

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7790 OF 2014  
(Arising out of SLP (C) No.31827 of 2013)

BANSHIDHAR AND ORS.

Appellants

VERSUS

RADHEY SHYAM

Respondent

O R D E R

Leave granted.

This appeal has been preferred by the appellants against the order dated 2<sup>nd</sup> April, 2013 passed by the High Court of Allahabad, Lucknow Bench, Lucknow in Writ Petition No.143 (Consolidation) of 2010. By the impugned order, the High Court refused to interfere with the order 18<sup>th</sup> November, 2009 passed by the Deputy Director, Consolidation in Revision No. 384/327 and the order dated 16<sup>th</sup> January, 2009 passed by the Settlement Officer, Consolidation in Appeal NO. 287/08-09.

According to the appellants, Smt. Achla executed Will Deed on 29<sup>th</sup> June, 1985 in favour of Deep Narayan, Siddhnath, Suresh Kumar and Banshidhar, sons of Mani Ram (Appellants herein). Smt. Achla died on 2<sup>nd</sup> July, 1985 and after her death, the appellants' father filed application for mutation before the Tehsildar, Tulsipur bearing Case No. 642/240/952, under Section 34 of U.P. Land Revenue Act on the basis of Will dated 29<sup>th</sup> June, 1985. The respondent-Radhey Shyam also filed an application for mutation

before the Tehsildar, Tulsipur on the basis of a Will Deed dated 26.07.1985, purported to have been executed by Smt. Achla in his favour. However, subsequently, Radhey Shyam filed application for withdrawal of the same and admitted the will of Smt. Achla executed in favour of the appellants. As a result of such withdrawal, Tehsildar, by means of order dated 20<sup>th</sup> December, 1999 decided the mutation case in favour of the appellants.

The grievance of the appellants is that after about 22 years, the respondent-Radhey Shyam preferred the appeal before the Settlement Officer, Consolidation against an order dated 28.10.1975 passed by Assistant Consolidation Officer directing to record the names of Maniram, Deepnarayan and Smt. Achla in place of the deceased Laldei. The Settlement Officer, Consolidation, after examining the issue, remanded the matter to the Consolidation Officer. The said order was challenged by the appellants before the Deputy Director of Consolidation who dismissed the said revision application. The High Court by the impugned order affirmed and refused to interfere with the said orders. It is submitted that the appeal was filed after about twenty two years and neither an application for condonation was filed nor was the delay condoned.

The learned counsel for the respondent submits that the respondent is illiterate and was not properly guided by the Advocate and, therefore, the application filed by him was withdrawn. It is further contended that the order being illegal, it was not necessary to condone the delay.

We have heard the learned counsel for the parties and perused the record. We do not agree with the submission made on behalf of the respondent that if the order is illegal, then period of limitation can be ignored in preferring the appeal. The Consolidation Authority (Appellate Authority) as also the High Court failed to notice that the appeal was filed by the respondent after delay of 22 years. Neither any reason was shown as to why the appeal was filed after such a long delay, nor any application for condonation of delay was filed.

In view of the aforesaid finding, we set aside the order dated 16<sup>th</sup> January, 2009 passed by the Settlement Officer, Consolidation in Appeal No. 287/08-09; order dated 18<sup>th</sup> November, 2009 passed by the Dy. Director, Consolidation in Revision No. 384/327 and the order dated 2<sup>nd</sup> April, 2013 passed by the High Court in Writ Petition No. 143 (Consolidation) of 2010.

The appeal is allowed.

.....J.  
[SUDHANSU JYOTI MUKHOPADHAYA]

.....J.  
[PRAFULLA CHANDRA PANT]

NEW DELHI;  
AUGUST 19, 2014

ITEM NO.49

COURT NO.5

SECTION XI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).31827/2013

(Arising out of impugned final judgment and order dated 02/04/2013  
in WP No. 143/2010 passed by the High Court of U.P at Lucknow)

BANSHIDHAR AND ORS

Petitioner(s)

VERSUS

RADHEY SHYAM

Respondent(s)

(With interim relief and office report)

Date : 19/08/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
HON'BLE MR. JUSTICE PRAFULLA CHANDRA PANT

For Petitioner(s) Mr. Pramod Swarup, Sr. Adv.  
Mr. Prashant Chaudhary, Adv.

For Respondent(s) Mr. Dilip Pandey, Adv.  
Mr. Badri Prasad Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the Signed Order.

(Rajni Mukhi)  
Sr. P.A.

(Usha Sharma)  
Court Master

(Signed Order is placed on the file)