

Neutral Citation No. - 2025:AHC:84246

Reserved on 30.4.2025

Delivered on 20.5.2025

Court No. - 50

Case :- WRIT - B No. - 1388 of 2020

Petitioner :- Amrit Lal And 8 Others

Respondent :- Deputy Director Of Consolidation And 9 Others

Counsel for Petitioner :- Manvendra Nath Singh, Vinod Kumar Singh (Senior Adv.)

Counsel for Respondent :- C.S.C., Rajesh Yadav

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. V.K. Singh, learned Senior Counsel assisted by Mr. Manvendra Nath Singh, learned counsel for the petitioners, Mr. Rajesh Yadav, learned counsel for respondent nos. 4 to 10 and Mr. Abhishek Srivastava, learned Additional Chief Standing Counsel for the State respondents.

2. Brief facts of the case are that dispute relates to khata No. 15 new plot No. 315 area 1-1-0 and plot No. 316 area 1-19-0 total area 3-0-0 situated in Village Jiratamtam @ Narayan Das Ka Pura, Pargana, Jhunsi, Tehsil Phoolpur District Prayagraj. In the basic year of the consolidation operation, khata No. 26 was recorded in the name of petitioners as well as private respondents. In respect to the basic year entry of khata No. 15, new plot No. 315 and 316, two objections were filed by private respondents under Section 9A (2) of the U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as U.P.C.H. Act claiming relief that khata No. 15 is self acquired property of the predecessors of private respondents, as such, the khata No. 15 should be recorded exclusively in the name of private respondents after expunging the entries of the petitioners. Petitioners have also filed objection under Section 9A (2) of the U.P.C.H. Act in respect to khata No. 15 claiming that their name be recorded to the extent of 1/2 share. The aforementioned objections were clubbed together. During pendency of the aforementioned objection, parties have entered into

compromise accordingly compromise application was filed on 5.9.1994 and Consolidation Officer has decided the proceeding under Section 9A (2) of the U.P.C.H. Act on the basis of compromise entered into between the parties. In pursuance of the order dated 5.9.1994, reference proceeding under Section 48 (3) of the U.P.C.H. Act was initiated which was registered as reference case No. 1193. In the reference proceeding, the prayer was with respect to carving of chaks. No objection was filed on behalf of private respondents with respect to the order dated 5.9.1994 determining the share of the parties on the basis of compromise. Objection raised in the reference proceeding under Section 48 (3) of the U.P.C.H. Act was rejected by Consolidation Officer and chak have been carved out vide order dated 30.7.1999. Against the order dated 5.9.1994 passed by Consolidation Officer under Section 9A (2) of the U.P.C.H. Act, time barred appeal under Section 11 (1) of the U.P.C.H. Act was filed on behalf of the private respondents before Settlement Officer of Consolidation. On behalf of petitioners, objection was filed to the delay condonation application but Settlement Officer of Consolidation has contained the delay of nine years and proceeded to decide the appeal on merit. Settlement Officer of Consolidation vide order dated 12.9.2018 allowed the appeal filed by private respondents setting aside the order dated 5.9.1994 passed by Consolidation Officer and directed that name of Ramai (father of respondent nos. 4 to 6), Sukru (respondent no.8) Bhai Lal (respondent no.9) Bhuwai Lal (respondent no.10) be recorded having $\frac{1}{4}$ share each in place of deceased Baiju. Against the appellate order dated 12.9.2018, petitioners filed revision under Section 48 of U.P.C.H. Act before Deputy Director of Consolidation which was registered as revision No. 809/455/612. The aforementioned revision was heard and dismissed by Deputy Director of Consolidation vide order dated 5.10.2020 hence this petition for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 5.10.2020 passed by Deputy Director of

Consolidation, Prayagraj/ respondent no.1 in revision No. 809/455/612 (Amrit Lal and others Vs. Ramai and others)- "Contained in Annexure No. 9 to the writ petition"- and order dated 12.9.2018 passed by the Settlement Officer of Consolidation Allahabad/ respondent no.2 in appeal No. 1718 (Ramai and others Vs. Samai and Others)-' contained in Annexure No. 7 to the writ petition'

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in peaceful possession of petitioners over the land consisting of khata No. 15 (new plot No. 315 and 316) situated in Village Jiratamtan Narayan Das Ka Pura, Pargana Jhunsi, Tehsil Phoolpur District Prayagraj in any manner whatsoever and to maintain status quo regarding the nature and possession of same."

