The [**Madhya Pradesh High Court**](https://www.indialegallive.com/topic/madhya-pradesh-high-court/) has observed that a revenue authority does not have the power to determine the validity of a will while considering an application for mutation.

A Single-Judge Gwalior Bench of Justice Vishal Mishra, while disposing of a petition filed by Rajkumar Sharma, said “The order passed by the Authorities is bad in law, accordingly, the same is hereby quashed. It is also a settled position that Will is to be proved by leading cogent evidence and the heavy burden is on the propounder of the Will. In such circumstances, the liberty is extended to the respondent to get the Will checked by initiating the proceedings before the Trial Courts.”

The petition challenged the order dated June 28, 2021 passed by the Additional Commissioner, Gwalior Division, whereby the order dated July 25, 2016 passed by the Upper Collector, Datia and order dated March 31, 2011 passed by the Sub-Divisional Officer, Bhander, District Datia have been quashed, thereby mutating the name of respondent in the Revenue Record.

It is submitted that upon the death of Balikdas, respondent filed an application before the Tahsildar for entering their names in the Revenue Records on the basis of Will.

The Petitioners also filed an application for mutation of their names over the said land on the basis of hereditary succession.

These applications were heard jointly before the Tahsildar and thereafter an application was preferred before the SDO for transferring the matter. The said application was allowed and the SDO order dated March 31, 2011 directed to record the name of the petitioners. Assailing the order dated March 31, 2011, the respondent preferred an appeal before the Upper Collector, District Datia and the same was dismissed order dated July 25, 2016.

Thereafter, the matter was put forth before the Additional Commissioner challenging both the orders dated March 31, 2011 and July 25, 2016 on the ground that Balikdas was unmarried and the Will was executed in their favour and on the basis of the Will, their names deserves to be mutated, whereas, it was the case of the petitioner that since Balikdas remained unmarried, but having blood relations through males and as per the provision of Section 8(c) of the Hindu Succession Act, 1959 when there is no heir of any of the two classes, then the property shall devolve upon the agnates of the deceased.

It is further submitted that the SDO vide its order dated March 31, 2011 has considered the legal aspect and has passed the order of mutation on this basis and the same was affirmed by the Collector. While in the second appeal, the Additional Collector has failed to appreciate this legal aspect and has passed the impugned order has directed for mutation of name on the basis of will.

It is also submitted that once, the Will on the basis of which the mutation is sought, the same is objected, then no mutation can be done on the basis of Will. The Revenue Authorities have no right to check the genuineness of the Will and mutate the name on the basis of the Will in question, rather, it is the domain of Civil Courts. The person alleging has mutation on the basis of the Will if the object is required to get the genuineness of the Will checked by filing appropriate proceedings before the Civil Courts.

Counsel for the respondent has opposed the arguments made by the Petitioner stating that the order passed by the Authorities on the basis of the Will is well reasoned and justified order.

In case, Petitioners want their names to be mutated on the basis of succession, then they are required to establish their succession under the Hindu Succession Act and mere entry in the Revenue Records, on the basis of Will, he will not have title over the property in question.

Counsel for the respondent said that they are required to get the title over the suit property in terms of the Section 8 of the Hindu Succession Act. He supports the impugned order and has argued that the same is a well reasoned order and does not call for any interference in the Petition. He has prayed for dismissal of the same.

Also Read: Court cannot decide under PIL jurisdiction as to when a Hindu can execute will or a Muslim can dedicate property to the Waqf: Chhattisgarh HC

The SDO has recorded the names of all the family members only on the basis of succession and which was affirmed by the Additional Collector, but the Additional Commissioner has set aside the orders passed by the SDO as well as Additional Collector and has directed for mutation on the basis of the Will. It is not disputed that the will in question is not objected to by the other party.

“The order passed by the Authorities is bad in law, accordingly, the same is hereby quashed. It is also a settled position that Will is to be proved by leading cogent evidence and the heavy burden is on the propounder of the Will. In such circumstances, the liberty is extended to the respondent to get the Will checked by initiating the proceedings before the trial Courts”, the Court said while disposing of the Petition.