

तारीख हुकम	<p style="text-align: center;">हुकम या कार्यवाही मय इनिशियल्स जज</p> <p style="text-align: center;">Revision/LR/6824/2001/Sikar. Moola Ram & ors Vs Kishanlal & ors</p>	<p>नम्बर व तारीख अहकाम जो इस हुकम की तामील में जारी हुए</p>
	<p style="text-align: center;"><u>S.B.</u></p> <p style="text-align: center;">Shri Rajinder Kumar, Member</p> <p><u>Argued by:-</u> Shri Hangami Lal, Counsel for the Revisionists. Shri Hemant Sogani, Counsel for the Respondents. *****</p> <p style="text-align: center;">J U D G M E N T Dated: 01-02-2019</p> <ol style="list-style-type: none"> 1. This revision petition has been preferred against the judgment dated 21.09.2001 of the learned Additional Divisional Commissioner, Jaipur passed in Second Appeal no. 6/2000. 2. Facts of the case mentioned in the Revision Petition in nutshell are that the revisionists are in physical possession of the disputed land as 'co-tenants' with the respondents since prior to the Samvat 2022. On the basis of their old and settled possession, the Tehsildar Neemka-Thana sanctioned the mutation of the disputed lands in their favor on 15.04.1975. Assailing the said order, the father/husband of the respondents no. 1 to 6, namely, Gharsi Ram and the respondent no. 7 Ramji Lal preferred an appeal in the court of Assistant Collector, Jaipur, whereupon on 18.12.1999 the said appeal of the respondents was accepted and the matter was remanded to the Tehsildar for passing the order afresh after making physical inspection of the disputed lands and after hearing the parties. The said judgment of the Assistant Collector, Jaipur was challenged by the revisionists by filing second appeal in the court of the learned Assistant Commissioner, Jaipur. The second appellate Court dismissed the appeal of the revisionists and simultaneously, it also set aside the judgment of the Assistant Collector and the order of the Tehsildar by which mutation was sanctioned in favor of the revisionists. Hence this revision petition. 	

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	<p>3. I have heard the learned counsels.</p> <p>4. On behalf of the revisionists the following submissions have been advanced:-</p> <p>i). The revisionists are continuing in possession of the disputed lands as 'co-tenants' alongwith the respondents from Samvat 2012 onwards. This fact is proved from the 'khasra Girdawaris' of the relevant years. In this way, the revisionists had become 'the khatedars' of the disputed land by virtue of the provisions contained in section 15 of the Act. Thus, the Tehsildar, Neem-ka-Thana committed illegality in sanctioning the mutation in favor of the revisionists.</p> <p>ii). The respondents challenged the order of the Tehsildar on the ground that mutation was sanctioned in the name of the revisionists without hearing them and without making local inspection of the disputed lands. Thus the Assistant Collector remanded the matter to the Tehsildar for <i>denovo</i> inquiry but the Additional Divisional Commissioner illegally set aside the order of the Assistant Collector and the mutation order.</p> <p>iii). The mutation proceedings are only fiscal in nature and the rights of the parties are not finally determined by the said proceedings. The said proceedings are summarily decided on the basis of actual possession and the revenue record. The claim of the revisionists was legally justified and well proved but the learned Additional Divisional Commissioner committed illegality by making out a new case in favor of the respondents.</p> <p>To buttress the above arguments, learned counsel relied upon AIR 1977 SC 890 'Siddu Venkappa Vs Smt. Rangu'. In this case, it was held by the Hon'ble Supreme Court that</p>	