3. This Court entertained the matter on 15.12.2020 and granted interim order for maintaining status quo with regard to the possession and title.

4. In pursuance of the order dated 15.12.2020, the parties have exchanged their affidavit.

5. Learned Senior Counsel for the petitioners submitted that name of Jagesar (predecessor in interest of petitioners and private respondents) was recorded since 1320 fasli, as such, two sons of Jagesar. namely Baiju and Arjun should be continued in the records but by mistake of the authorities, the name of Arjun was not mentioned in the khatauni of 1359 fasli, as such, the right and title of the petitioners predecessors in interest cannot be ignored in respect to the khata in question. He submitted that before Consolidation Officer, the parties have entered into compromise in proper manner. He further submitted that on the basis of the order passed by Consolidation Officer on the basis of compromise, the chakes were carved out in the name of petitioners as well as private respondents, as such, the filing of highly time barred title appeal against the order passed by Consolidation Officer under Section 9A (2) of the U.P.C.H. Act on the basis of compromise is abuse of process of law. He submitted that Settlement Officer of Consolidation has condoned the

inordinate delay in filing the appeal in casual manner and passed the order on merit rejecting the claim of petitioners. He submitted that revision filed by petitioners has been dismissed in arbitrary manner. He submitted that impugned orders passed by Settlement Officer of Consolidation and Deputy Director of Consolidation should be set aside and the order passed by Consolidation Officer dated 5.9.1994 should be maintained. He further placed reliance upon the following judgements of this Court:-

"(i) 2014 (125) RD 473 Sudharani Pandey Vs. D.D.C. Barabanki Through U.P. Government and Others

(ii) 2020 (146) RD 199 Ram Awadh Singh and Another Vs. Additional Commissioner Azamgarh

(iii) C.M.W.P. No. 1757 of 1993 Govind Singh and Others Vs. Deputy Director of Consolidation Bijnore and Others."

6. On the other hand, Mr. Rajesh Yadav, learned counsel for respondent nos. 4 to 10 submitted that the entry of 1356 fasli and 1359 fasli are relevant entry, as such, no right will accrue to the petitioners' predecessor in interest in respect to the khata/ plot in question. He submitted that the order passed by Consolidation Officer on the basis of fraudulent compromise cannot be sustained in the eye of law. He submitted that as soon as the private respondents came to know about the order passed by Consolidation Officer, the appeal under Section 11 (1) of the U.P.C.H. Act along with the prayer for condonation of delay was filed accordingly delay in filing the appeal has been properly condoned by the Appellate Court. He submitted that considering the entry of 1359 fasli in respect to plot Nos. 315-316, Settlement Officer of Consolidation has rightly allowed the appeal on merit vide order dated 12.9.2018. He further submitted that revision filed by petitioners has rightly been dismissed by Deputy Director of Consolidation affirming the order of Settlement Officer of Consolidation. He further submitted that private respondents are the recorded tenure holder of the khata/ plot in dispute, as such, the

burden of proof is on petitioners who are claiming co-tenancy right in respect to the khata/ plot in dispute. He further submitted that entry in the revenue records is presumed to be correct unless proved otherwise. He submitted that no interference is required and writ petition is liable to be dismissed. He further placed reliance upon the following judgement in support of his argument:-

