

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE  
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

**Writ Petition No.41673 of 2024**

***Ram Singh Raghuvanshi***

***Vs.***

***Urmila (died) through her legal representative Smt. Shashi Raghuvansh, W/o  
Shri Rajkumar @ Raju Raghuvanshi***

**APPEARANCE**

*Shri Deependra Singh Raghuvanshi - Advocate for the petitioners.*

*Shri Akshat Kumar Jain – Advoacte for the respondent.*

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<i>Reserved on</i>	:	<b>07/01/2025</b>
<i>Delivered on</i>	:	<b>30/1/2025</b>

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*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

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**ORDER**

The instant petition, under Article 226/227 of the Constitution of India, has been filed by the petitioner against the order dated 05.10.2018 passed by the Additional Commissioner, Gwalior Division, Gwalior in a Second Appeal No.651/2016-17; whereby, while allowing the said appeal, the order of Sub-Divisional Officer, Gwalior dated 31.07.2017 whereby the order of mutation of the petitioner in the revenue records vide Resolution No.17, dated 24.07.2004 on the basis of sale deed dated 12.01.2001 was set aside, was affirmed.

2. Short facts of the case are that the present petitioner had purchased the land bearing Survey No.1527, ad-measuring 1.62

hectares by way of registered sale deed dated 12.01.2001 from late Urmila through her husband Hari Singh as her power of attorney dated 10.01.2001. On the basis of the said sale deed, name of petitioner got duly mutated in the revenue records by the Gram Panchayat by passing resolution No.17 vide order dated 24.07.2004. After lapse of 10 years, the respondent (since deceased) had filed an application before the Sub-Divisional Officer, challenging the said order of mutation, which was registered as Case No.59/2013-14/Appeal. Vide order dated 31.07.2017, learned Sub-Divisional Officer had found that Village Panchayat has not followed the due procedure prescribed for mutation and moreover the Power of Attorney on the basis of which the said sale deed was executed was not properly registered, therefore, the resolution passed by Village Panchayat deserves to be quashed and accordingly, mutation of the name of the petitioner got cancelled. Aggrieved by the aforesaid order, the petitioner preferred a second appeal before the Commissioner, Gwalior Division, Gwalior and vide order dated 05.10.2018, affirmed the Additional Commissioner while dismissing the said second appeal, the order of the SDO dated 31.07.2017. Hence, the present petition.

3. Learned counsel for the petitioner has argued before this Court that both the Appellate Authorities have passed the orders mechanically without applying their mind and by way of non-speaking orders, therefore, they deserve to be set aside.

4. It was further argued that the Appellate Authorities have not dwelve upon the legal aspect of the appeals being hopelessly barred by limitation when admittedly, the order of Gram Panchayat was dated 24.07.2004 was challenged on 24.04.2014, thus without their being any application for condoning the delay and plausible explanation thereof,

had decided the matter on merits, which had caused grave prejudiced.

5. It was further argued that the Courts below have not considered that the rights have accrued in favour of the present petitioner by way of registered sale deed dated 10.01.2001 which could not have been discarded so lightly and without getting the said registered document declared null and void by the competent Court of Civil jurisdiction, the order setting aside the order of mutation done on its basis was *per se* illegal.

6. It was further argued that during the lifetime of the husband of the respondent (since deceased) she had not challenged the sale deed executed by her husband in favour of the petitioner; however, after the death of her husband, with an oblique motive, had challenged the mutation done on the basis of said sale deed and that too, after more than 05 years of death of her husband that the order of mutation was challenged in appeal, which itself shows the *mala-fide* intention on the part of the respondent (since deceased), but ignoring the said aspect, the Appellate Authorities had set aside the order of mutation, which being perverse deserves to be quashed.

7. Learned counsel while placing reliance on the judgment of the Hon'ble Apex Court in the matter of **Asset Reconstruction Co. (India) Ltd. v. S.P. Velayutham**, reported in **(2022) 8 SCC 210** had argued that the registration of a document comprises of three essential steps (a) execution of the document (b) presentation of the document for registration and (c) the act of registration and where a challenge is laid to the execution and the presentation, the remedy is only before the competent Civil Court. Thus, the very jurisdiction which has been usurped by the appellate authorities of the Civil Court in rejecting the

registered document is arbitrary and illegal, therefore, the impugned orders deserve to be set aside and the order of mutation dated 10.01.2001 deserves to be restored.

**8.** On the other hand, learned counsel for the respondent had supported the impugned order and had submitted that no illegality or perversity has been committed by the Appellate Authorities in setting aside the order of mutation of the petitioner in the revenue records vide resolution No.17, dated 24.07.2004 on the basis of sale deed dated 12.01.2001, which was a sham document.

**9.** While referring to the power of attorney which was executed on 10-11/01/2001, it was argued that sale deed was already executed on 09.01.2001, therefore, at the time of execution of sale deed, the power of attorney was not in existence, therefore, the said sale deed was a sham document and had rightly been not relied upon by the Appellate Authorities and therefore, had set aside the order of mutation which cannot be faulted with. It was, thus, prayed that the present petition being devoid of any substance deserves to be dismissed.

**10.** Heard counsel for the parties and perused the record.

**11.** So far as the objection with regard to sale deed being a sham document is concerned, from bare perusal of the sale deed, it appears that though the stamp on which the sale deed has been typed was taken on 09.01.2001, but from the endorsement of the Sub-Registrar, it appears that the same was presented for its registration on 12.01.2001, thus, at the time of execution of the said sale deed, the power of attorney (executed on 10-11/01/2001) given by late Urmila in favour of her husband/Hari Singh was very much in existence, thus *prima faice* it cannot be said that the said document is a sham document, thus, the

orders of appellate authorities on the basis of the sale deed being sham document appears to be not sustainable. Even otherwise, the Hon'ble Apex Court in the matter of **Asset Reconstruction Co. (India) Ltd. v. S.P. Velayutham (supra)** in para 54 has held as under:

*“54. In cases where a suit for title is filed, with or without the relief of declaration that the registered document is null and void, what gets challenged, is a combination of all the aforesaid three steps in the process of execution and registration. The first of the aforesaid three steps may be challenged in a suit for declaration that the registered document is null and void, either on the ground that the executant did not have a valid title to pass on or on the ground that what was found in the document was not the signature of the executant or on the ground that the signature of the executant was obtained by fraud, coercion, etc. The second step of presentation of the document and admitting the execution of the same, may also be challenged on the very same grounds herein-above stated. Such objections to the first and second of the aforesaid three steps are substantial and they strike at the very root of creation of the document. A challenge to the very execution of a document, is a challenge to its very DNA and any defect or illegality on the execution, is congenital in nature. Therefore, such a challenge, by its very nature, has to be made only before the civil court and certainly not before the writ court.”*

12. Thus, where a challenge is laid to the execution and the

presentation, the remedy is only before the competent civil court.

**13.** This Court in light of the aforesaid discussion finds that the impugned orders dated 31.07.2017 and 05.10.2018 are not in consonance with the legal position. Accordingly, they are hereby **set aside**. In consequence thereof, the order of mutation of the petitioner in the revenue records vide resolution No.17, dated 24.07.2004 on the basis of sale deed dated 12.01.2001 is hereby **restored**.

**14.** As a result, the present petition is **allowed** and **disposed of**.

**(Milind Ramesh Phadke)**  
**Judge**