

Court No. - 48

Case :- WRIT - B No. - 1073 of 2023

Petitioner :- Subba And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Raj Deo Singh, Samta Singh Kushwaha

Counsel for Respondent :- C.S.C., Rakesh Singh

Hon'ble Saurabh Shyam Shamsbery, J.

This writ petition is pending before this Court since 13.4.2023. Respondents have appeared as a caveator, however, despite direction and liberty, no counter affidavit has been filed till date.

This Court has passed the following order on 13.4.2023:-

"Heard Mr. R.D. Singh, Counsel for the petitioners and Mr. Rakesh Singh for respondent No.3.

Counsel for the petitioners submitted that title objection was decided by the Consolidation Officer on the basis of compromise between the petitioners and respondent No.3. He submitted that both are real brothers and on the basis of compromise, the objection was decided and there was no fraud or forgery in the same. He submitted that appeal under Section 11(1) of the U.P.C.H. Act was filed after six years and which was rejected by the Appellate Court recording finding that respondent No.3 is not entitled for the benefit of Section 5 of Limitation Act. He submitted that revision has been allowed setting aside the order of Settlement Officer Consolidation and Consolidation Officer and matter has been remanded back to the Consolidation Officer. Counsel for the petitioners submitted that no proper finding has been recorded by the Revisional Court for condonation of delay of six years although the Appellate Court has accorded finding for refusing the benefit of Section 5 of Limitation Act.

On the other hand, Mr. Rakesh Singh, Counsel for the respondent No.3 submitted that respondent No.3 has not entered into any compromise and the fraud was committed, as such, the order of Consolidation Officer has been rightly set aside by the Revisional Court and no interference is required.

Matter requires consideration as to whether the Revisional Court

can allow the revision and remand the matter to the Consolidation Officer without recording proper finding of Section 5 of Limitation Act under Section 5 of Limitation Act.

Respondent No.3 shall file counter-affidavit within six weeks. Petitioners shall file rejoinder-affidavit within two weeks thereafter.

List this matter on 14.7.2023.

Until further orders of this Court, the parties are directed to maintain status with respect to nature and possession of the plot in dispute and no third party interest shall be created by the parties in respect to the plot in dispute. "

Sri Raj Deo Singh, learned counsel for petitioner has reiterated above submission.

Heard learned counsel for petitioner and since there is no serious objection on behalf of contesting respondent, therefore, prayer made in this writ petition is allowed and the impugned order dated 27.1.2023 is set aside and matter is remitted to Revisional Authority to decide afresh, after considering the averments raised in revision petition, in accordance with law, preferably within a period of six months from today. The Authority shall consider issue of limitation as a preliminary issue.

This writ petition is accordingly **disposed of**.

Order Date :- 19.10.2023

P. Pandey