



2025:0004-1 K0:2025

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 11844 of 2025

Rohit Agarwal

.....Petitioner(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Revenue
Deptt., Lko. And Others

.....Respondent(s)

Counsel for Petitioner(s)	: Ajay Pratap Singh, Mohammad Ehtesham Khan
Counsel for Respondent(s)	: C.S.C., Mohan Singh

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Ajay Pratap Singh ands Sri M.E. Khan, learned counsel for petitioner as well as learned Standing Counsel on behalf of respondent Nos. 1 to 5 and Sri Mohan Singh, learned counsel for respondent Nos. 6 & 7.

2. It has been submitted by learned counsel for petitioner that a suit U/S 229B of U.P. Z.A. & L.R. Act was filed by Subhash Chandra Agarwal, the late father of the petitioner with regard to Gata No. 2630 area 10-4-0 situated at Village Badel, Paragana and Tehsil - Nawabganj, District Barabanki on 03.08.1977 and the said suit was allowed in favour of father of the petitioner by means of judgment and order dated 29.1.1979 by the Pargana Adhikari, Nawabganj, now the Sub-Divisional Officer, Nawabganj, Barabanki, it was directed that the name of Subash Chandra be recorded with regard to Gata No. 2630 in Village Badel, Paragana and Tehsil - Nawabganj, District Barabanki. Subsequent to the said judgment and order, the father of the petitioner was continued to be in occupation of the said land subsequent to which the petitioner claims to be in possession.

3. It has been submitted that the order dated 29.01.1979 could not be executed and therefore the name of the father of the petitioner could not be recorded in the revenue records. It has further been stated that subsequently one stranger to the proceedings, namely, Govind Prasad had moved an application for restoration of the order dated 29.01.1979 which

was rejected on 02.11.2012 by the Sub-Divisional Officer. It has been submitted that Subhash Chandra died on 22.10.2018 leaving behind the petitioner as the sole legal heir.

4. It is the case of the petitioner that it is after the death of his father that he came to know about the order dated 29.01.1979 and then he moved an application for mutation of the aforesaid property and also approached this Court by filing a writ petition being Writ C No. 5009/2022 seeking a direction to the revenue authorities to implement the order dated 29.01.1979. This Court by means of order dated 08.08.2022 disposed of the same by passing following directions:

"This petition has been filed with a prayer to issue direction to the Sub-Divisional Officer and Tehsildar to implement the judgment and decree said to have been passed on 29.01.1979 by the Sub-Divisional Officer in a case under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act (Subhash Chandra Agarwal Vs. Gaon Sabha Barail).

If a declaratory decree has been passed by the Sub-Divisional Officer its execution can also be sought before the court which has passed the order. Accordingly, without entering into the claim of the petitioners this petition is finally disposed of with liberty to the petitioners to approach the Court which has passed the judgment and decree dated 29.01.1979 in a suit said to have been instituted under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act.

In case any such application seeking execution of the said decree is moved by the petitioners before the Sub-Divisional Officer, the same shall be considered and decided with expedition.

However, we make it amply clear and direct as well that the Sub-Divisional Officer while considering the application which may be moved by the petitioners under this order shall appropriately issue notices to the Bhumi Prabandhak Samiti of the Gram Panchayat concerned and shall also verify the authenticity of the judgment and decree dated 29.01.1979 passed by the Sub-Divisional Officer on the basis of which this petition has been filed.

The Sub-Divisional Officer shall also take into account as to whether after lapse of a period of about 43 years from the date the said decree was passed, any Amaldaramad can be made on the basis of such decree."

5. It has been submitted that it is in the compliance of the order dated 08.08.2022 passed by this Court that the Sub-Divisional Officer had called a report from the revenue authorities and also from the District Government Counsell (Revenue). The Sub-Divisional Magistrate, Nawabganj, Barabanki rejected the application after noticing that original suit proceedings were instituted by the Subhash Chandra, and the father of the petitioner and petitioner was not a party not the said proceedings and accordingly no application for execution / implementation was maintainable at the behest of the petitioner and consequently rejected his application by means of order dated 12.03.2024.

6. Aggrieved by the order dated 12.03.2024 the petitioner had preferred a revision before the Additional Commissioner (Judicial), Ayodhya Mandal, Ayodhya who dismissed the revision as being not maintainable holding that the order passed by the Sub-Divisional Magistrate was an administrative order against which a revision was not maintainable and therefore in the aforesaid circumstances by means of present writ petition the petitioner has challenged the order dated 12.03.2024 as well as order dated 30.09.2025.

