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

Mutation Appeal No. 14 of 2026

(Arising out of the order dated 17.04.2026 of the Tahasildar, Kishorenagar in Mutation Case No. 943/2026)

Puspanjali Sahu … Appellant v. Nalini Behera and nineteen other co-sharers … Respondents

Decided on 20 November 2026

Mutation – Purchase from one co-sharer of unpartitioned land – Objection by other co-sharers. The purchaser of an undivided share steps into the vendor's shoes under section 44 of the Transfer of Property Act. The objection of other co-sharers is a reason not to carve out a separate plot or khata, but not a reason to refuse mutation altogether. The purchaser is to be recorded as a co-sharer jointly in place of the vendor, with a remark that the entry is subject to partition (*Sudam Das v. Krushna Mahakur*, JBR Vol. XVIII (1982) II, p. 43; *Sashikanta Panigrahi v. State of Odisha*, W.P.(C) No. 25050 of 2025, decided 20.09.2025). Delay condoned.

Result: Appeal allowed in part. Appellant to be recorded jointly as co-sharer in place of the vendor; no separate khata.

ORDER

1. The record is put up today for orders. The appellant purchased Ac.0.25 dec. out of Hal Plot No. 3277 (Ac.0.30 dec.), Kisam Sarad-2, Khata No. 43 of Mouza Dhaurapali, from Muralidhar Behera, S/o Late Gadadhar Behera, one of the recorded co-sharers, under RSD No. 91 dated 20.02.2009 (Sub-Registrar, Kishorenagar). Her Mutation Case No. 943/2026 was dropped by the Tahasildar, Kishorenagar on 17.04.2026 because the co-sharers had objected, citing paragraph 49 of the Orissa Mutation Manual. Hence this appeal, with a petition under Section 5 of the Limitation Act citing the appellant's illness.

2. Delay: Mutation proceedings are fiscal in nature, and the appellant has explained the delay by her illness. Rejecting the appeal on a technicality would cause her greater injustice than condoning the delay would cause the respondents, who have been heard on merits (Collector, Land Acquisition, Anantnag v. Mst. Katiji, (1987) 2 SCC 107). The delay, if any, is condoned.

3. Record: The R.I., Kishorenagar verified the original sale deed and reported on 23.03.2026 that the appellant had purchased the land from a rightful co-sharer and has been in peaceful possession since registration. The R.I. also recorded that the land is not SC/ST, Devottar, ceiling-surplus or Chaka land. The co-sharers (Respondent Nos. 1 to 20 and others) filed written objections. They say the land is joint ancestral property that has never been partitioned, that they never consented to the sale, and that they are in possession. The vendor has not objected. In his parawise comments, the Tahasildar relies on R&DM Department letter No. 22638/R&DM dated 23.06.2025 and states that a separate khata cannot be created in favour of the appellant for an undivided share. Heard the learned counsel for the appellant and the respondents who appeared, and perused the LCR.

4. The law: Mutation proceedings under Rules 34 to 41 of the Odisha Survey and Settlement Rules, 1962 ("the OSS Rules"), read with the Orissa Mutation Manual, 1962, are summary proceedings for keeping the Record-of-Rights up to date for fiscal purposes. A mutation entry neither creates nor

extinguishes title, and complicated questions of title cannot be decided in such a proceeding (Jitendra Singh v. State of M.P., Supreme Court, 2021; Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186). The Mutation Manual is executive in nature and cannot override the OSS Rules. The Hon'ble High Court of Orissa has repeatedly held, following Sudam Das v. Krushna Mahakur, JBR Vol. XVIII (1982) Part-II, p. 43, that when one co-sharer sells his share, the purchaser becomes a co-sharer in the seller's place. No particular plot can be mutated in the purchaser's name unless the other co-sharers consent or a Civil Court decree specifies his share. Equally, the Tahasildar should not reject the mutation outright merely because the other co-sharers did not consent; the purchaser should be recorded as a co-owner in the Record-of-Rights alongside the other co-sharers (Sashikanta Panigrahi v. State of Odisha, W.P.(C) No. 25050 of 2025, decided on 20.09.2025; Satyabhama Seth v. State of Odisha, W.P.(C) No. 25338 of 2025, decided on 20.09.2025). The Revenue & Disaster Management Department's letter No. 22638/R&DM dated 23.06.2025, relied on by the Tahasildar, is to the same effect. It recognises that the transferee of an undivided share steps into the transferor's shoes under Section 44 of the Transfer of Property Act, 1882, but acquires no exclusive right to any demarcated portion until partition. Read together, the position is that the purchaser of an undivided share is to be recorded jointly, as a co-sharer in place of the vendor, but no separate khata or plot can be carved out for him.

5. Discussion: The sale deed is a registered instrument that has stood unchallenged for over seventeen years, and the vendor himself has not disputed it. Under Section 44 of the Transfer of Property Act, the appellant has therefore stepped into the shoes of the vendor as a co-sharer to the extent of his undivided interest in Khata No. 43. The co-sharers' objections — that the land is joint, that they did not consent, and that the vendor may have sold more than his share — are good reasons for not carving out a separate plot or khata of Ac.0.25 dec. for the appellant. They are not reasons for refusing to record her as a co-sharer at all. The impugned order records only that objections were received and drops the case without discussing them or the R.I.'s report. Such a non-speaking order cannot be sustained. How much land the vendor's share actually amounts to, and where it lies, can be settled only by partition, amicably among all co-sharers or by a decree of the Civil Court.

6. In the result, the appeal is allowed in part. The order dated 17.04.2026 in Mutation Case No. 943/2026 is set aside, and the case is remitted to the Tahasildar, Kishorenagar with the following directions:

(i) He shall record the appellant, Puspanjali Sahu, as a co-sharer in Khata No. 43 of Mouza Dhaurapali in place of, and to the extent of the undivided interest of, her vendor Muralidhar Behera, jointly with the other recorded co-sharers.

(ii) No separate khata shall be opened, and no separate plot carved out, in the appellant's name for the Ac.0.25 dec. claimed. The remarks column shall note that her entry is on the basis of RSD No. 91/2009 and is subject to partition by metes and bounds, amicably or by a decree of the competent Civil Court.

(iii) The above shall be done after giving the objecting co-sharers notice and a hearing on the form of the entry, within 45 (forty-five) days of receipt of this order.

(iv) The appellant's claim to exclusive possession of any specific portion, and the co-sharers' objection that the sale exceeds the vendor's share, are left open for decision in partition. Nothing in this order shall be read as a finding on title or on the extent of the vendor's share.

7. Send a copy of this order along with the LCR to the 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.