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

Mutation Appeal No. 21 of 2026

(Arising out of the orders dated 04.05.2026 and 27.07.2026 of the Tahasildar, Athamallik in Mutation Case No. 1132/2026)

Legal heirs of Jagannath Kheti … Appellants v. Indumati Bishi and Tahasildar, Athamallik … Respondents

Decided on 20 November 2026

Mutation by succession – Share already partly sold by the deceased – No notice to co-sharer son of the recorded tenant. A successor can be recorded only for the land that stood in the deceased's name at death, i.e. her decretal share less what she had sold and got mutated during her lifetime; recording the full share counts the same land twice. A co-sharer son of the recorded tenant must be noticed. A claim under an unregistered agreement for sale is for the civil court.

Result: Appeal allowed in part. Orders set aside and remanded for fresh disposal after notice to all heirs and the purchaser.

ORDER

1. The record is put up today for orders. The recorded tenant Basu (Basudev) Kheti, S/o Balaram Kheti, left the lands of Khata No. 56 of Mouza Kuteswar and Khata No. 24 of Mouza Haridakotha. According to the genealogy furnished by the appellants on 18.11.2026, he was survived by a son, Jagannath Kheti (the original appellant), and two daughters, Pinjra Pradhan and Rangabati Mahakud. The respondent Indumati Bishi is Rangabati Mahakud's daughter. In Mutation Case No. 1132/2026, by orders dated 04.05.2026 and 27.07.2026, the Tahasildar, Athamallik recorded Ac.2.85 dec. of Khata No. 56 of Mouza Kuteswar (new Khata No. 89/196) and Ac.1.375 dec. of Mouza Haridakotha (new Khata No. 33/52) in the respondent's name as successor of Rangabati Mahakud.

2. Contentions: The appellants contend as follows. (a) No notice of the mutation proceeding was given to Jagannath Kheti, although he was a co-sharer and the son of the recorded tenant; he came to know of the mutation only on 10.09.2026. (b) Under the decree in T.S. No. 19/77, Rangabati Mahakud's one-third share in Khata No. 56 of Mouza Kuteswar was Ac.2.85 dec. During her lifetime she sold Ac.0.84 dec. of it to Jubati Dehury under RSD Nos. 88/1996 and 52/2004, and those portions have been mutated in the purchaser's name. Only about Ac.2.01 dec. could therefore devolve on the respondent, yet Ac.2.85 dec. has been recorded. (c) Rangabati Mahakud had agreed to sell her share to Jagannath Kheti under an agreement for sale dated 16.07.1997, executed through her attorney, and he has been in possession under it. The respondent did not appear despite notice and reminder. The Tahasildar was directed to appear on 20.11.2026, but his parawise comments are not on 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. Under the OSS Rules and paragraphs 36 to 47 of the Mutation Manual, notice must be given to every person whose interest may be affected before the record is corrected. On succession, an heir can be recorded only for what the deceased held at the time of death, not for property she had already transferred during her lifetime. An agreement for sale, unlike a registered sale deed, does not transfer title (Section 54 of the Transfer of Property Act, 1882; Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656), so it cannot found a claim to mutation.

4. Discussion: (a) The plea based on the 1997 agreement for sale cannot be accepted in a mutation proceeding. If the appellants have any right under that agreement, it can be worked out only before the Civil Court.

(b) However, the original appellant was the son of the recorded tenant and a co-sharer in the very khatas from which the respondent's share was carved out. Nothing on record shows that he was noticed in Mutation Case No. 1132/2026.

(c) More importantly, on the appellants' unrebutted case, Ac.0.84 dec. of Rangabati Mahakud's share in Khata No. 56 of Mouza Kuteswar had already been sold by her and mutated in the name of Jubati Dehury. If so, recording the entire Ac.2.85 dec. in the respondent's name as successor counts the same land twice and cannot stand. The respondent has not appeared to dispute this.

(d) The extent of Rangabati Mahakud's decretal share, the plots allotted to her, and the transfers made by her must be verified from the decree in T.S. No. 19/77 and the sale and mutation records. That is the Tahasildar's task on remand. The same want of notice affects the entry made for Mouza Haridakotha.

5. In the result, the appeal is allowed in part. The orders dated 04.05.2026 and 27.07.2026 in Mutation Case No. 1132/2026 are set aside, and the case is remitted to the Tahasildar, Athamallik with the following directions:

(i) He shall dispose of the case afresh after notice to all the legal heirs of the recorded tenant Basu Kheti (including the present appellants and the successors of Pinjra Pradhan), the respondent Indumati Bishi, and Jubati Dehury.

(ii) He shall verify the decree in T.S. No. 19/77, the plots allotted to Rangabati Mahakud, RSD Nos. 88/1996 and 52/2004, and the mutations made on their basis.

(iii) He shall record the respondent, as successor of Rangabati Mahakud, only for the land that stood in Rangabati Mahakud's name at the time of her death, i.e. her share less the areas transferred by her, in both Mouza Kuteswar and Mouza Haridakotha.

(iv) Until the fresh order is passed, the entries in Khata No. 89/196 of Mouza Kuteswar and Khata No. 33/52 of Mouza Haridakotha shall carry a remark 'subject to Mutation Appeal No. 21/2026 (remanded)', and no further mutation on the basis of any transfer from those khatas shall be entertained.

(v) The case shall be disposed of within 60 (sixty) days of receipt of this order. The claim of the appellants under the agreement for sale dated 16.07.1997 is left open for the Civil Court.

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

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