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

Mutation Appeal No. 15 of 2026

(Arising out of the order of the Tahasildar, Athamallik in Mutation Case No. 4123/2026)

Hrudananda Sahoo … Appellant v. Tahasildar, Athamallik … Respondent

Decided on 20 November 2026

Mutation – Sale of undivided share by one brother – Separate khata opened for purchaser without notice to the other joint tenant. A joint recorded tenant of the very holding is a person whose interest is affected and must be noticed. A separate khata cannot be opened in favour of the purchaser of an undivided share before partition; he can only be recorded jointly in place of his vendor. A pending civil suit on title does not bar an appeal confined to the correctness of the revenue entry.

Result: Appeal allowed in part. Separate khata set aside, land restored to the joint holding, and the case remanded for fresh disposal after notice.

ORDER

1. The record is put up today for orders. Holding No. 102/212 of Mouza Tentheipali, area Ac.0.90 dec., stands jointly recorded in the names of the appellant Hrudananda Sahoo and his brother Sagar Sahoo, sons of Late Bholanath Sahoo. It has not been partitioned. Sagar Sahoo sold Ac.0.42 dec. (shown as Ac.0.40 dec. in the parawise comments) to Sraban Sahoo, S/o Nandi Sahoo, under RSD No. 10022600535 dated 13.08.2026. On that basis the land was mutated in Mutation Case No. 4123/2026, and a separate Record-of-Rights, Khata No. 102/344, was opened in Sraban Sahoo's name. The appellant says he was given no notice of the mutation proceeding, that his dwelling house and other structures stand on the joint land, and that the separate khata prejudices him.

2. Record: The Tahasildar, in his parawise comments, admits that the land is the unpartitioned joint property of the two brothers. He justifies the sale as one of an undivided share permitted under Section 44 of the Transfer of Property Act, relying on R&DM Department letter No. 22638/R&DM dated 23.06.2025 and Board of Revenue Circular No. 2169/Regn. dated 09.06.2017. The comments do not claim that notice was served on the appellant. Sagar Sahoo and Sraban Sahoo, examined on 18.11.2026, state that the sale is within Sagar Sahoo's share and that the appellant has no structure on the sold portion. The appellant has produced the order dated 30.10.2026 of the learned Civil Judge (Sr. Divn.), Athamallik in I.A. No. 28/2026 arising out of C.S. No. 66/2026 (Hrudananda Sahoo v. Sraban Sahoo). That order directs both parties to maintain status quo regarding ownership, possession and enjoyment of the B-schedule property till disposal of the suit, and restrains the opposite party from dispossessing the petitioner from, or damaging, the residential houses in his settled possession. On 18.11.2026 the purchaser's side filed a petition praying that this appeal be dismissed because the suit is pending. Heard the parties and perused the record.

3. 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. Paragraphs 36 to 47 of the Mutation Manual, referred to in the same Departmental letter, require notice to every person whose interest may be affected.

4. Discussion: (a) The pendency of C.S. No. 66/2026 does not bar this appeal. The suit concerns title and possession. This appeal concerns only whether the revenue entry was made in accordance with the OSS Rules, and this Court does not decide any question of title. The petition for dismissal of the appeal is therefore rejected.

(b) The appellant is a joint recorded tenant of the very holding out of which the sale was made, and so a person whose interest was plainly affected. Making the mutation without notice to him violates the procedure in the Rules and the Mutation Manual and the principles of natural justice.

(c) More fundamentally, the Tahasildar has opened a separate khata in favour of the purchaser of an undivided share of unpartitioned land. This is precisely what the Departmental letter he relies on, and the decisions of the Hon'ble High Court, say cannot be done before partition by consent or by decree. The purchaser is entitled to be recorded as a co-sharer in place of his vendor in the joint holding, but not to a separate khata for a specific area.

(d) The status quo order of the Civil Court protects possession and enjoyment, and its spirit is better served by keeping the record joint than by a separate khata that treats the sold portion as already partitioned. The impugned order is therefore liable to be set aside.

5. In the result, the appeal is allowed in part. The order passed in Mutation Case No. 4123/2026, and the separate Khata No. 102/344 of Mouza Tentheipali opened under it, are set aside, and the case is remitted to the Tahasildar, Athamallik with the following directions:

(i) He shall restore the land of Khata No. 102/344 to joint Holding No. 102/212 as it stood before the impugned mutation.

(ii) He shall then dispose of Mutation Case No. 4123/2026 afresh, after notice to the appellant, Sagar Sahoo and Sraban Sahoo. If he allows the mutation, he shall only record Sraban Sahoo as a co-sharer in Holding No. 102/212 in place of, and to the extent of the undivided interest of, his vendor Sagar

Sahoo, jointly with the appellant. No separate khata or plot shall be created until partition by metes and bounds, amicably or by a decree of the competent Civil Court.

(iii) The entry shall carry a remark that it is subject to the result of C.S. No. 66/2026 and to the orders passed in I.A. No. 28/2026 by the learned Civil Judge (Sr. Divn.), Athamallik.

(iv) The above shall be completed within 45 (forty-five) days of receipt of this order. The allegations made against the officer in the memorandum of appeal are not adjudicated in this appeal.

6. Send a copy of this order along with the LCR to the Tahasildar, Athamallik 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.