7. Learned counsel for the petitioner at the very outset submits that the proceedings for implementation of the final judgment passed in exercise of powers U/S 229B of U.P. Z.A. & L.R. Act can be implemented by the legal heirs or any person claiming his right from the original plaintiff / decree holder. He submits that the petitioner being the sole legal representative of Subhash Chandra was fully entitled to move an application for implementation of the order dated 29.01.1979 and therefore both the authorities below have committed manifest error in not exercising the jurisdiction vested therein in most illegal and arbitrary manner. In support of his submissions, learned counsel for petitioner has relied upon the provisions of Section 146 of the Civil Procedure Code.

8. He has submitted that Section 146 is an expansive provision which has been made only to facilitate the legal representatives of the plaintiff/respondents from initiating proceedings which could have been initiated by the predecessor in interest. He submits that Section 146 provides a robust mechanism for the transferee to safeguard the interest in

ongoing legal proceedings ensuring that property transaction and transfers do not leave new party vulnerable to unforeseen legal actions. Accordingly, he submits that provisions of order 22 Rule 10 CPC would apply in a situation where the proceedings are pending and necessary substitution can take place during those proceedings but once the proceedings stands concluded then it is only in exercise of powers U/S 146 appropriate action subsequent to the judgment and order can be passed at the behest of the person so claiming under the plaintiff/respondent.

9. Learned Standing Counsel on the other hand has opposed the writ petition but does not dispute the aforesaid legal provisions. He has also submitted that the Division Bench while considering the application of the petitioner in Writ C No. 5009/2022 had directed the Sub-Divisional Magistrate to take into account the delay of 43 years in filing the application and also to consider the antecedents of the petitioner before deciding his application and submits that in any view of the matter in case the matter is remanded the Sub-Divisional Magistrate would have to consider the directions of this Court passed in Writ C No. 5009/2022.

10. I have heard rival contention of the parties and perused the record.

11. There is no dispute with regard to the fact that Subhas Chand had instituted regular proceedings U/S 229B of U.P. Z.A. & L.R. Act in which proceedings it was directed that in Khata No. 1050, Gata No. 2630, the name of the gaon sabha be deleted and the name of Subhas Chand be entered in its place in the revenue records. Due to certain circumstances, the order dated 29.01.1979 could not be implemented and necessary correction in the entries in the revenue records could not be made during the lifetime of the plaintiff/Subhash Chandra and it is due to this reason that after his death the petitioner had moved an application for implementation of the judgment and order dated 29.01.1979.

12. The Sub-Divisional Magistrate, Nawabganj, Barabanki duly considered the judgment of this Court dated 08.08.2022 and was of the considered view that the petitioner does not have any locus standi to move the application for implementation of the order dated 29.01.1979 inasmuch as he was not a party to the said proceedings and being an

stranger to the said proceedings could not move any application in this regard. The revisional authority has considered the said proceedings to be mere administrative proceedings and rejected the revision.

13. The ground on which the revision has been rejected by the revisional authority is that the order dated 12.03.2024 is an administrative order and no revision would be maintainable against such an order.

14. It is noticed that Section 146 provides for initiation of proceedings by or against the representatives where such proceedings could have been taken by or against any person claiming under him.

15. Hon'ble the Supreme Court in the case of **Saila Bala Dassi Vs. Nirmala Sundari Dassi, 1958 SCC OnLine SC 140** has interpreted the provisions of Section 146 CPC and held that it has to be given an expansive interpretation to protect interest of persons who are claiming under the original plaintiff or the respondent. Merely because the plaintiff or the respondent has died or lost interest in the disputed property would not render any person claiming under them or acquiring subsequent interest in the property to be remediless with regard to adjudication which had already taken place between the parties pertaining to the lis for which an application has been claimed subsequently. The relevant portion of the above mentioned case law is quoted hereinbelow:-

