COURT OF THE SUB-COLLECTOR-CUM-APPELLATE AUTHORITY, ATHAMALLIK

Mutation Appeal No. 13 of 2026

(Arising out of the order dated 05.08.2026 of the Addl. Tahasildar, Kishorenagar in Mutation Case No. 1374/2026)

Ramananda Sahoo … Appellant v. Jayananda Sahoo and Addl. Tahasildar, Kishorenagar … Respondents

Decided on 20 November 2026

Orissa Survey and Settlement Rules, 1962 – Rule 34(c) – Mutation on a final partition decree – Pending application against the decree. A final decree of a competent civil court operates until it is set aside or stayed. The mere pendency of an application challenging it (here a CMA) is no ground to drop a mutation case founded on the decree. The Record-of-Rights must be corrected to conform to the decree, with a remark that the entry is subject to the result of the pending application.

Result: Appeal allowed. Order dropping the case set aside; Record-of-Rights to be corrected as per the final decree within 45 days.

ORDER

1. The record is put up today for orders. This appeal is directed against the order dated 05.08.2026 of the Addl. Tahasildar, Kishorenagar, which dropped Mutation Case No. 1374/2026. The appellant had filed that case under Rule 34 of the OSS Rules, read with paragraph 17 of the Orissa Mutation Manual, on the basis of the final decree in C.S. No. 02/2023 of the Court of the learned Civil Judge (Sr. Divn.), Athamallik. The land concerned is Mouza Chuliapur, Khata No. 69/86, Plot No. 235/656 (Ac.0.5900 out of Ac.0.9800) and Plot No. 235/769 (Ac.0.1200), Kisam Taila-I.

2. Facts: The appellant and respondent No. 1 are brothers. They jointly purchased the land of Khata No. 69/86 under RSD No. 421/1990 dated 02.05.1990 and are its joint recorded tenants. The appellant filed C.S. No. 02/2023 for partition. A preliminary decree was passed on 15.04.2024 (judgment dated 28.03.2024), declaring each party entitled to a half share, and an Amin Commissioner carved out the shares. By order dated 25.09.2025 the learned Civil Judge made the preliminary decree final, directing that the Amin Commissioner's report, allotment sheet and sketch map would form part of the final decree. On that basis the appellant applied for mutation of the land allotted to him. The Addl. Tahasildar issued notices. Respondent No. 1 objected that he had filed CMA No. 39/2025 before the learned Civil Judge against the order of 28.03.2024. On 05.08.2026 the Addl. Tahasildar dropped the case, holding that it could not be allowed 'until further orders of the Hon'ble Higher Court' in view of the pending objection petition.

3. Contentions: The appellant contends that no order staying the decree, or restraining the mutation, has been passed by any court, and that the mere filing of CMA No. 39/2025 is no ground to deny him the fruit of the decree. He has also produced a copy of his execution petition filed before the learned Civil Judge (Sr. Divn.), Athamallik for delivery of possession under the final decree. Respondent No. 1, in his deposition dated 25.09.2026, states that the decree was passed ex parte, that he has challenged it, and that the Tahasildar rightly rejected the mutation. The Addl. Tahasildar, in her parawise comments dated 23.09.2026, admits that no stay order was produced, but justifies the

dropping as avoiding a conflict with the Civil Court. Heard both sides and perused the lower court record.

4. Point for determination: Whether a mutation application founded on a final partition decree of a competent Civil Court could be dropped merely because an application challenging that decree was pending, when no stay or restraint order had been passed.

5. Discussion: Rule 34(c) of the OSS Rules expressly provides for correction of the Record-of-Rights and map on the basis of a decree or order of a Civil Court. The final decree in C.S. No. 02/2023 is a decree of a competent Civil Court and is binding on the parties. It operates unless it is set aside, or its operation is stayed, by a competent court. Respondent No. 1's own case, and the Addl. Tahasildar's parawise comments, show that no such stay was obtained. The mere pendency of an application to set aside or review a decree does not suspend the decree; were it otherwise, any decree could be kept from operation by the simple step of filing an application. By dropping the case, the Addl. Tahasildar did not avoid a conflict with the Civil Court. She in effect refused to give effect to a subsisting decree of that Court, which is not within the scope of a summary revenue proceeding. A mutation entry neither creates nor extinguishes title (Jitendra Singh v. State of M.P., Supreme Court, 2021). The appropriate course was to correct the record in conformity with the decree and to make the entry expressly subject to the result of CMA No. 39/2025, so that the record can be brought back in line with whatever order the Civil Court may finally pass. The respondent's interest is fully protected by such a course. The impugned order cannot therefore be sustained.

6. In the result, the appeal is allowed. The order dated 05.08.2026 in Mutation Case No. 1374/2026 is set aside, and the case is remitted to the Addl. Tahasildar, Kishorenagar with the following directions:

(i) She shall verify the certified copies of the judgment, the preliminary decree, the final decree dated 25.09.2025, and the Amin Commissioner's report, allotment sheet and sketch map in C.S. No. 02/2023. She shall correct the Record-of-Rights of Khata No. 69/86 of Mouza Chuliapur so that it conforms to the final decree, recording the portions allotted to the appellant and to respondent No. 1 respectively, in accordance with Rule 34(c) of the OSS Rules, after notice to both parties.

(ii) The correction shall carry a remark that it is subject to the result of CMA No. 39/2025 pending before the learned Civil Judge (Sr. Divn.), Athamallik. If before the correction is made any order staying, setting aside or modifying the decree is produced, she shall act in conformity with that order.

(iii) The case shall be disposed of within 45 (forty-five) days of receipt of this order.

7. Send a copy of this order along with the LCR to the Addl. Tahasildar, Kishorenagar for compliance, and supply copies to the parties. The appeal is disposed of accordingly.

Sd/-

Sub-Collector-cum-Appellate Authority, Athamallik

Odisha Revenue Laws · Revenue Court Orders. Reported for the reference of revenue officers. The order applies to its own facts; check the current law before relying on it.