

ITEM NO.101

COURT NO.8

SECTION III-A

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

Civil Appeal No(s). 4587/2009

RAM NARAIN (D) BY LRS. &amp; ORS.

Appellant(s)

VERSUS

THE SUB DIVISIONAL OFFICER &amp; ORS.

Respondent(s)

(IA 159597/2018 - Application for substitution,  
IA 159599/2018 - Cond.of delay in filing substitution appln.,  
IA 159602/2018 - Exemption from filing O.T.)

Date : 07-02-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI  
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Appellant(s)

Mr. S.R.Singh, Sr. Adv.  
Mr. Vikas K. Singh, Adv.  
Ms. Sunita Pandit, Adv.  
Ms. Shweta Yadav, Adv.  
Mr. Ujjawal Pandey, Adv.  
Mr. T. N. Singh, AOR

For Respondent(s)

Mr. Naresh Kaushik, Adv.  
Mr. Vardhman Kaushik, Adv.  
Mr. Manoj Joshi, Adv.  
Mr. Omung Raj Gupta, Adv.  
Mr. Rahul Sharma, Adv.  
Mr. Siddhant Manral, Adv.  
Ms. Rebecca Dais, Adv.  
Mrs. Lalita Kaushik, AOR

(State of U.P.)

Mr. Tanmaya Agarwal, AOR.  
Mr. Shwetonk Shailakwal, Adv.  
(In place of  
Mr. Akshat Kumar, AOR)

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

We have heard Mr. S.R. Singh, learned senior counsel appearing for the appellants, at length and Mr. Naresh Kaushik, learned counsel appearing for the private respondents.

During the course of hearing it was brought to our notice that the High Court while examining the correctness of the order passed by the Sub-Divisional Officer dated 20<sup>th</sup> June, 1989, has proceeded under the mistaken impression as if Original Suit No.547 of 1986 and Original Suit No.548 of 1986 were still pending before the Trial Court and recorded certain findings with reference to the said suits.

From the records it is seen that the said suits were already decreed way back on 11<sup>th</sup> August, 1992 and the first appeals preferred by respondents No.3 to 45 - Civil Appeal bearing No(s).91/92 and 92/92 were also dismissed by judgment dated 26<sup>th</sup> August, 1997. Being aggrieved, respondents No(s).3 to 45 have preferred the second appeals bearing No(s).1124/1997 and 1125/1997 before the High Court. Out of those two second appeals, Second Appeal NO.1124/1997 was dismissed as abated on 12<sup>th</sup> September, 2007. It is stated that the other second appeal, S.A. No.1125/1997 is still pending consideration before the High Court.

Having regard to the contentions urged by both the parties, in our considered view both the second appeals preferred by respondents no.3 to 45 ought to be heard on their own merits, before we consider the order impugned here.

Considering the facts and circumstances of the case and since respondents no.3 to 45 belonging to SC/ST are said to be in possession from 1970 onwards in order to complete justice between the parties, in exercise of our power under Article 142 of the Constitution of India, we deem it appropriate to set aside the order of dismissal passed in S.A. No.1124 of 1997 (which was

dismissed as abated), and the same shall stand restored to its original number on the file of the High Court. The appellants in S.A. NO.1124 of 1997 shall have to take steps before the High Court to bring on record the legal representatives of the deceased-respondents who are the appellants in the second appeal. We request the High Court to take up both the second appeals - S.A.No(s).1124/1997 and 1125/1997 preferred by respondents no.3 to 45 and to afford sufficient opportunity to both the parties and dispose of the same on its own merits.

Since various contentions/issues are raised by the appellants herein which are refuted by Mr. Naresh Kaushik, learned counsel appearing for the private respondents, the State of Uttar Pradesh represented by its Department of Revenue is ordered to be impleaded as the respondent in this appeal.

I.A. NO(s).159599/2018 and I.A. NO(s). 159597/2018 :

Delay in filing the application (IA No.159599/2018) of substitution is condoned and the application (IA No.159597/2018) for substitution to bring on record the legal representative of deceased appellant no.2 is allowed.

Learned counsel for the appellant shall file amended cause title within two weeks from today.

Post the matter in the last week of August, 2019.

(MAHABIR SINGH)  
COURT MASTER

(PARVEEN KUMARI PASRICHA)  
BRANCH OFFICER