IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

ON THE 6th OF APRIL, 2022

MISC. PETITION No. 1417 of 2017

Between:-

AMARJEET SINGH S/O SHRI TEJ SINGH , AGED ABOUT 62 YEARS, OCCUPATION: AGRICULTURIST VILLAGE SALBAI, TEHSIL DABRA, DIST. GWALIOR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI RAJEEV SHRIVASTAVA, ADVOCATE)

AND

1. **RICHHPAL SINGH S/O DILBAG SINGH , AGED ABOUT 55 YEARS, VILLAGE SALBAI, TEHSIL DABRA, DIST. GWALIOR (MADHYA PRADESH)**

2. **BALJEET SINGH S/O SHRI DILBAG SINGH JATSIKH , AGED ABOUT 70 YEARS, VILLAGE DORAR MOHNA TEHSIL GHATIGAON (MADHYA PRADESH)**

3. **SATPAL SINGH S/O SHRI DILBAG SINGH JATSIKH , AGED ABOUT 60 YEARS, VILLAGE DORAR MOHNA TEHSIL GHATIGAON (MADHYA PRADESH)**

4. **DALVEER KAUR W/O LATE SHRI DALJEET SINGH , AGED ABOUT 65 YEARS, VILLAGE SALBAI, TEHSIL DABRA, DIST. GWALIOR (MADHYA PRADESH)**

5. **HARJINDAR SINGH S/O LATE SHRI DALJEET SINGH JATSIKH , AGED ABOUT 32 YEARS, VILLAGE SALBAI, TEHSIL DABRA, DIST. GWALIOR (MADHYA PRADESH)**

6. **SUKHVINDAR SINGH S/O LATE SHRI DALJEET SINGH JATSIKH VILLAGE SALBAI, TEHSIL DABRA, DIST. GWALIOR (MADHYA PRADESH)**

7. **HARVINDAR SINGH S/O LATE SHRI DALJEET SINGH JATSIKH , AGED ABOUT 29 YEARS, VILLAGE SALBAI, TEHSIL DABRA, DIST. GWALIOR (MADHYA PRADESH)**

8. **SARVAJEET KAUR W/O LATE SHIR JASPAL SINGH , AGED ABOUT 40 YEARS, VILLAGE DORAR MOHNA POST DORAR TEHSIL GHATIGAON (MADHYA PRADESH)**

9. **KARAN SINGH @ KARU M/O SARVAJEET KAUR OCCUPATION: U/G MOTHER SARVAJEET KAUR VILLAGE DORAR MOHNA POST DORAR TEHSIL GHATIGAON (MADHYA PRADESH)**

10. **POONAM D/O JASPAL SINGH OCCUPATION: U/G MOTHER SARVAJEET KAUR VILLAGE DORAR MOHNA POST DORAR TEHSIL GHATIGAON (MADHYA PRADESH)**

11. **STATION OFFICER THE STATE OF MADHYA PRADESH P.S. DABRA GWALIOR GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI BRIJESH SHARMA, ADVOCATE FOR RESPONDENTS NO. 1 TO 10 AND SHRI VARUN KAUSHIK, GOVT. ADVOCATE FOR THE STATE)

ORDER

Present petition under Article 227 of Constitution of India is filed challenging the order dated 10/10/2017 passed by Board of Revenue, Gwalior (M.P.) in Case No.565PBR/2017, whereby the order of the Additional Commissioner, Gwalior dated 25/1/2017 was dismissed.

The facts in brief to decide the present petition are that the petitioner and Dilbag Singh, father of respondents No. 1 to 3, jointly applied for partition before the Tahsildar, Dabra in respect to the land bearing survey No. 284, 990. The Tahsildar, Dabra passed the partition order dated 08/8/2004. Thereafter, their name was mutated in the revenue record as per the partition order of the Tahsildar. In the year 2015, Sub-Divisional Officer, Dabra (hereinafter referred to as "S.D.O.") passed the order dated 09/6/2015 and remanded the matter to Tahsildar for reconsideration. Against the order of the S.D.O. dated 09/6/2015, petitioner filed an appeal before the Additional Commissioner, Gwalior, who allowed the appeal vide order dated 25/1/2017 and set aside the order of the S.D.O. Against the order of the Additional Commissioner, respondents preferred the revision before the Board of Revenue, Gwalior (M.P.). The Board of Revenue allowed the revision and set aside the order of the Additional Commissioner by the order impugned.

Learned counsel for the petitioner argued that the order impugned is bad in law, patently illegal and without jurisdiction and deserves to be set aside. He has further argued that once the joint application had been filed by the petitioner and Dilbag, father of respondents No. 1 to 3, for partition of the land in question, then there is no question of fraud played by the petitioner. He has further argued that the S.D.O. has passed the order after lapse of 11 years without considering the period

of limitation. It is further argued that the order of the S.D.O., which has been passed without following the law, is perpetually wrong and, therefore, cannot be sustained.

On the other hand, learned counsels for the respondents argued that the order impugned passed by the Board of Revenue is in accordance with law and procedure and need not to be interfered with. They have further argued that since the order of the S.D.O. is passed in *Jan Sunwai* and an enquiry was also held, therefore, the question of limitation does not arise.

Heard learned counsel for the rival parties and perused the available record.

It is not disputed by both the parties that on joint application of the petitioner and Dilbag, father of respondents No. 1 to 3, the Tahsildar has passed the order dated 08/8/2004 after recording the evidence of both the parties. It is also apparent that thereafter both the parties got their name mutated in the Revenue Record in accordance with partition order dated 08/8/2004. The facts also reveal that after lapse of 11 years, the S.D.O. took cognizance on the basis of a complaint made during *Jan Sunwai* and remanded the matter to Tahsildar for reconsideration.

On perusal of the order of the S.D.O. dated 09/6/2015, it is clear that he has not considered the point of limitation as prescribed in Section 51 of the M.P. Land Revenue Code. It is also apparent that the Board of Revenue has also not considered the aspect of limitation while passing the order impugned. The Revenue Board as well as the S.D.O. have clearly overlooked the mandatory provisions of Section 51 of the M.P. Land Revenue Code and passed the orders after lapse of 11 years.

Consequently, the order impugned is found to be contrary to the provisions of law.

Resultantly, present petition is allowed setting aside the order of the Board of Revenue.

(SUNITA YADAV)
JUDGE

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THE HIGH COURT OF MADHYA PRADESH
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