"(i) 2008 (8) SCC 58 Ram Awadh Vs. Ram Das

(ii) 2014 (122) RD 584 Ram Nath Singh and Another Vs. Deputy Director of Consolidation and Others

(iii) 2015 (129) RD 1 Gajji Lal and Others Vs. Deputy Director of Consolidation Firozabad and Others

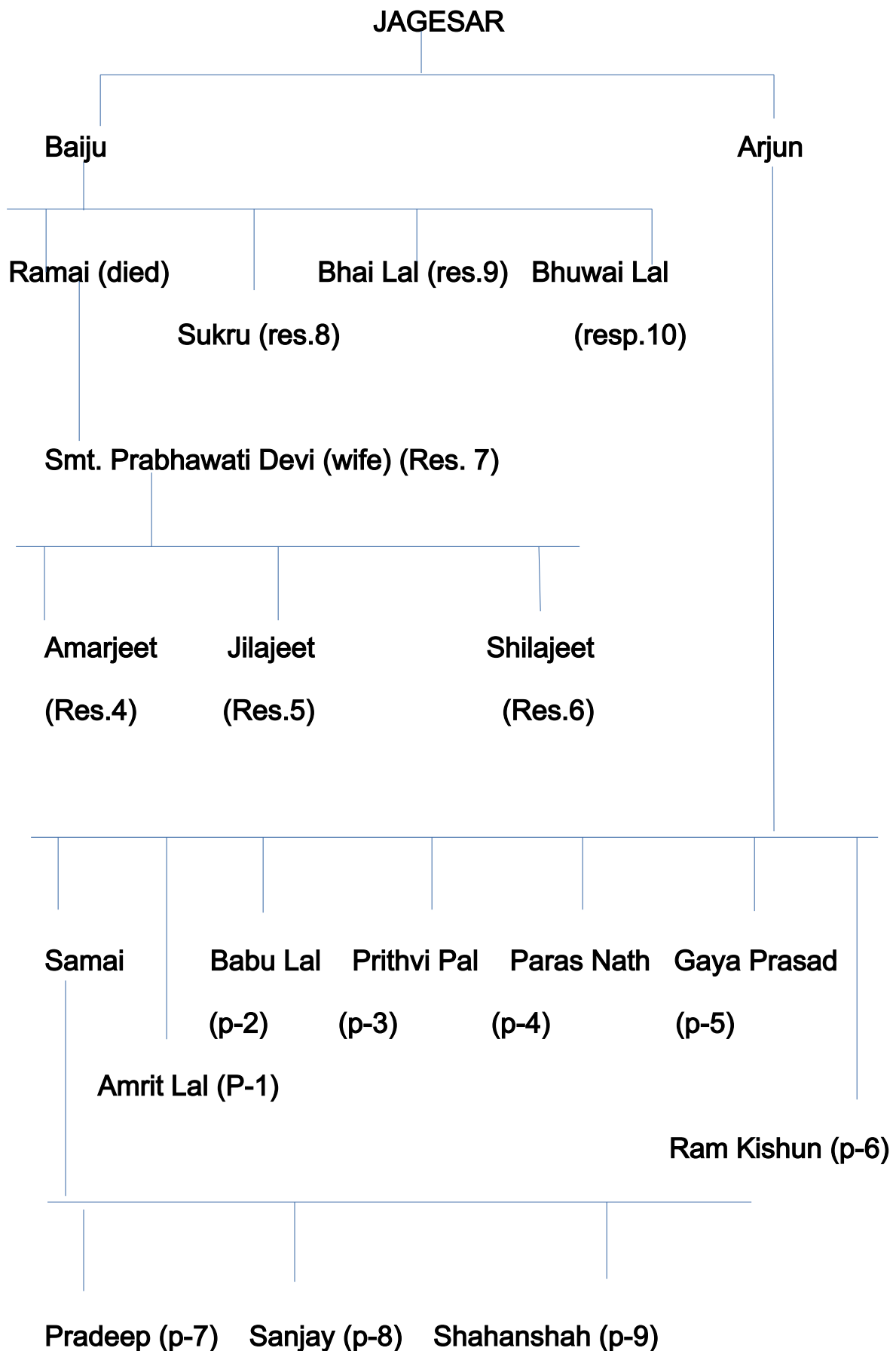
(iv) AIR 1968 SC 1351 Nath Singh Vs. Board of Revenue, U.P.

