अपना कब्जा व दखल कर लेंवे व बाद अदाम लगान सरकारी कागजात में अपने नाम दाखिल—खारिज करा लेंवे" and being so it appears, prima facie, that the possession of the land transferred was not given at relevant time to the vendor else in the sale deed delivery of possession ought to have mentioned.

(c) To show the fact that the possession was provided to Smt. Kalawati, a copy of Khasra of Fasli Year 1419-1426 (C.E. 2012-2019) has been filed.

(d) Claim of the side opposite is based upon the sale deed dated 09.03.1981 executed by Mushir Ahmad (recorded tenure holder).

(e) The sale deed 09.03.1981 has not been placed on record and as such, nothing could be said regarding delivery of possession to vendees by vendor.

(f) Till 2014 based upon the sale deed dated 09.03.1981, mutation application was not preferred. Thus, the claim on the

basis of sale deed dated 09.03.1981 was preferred after about 33 years from its execution.

(g) It appears from the impugned order dated 15.02.2021 that in the reply dated 20.05.2015 filed by Smt. Kalawati (mother of the petitioners) and others, which was filed in response to the objection filed by the beneficiary of the sale deed dated 09.03.1981, it has been alleged that after 28 years the mutation has been claimed on the basis of bogus/forged document.

(h) The impugned order dated 15.02.2021 and 19.01.2023 are based upon the compromise dated 05.11.2020 supported by an affidavit of Smt. Kalawati, which is in dispute, and the fact that the sale deed dated 19.03.1981 is intact.

30. In view of the above, this Court finds that several disputed questions of fact are required to be adjudicated, on the basis of evidence adduced by the parties, some of which can be indicated as under:-

(a) Whether the sale deed executed and registered prior in time i.e. sale deed dated 09.03.1981 is a bogus/forged documents?

(b) Whether the sale deed dated 22.07.2009, the basis of claim of the petitioners is a valid document?

(c) Whether the compromise dated 05.11.2020 duly supported by an affidavit of Smt. Kalawati (mother of the petitioners) is genuine?

31. It is settled principle of law that registered document carries with the presumption that it was validly executed and there is also a presumption that the transaction is a genuine one, and being so it is for the party challenging the genuineness of transaction to show that in law the transaction is/was not valid.

32. In the instant case, petitioners have alleged that the registered sale deed dated 09.03.1981 is not a valid document and accordingly, it is for the petitioners to plead and challenge the genuineness of the transaction and to prove before the competent court of jurisdiction that the transaction/sale deed dated 09.03.1981 is not valid document. It is to rebut the presumption related to registered document, which in the case is sale deed dated 09.03.1981.

33. So far as the possession is concerned, the possession should be legal. Thus, the petitioners have to prove that their possession on the basis of sale deed dated 22.07.2009 is a valid possession.

34. Upon due consideration of the facts, indicated above, as also taking note of the issues, indicated in paras 30 to 33 of this judgment, this Court is not inclined to entertain the present petition for the reason that any observation made by this Court while deciding the present petition, arising out of mutation proceedings, would prejudice the case of the parties in a suit before the regular court claiming rights over the land/

property in issue and further, the affect of entertaining this petition challenging the orders passed in mutation proceedings, would be that the dispute regarding rights/title over the land in issue would not be decided for undetermined period.

35. Accordingly, present petition is **disposed of** with liberty to petitioners to file regular suit claiming rights over the land/property in issue.

36. In the facts and circumstances of the case, as indicated above, particularly the copy of Khasra of the fasli year 1419-1426 (C.E. 2012-2019), which prima facie indicates that the petitioners are in possession, as also to avoid the further litigation with regard to property in issue i.e. Gata No. 1609 Ka area 0.280 hect., which can be on account of transfer, alienation or by creating charge over the land/property in issue, it is provided that parties shall maintain status-quo, as exists today, for a period of six months, in which period a regular suit alongwith an application seeking interim protection can be instituted before the competent court of jurisdiction.

**Order Date 30.11.2023**

Vinay/-