“8. It is next contended that Section 146 authorises only the initiation of any proceeding, and that though it would have been competent to the appellant to have preferred an appeal against the judgment of P.B. Mukharji, J., she not having done so was not entitled to be brought on record as an appellant to continue the appeal preferred by the second respondent. We are not disposed to construe Section 146 narrowly in the manner contended for by counsel for the first respondent. That section was introduced for the first time in the Civil Procedure Code, 1908 with the object of facilitating the exercise of rights by persons in whom they come to be vested by devolution or assignment, and being a beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense. It has been held by a Full Bench of the Madras High Court in Muthiah Chettiar v. Govinddoss Krishnadoss [(1921) ILR 44 Mad 919] that the assignee of a part of a decree is

entitled to continue an execution application filed by the transferor-decree-holder. Vide also Moidin Ruttu v. Doraiswami [ILR 1952 Mad 622] . The right to file an appeal must therefore be held to carry with it the right to continue an appeal which had been filed by the person under whom the applicant claims, and the petition of the appellant to be brought on record as an appellant in Appeal No. 152 of 1955 must be held to be maintainable under Section 146.”

16. It is in this regard, it has been observed that Section 146 provides a robust mechanism for the transferee to safeguard the interest in ongoing legal proceedings ensuring that property transaction and transfers do not leave new party vulnerable to unforeseen legal action subsequently the said provision came to be considered by another bench of Hon'ble High Court in the case of **Varadarajan Vs. Kanakawalli & Ors. (Civil Appeal No. 5673 of 2009)**, relevant portion quoted as under:-

"8. We may state that Order 22 of the Code is applicable to the pending proceedings in a suit. But the conflicting claims of legal representatives can be decided in execution proceedings in view of the principles of Rule 5 of Order 22. This Court in a judgment in V. Uthirapathi v. Ashrab Ali [V. Uthirapathi v. Ashrab Ali, (1998) 3 SCC 148] held that the normal principle arising in a suit—before the decree is passed—that the legal representatives are to be brought on record within a particular period is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings. This Court held as under: (SCC p. 153, paras 11-14)

“11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows:

‘12. Application of order to proceedings.—Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.’

12. In other words, the normal principle arising in a suit — before the decree is passed — that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, — is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings.

13. In Venkatachalam Chetti v. Ramaswamy Servai [Venkatachalam Chetti v. Ramaswamy Servai, 1931 SCC OnLine Mad 149 : ILR (1932) 55 Mad 352 : AIR 1932 Mad 73] a Full Bench of the Madras High Court has

held that this rule enacts that the penalty of abatement shall not attach to execution proceedings. Mulla's Commentary on CPC [(Vol. 3) p. 2085 (15th Edn., 1997)] refers to a large number of judgments of the High Courts and says:

‘Rule 12 engrafts an exemption which provides that where a party to an execution proceeding dies during its pendency, provisions as to abatement do not apply. The Rule is, therefore, for the benefit of the decree-holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application.’

14. In our opinion, the above statement of law in Mulla's Commentary on CPC, correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the civil court.”

13. In another judgment in Suresh Kumar Bansal v. Krishna Bansal [Suresh Kumar Bansal v. Krishna Bansal, (2010) 2 SCC 162 : (2010) 1 SCC (Civ) 365] , this Court held as under: (SCC p. 167, para 20)

“20. It is now well settled that determination of the question as to who is the legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited.”

14. In view of the aforesaid judgments, we find that the appellant is the sole claimant to the estate of the deceased on the basis of will. The executing court has found that the appellant is the legal representative of the deceased competent to execute the decree. In view of the said fact, the appellant as the legal representative is entitled to execute the decree and to take it to its logical end.”

17. It is in the aforesaid circumstances, this Court finds that in exercise of powers U/S 146 CPC the application for execution was certainly maintainable at the behest of the petitioner who claimed himself to be the

sole legal heir of Subhash Chandra who was the original plaintiff in Suit No. 107/29/30 Accordingly, the Sub-Divisional Magistrate has incorrectly appreciated the law and rejected the application of the petitioner and for this reason the order dated 12.03.2024 is set aside. The order dated 30.09.2025 not interfering with the order of Sub-Divisional Magistrate is also illegal and arbitrary and is also set aside. The matter is remitted to Sub-Divisional Magistrate to consider the application of the petitioner afresh and would consider that an application at the behest of the legal heir of the plaintiff would be maintainable to implement the order passed in proceedings U/S 229B of U.P. Z.A. & L.R. Act. While proceeding with the matter, the Sub-Divisional Magistrate shall follow the directions issued by this Court in its judgment and order dated 08.08.2022 in Writ C No. 5009/2022.

18. In light of the above, the writ petition stands **allowed**.

(Alok Mathur,J.)

December 17, 2025

Ravi/