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	<p>decision of a case cannot be based on grounds outside the pleadings of the parties. He also relied upon 1962 RRD 230 'Shri Nathu Vs Shri Sewa'. In this case, it was held by the Revenue Board that the entry in the Annual Register in the capacity of 'Sub-tenant' must exist on 15.10.1955 and not on the "appointed date". Learned counsel also relied upon 1974 RRD 63 'Smt. Anand Kumari Vs State of Raj' and submitted that no notice was required to be given by the Tehsildar to the respondents before sanctioning the mutation.</p> <p>5. Learned counsel for the respondents vehemently opposed the above submissions. He has supported the judgment passed by the Additional Divisional Commissioner. According to the learned counsel, the appellate court can mould the relief in favor of the respondent who has neither filed separate appeal or cross objections. In support of this argument, he relied upon 2001 RBJ 253 'Municipal Corporation Vs Bahadur Raj Mehta'.</p> <p>6. I have given my thoughtful consideration to the above submissions perused the record carefully.</p> <p>7. It is revealed from the record that the mutation was initially sanctioned in favor of the revisionists in the year 1975, which came to be challenged by the respondents by preferring appeal in the year 1998 on the plea that they were not heard by the Tehsildar before sanctioning the disputed limitation. This submission was accepted by the appellate authority and the matter was remanded to the Tehsildar for <i>de-novo</i> inquiry and making local inspection of the disputed lands. The second appellate authority, however, set aside the order of the first appellate court and the order of the Tehsildar as well on the ground that the Tehsildar was not competent to sanction the mutation under section 19 of the Rajasthan Tenancy Act, 1955. The</p>	

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	<p>Additional Divisional Commissioner, Jaipur observed that though the respondents have not preferred any appeal or cross-objections yet the order of the Tehsildar is <i>de- hors</i> the rules and hence the same is also liable to set-aside.</p> <p>8. The provisions of making mutation entries are contained in Rules 119 to 125 of the Rajasthan Land Revenue [Land Records] Rules, 1957. There are manifold purposes of mutation proceedings. Firstly, they are fiscal proceedings to decide as to by whom land revenue will be payable. Secondly, the mutations are sanctioned to maintain upto date record of rights. A presumption of trust is attached to record of rights. Therefore, the act of sanctioning the mutation is a very important function of the Land revenue administration. It is apparent that all these Rules have been carefully drafted for their observance. A mutation order to be valid must reveal that all the interested parties were present and given due opportunity of hearing. The general instructions in this regard are contained in Rule 121 of the said Rules. Looking to importance of the above task, if a departure is made from the requirement of any of the said Rules, it would vitiate the entire exercise of sanctioning the mutation.</p> <p>9. In this case, both the courts below have given concurrent findings that the mutation was entered by the Tehsildar in the name of the revisionists without adhering to the relevant Rules and the provisions of the Rajasthan Tenancy Act, 1955. The first appellate court has observed that the respondents herein are the recorded khatedars of the disputed lands and thus, the mutation could not have been entered in the names of the revisionists without hearing the khatedars. The second appellate court has observed that the order by which mutation was sanctioned in the name of the revisionists has not been placed on record and only on the basis of the mutation</p>	

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	<p>entry, the order of the Tehsildar cannot be sustained. The second appellate court also observed the Tehsildar Neemka-Thana has sanctioned the mutation in favor of the revisionists under section 15 of the Rajasthan Tenancy Act, 1955 whereas the revisionist have not proved that they were in physical occupation of the said lands at the date of commencement of the said Act. Therefore, the mutation could not have been sanctioned by the Tehsildar in the manner done by him. An argument was also raised before the second appellate court that the mutation was sanctioned by the Tehsildar under section 19 of the Act and this argument was also repelled by the Additional Divisional Commissioner by observing that the name of the revisionists is not entered in the Jamabandi of the Samvat 2012 as "tenant", therefore, they are not entitled to claim khatedari rights by operation of law under section 19 (1) (A) of the Act, as claimed by them. In this way, the learned Additional Divisional Commissioner has not committed any illegality in passing the impugned judgment.</p> <p>10. It is trite that the scope of revisional jurisdiction is very limited and the same can be exercised only when the judgment of the court below is illegal or perverse. In the instant matter, the learned Additional Divisional Commissioner has passed the impugned judgment keeping in mind all the legal aspects of the case. None of the authorities relied upon by the learned counsel are of any assistance to the revisionists. Hence this revision petition is liable to be dismissed.</p> <p>11. Resultantly, the revision petition is dismissed. Pronounced.</p> <p style="text-align: right;">(Rajinder Kumar) Member</p>	