(v) 1987 RD 205 Lal Bihari and Others Vs. Ram Adhar and Others"

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that Consolidation Officer has passed the order on the basis of compromise entered between the parties vide order dated 5.9.1994. There is also no dispute about the fact that time barred title appeal filed on behalf of private respondents was allowed by Settlement Officer of Consolidation vide order dated 12.9.2018 setting aside the order of Consolidation Officer dated 5.9.1994 and rejecting the claim of petitioners. There is also no dispute about the fact that revision filed by petitioners has been dismissed by Deputy Director of Consolidation under the impugned order dated 5.10.2020.

9. In order to appreciate the controversy involved in the matter, the perusal of family pedigree will be relevant which is as under:-



10. The perusal of the family pedigree demonstrate that common ancestor Jageshar had two sons Baiju and Arjun. Petitioners belongs

to the branch of Arjun and private respondents belongs to the branch of Baiju.

11. The revenue entry of 1320 fasli demonstrate that khata in dispute was recorded in the name of common ancestor Jagesar, as such, both the sons i.e. Baiju and Arjun will be entitled to be recorded as co-tenure holder of the khata in dispute. After the death of Baiju and Arjun, their legal heirs who are petitioners and private respondent nos. 4 to 10 will be entitled to recorded over the khata in dispute. Before the Consolidation Officer, the parties have entered into compromise by which petitioners were given co-tenurial right in the plot in question which was according to the entry of 1320 fasli. It is correct that in 1356 fasli and later on the name of predecessor of private respondents was only recorded in the revenue record but the entry of 1320 fasli cannot be ignored by the consolidation authorities as there was no litigation/ adjudication of any dispute for recording the name of predecessor in interest of private respondents in exclusive manner over the khata in dispute.

12. The filing of title appeal by private respondents after nine years from the date of the order passed by Consolidation Officer as well as after four years from the date of confirmation of chak carving proceeding in favour of the parties cannot be entertained and allowed by the consolidation authorities.

13. On the question of delay condonation, the Hon'ble Apex Court in the recent judgement reported in ***2025 0 Supreme (SC) 66, H. Guruswamy & Ors. Versus A. Krishnaiah Since Deceased by LRS*** has held that question of limitation is not merely a technical consideration. Paragraph nos.13 to 19 of the judgment rendered by Hon'ble Supreme Court in **H. Guruswamy (supra)** will be relevant for perusal, which is as under:

"13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as ?liberal approach?, ?Justice

oriented approach?, ?substantial justice? should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the ?Sword of Damocles? hanging over the head of a litigant for an indefinite period of time.

18. For all the foregoing reasons this appeal succeeds and is hereby allowed.

19. The impugned order passed by the High Court is set aside and that of the Trial Court dated 05.08.2014 passed in Misc. No. 223 of 2006 is hereby restored."

14 Considering the family pedigree, the revenue entry of the khata in question, filing of title appeal after 9 years from the date of the order passed by Consolidation Officer on the basis of compromise, the impugned orders dated 12.9.2018 passed by respondent no.2, Settlement Officer of Consolidation Prayagraj and order dated 5.10.2020 passed by respondent no.1, Deputy Director of Consolidation are liable to be set aside and the same are hereby set aside.

15. The writ petition stands **allowed** and order of Consolidation Officer dated 5.9.1994 in respect to khata No. 15 is hereby affirmed.

16. No order as to costs.

Order Date :- 20.5.2025

Vandana Y.