

IN THE HIGH COURT OF JUDICATURE AT PATNA
SCA No.1 of 2019

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1. Devendrapati Tiwari S/o Sudarshanpati Tiwari
 2. Trayam Keshwarpati Tiwari @ Trim Keshwarpati Tiwari s/o Dalanpati Tiwari
 3. Dulhin Satyawati Tiwari W/o Trayam Keshwarpati Tiwari @ Trim Keshwarpati Tiwari
 4. Raghwendrapati Tiwari S/o Sudarshanpati Tiwari
 5. dulhin Prabha Devi w/o Sudarshanpati Tiwari, all Resident of Village- Patihapur Mushmoolai Ratanmai, P.s.- Raniganj, P.O.- Basirpur, Tahshilpatti, District- Pratapgarh (U.P.)

... .. Appellants

Versus

1. Pradeeppati Tiwari
2. Kuldeeppati Tiwari both S/o Late Bhupendrapati Tiwari
3. Kamla Devi Widow of Dhirendrapati Tiwari @ Kallu
4. Narendrapati Tiwari S/o Late Dhirendrapati Tiwari @ Kallu
5. Raghwendrapati Tiwari S/o Brijwantpati Tiwari
6. Dulhin Prema Devi widow of Rudra Narayanpati Tiwari
7. Vishnupati Tripathi
8. Raghupati Tirpathi
9. Rupeshpati Tripathi
10. Shatrughanpati Tripathi, sl. no. 7 to 10 S/o Rudra Narayanpati Tiwari
11. Most Malti widow of Kailashpati Tiwari
12. Binaypati Tiwari
13. Bijaypati Tiwari, sl. Nos. 12 & 13 S/o Kailashpati Tiwari, all resident of Village- Patihapur Mooshmoolai Ratanmai,P.O.- Basirpur, P.s.- Raniganj, Tahshilpatti, District- Pratapgarh (U.P.)
14. Ganeshpati Tiwari
15. Birendrapati Tiwari
16. Maheshpati Tiwari
17. Shitlapati Tiwari
18. Bindeshwaripati Tiwari, sl nos. 14 to 18 S/o Dayapati Tiwari
19. Dulhin Bidyawati W/o Birendrapati Tiwari
20. Manu Tiwari @ Hirendrapati Tiwari S/o Bhagwantpati Tiwari, sl. Nos. 14 to 20 are Resident of Village- Patihapur Mooshmoolai Ratanmai,P.O.- Basirpur,



P.s.- Raniganj, Tahshilpatti, District- Pratapgarh (U.P.)

... .. Respondents

Appearance :

For the Appellant/s : Mr. Narayan Singh, Sr. Adv. with
Mr. Subodh Kumar, Adv.
For the Respondent/s : Mr. Rabi Bhushan Prasad No. 1 &
Mr. Vijay Prakash Bhargava, Advocates

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGEMENT**

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

4 27-02-2020 Heard Mr. Narayan Singh, learned senior advocate
appearing for the petitioners.

2. This application under Article 134A of the Constitution of India has been filed by the petitioners seeking a certificate of fitness for appeal to the Supreme Court against the judgment and order dated 25.11.2014 passed by learned single Judge in First Appeal No. 326 of 1973, whereby in the first appeal the judgment and order of trial court was set aside.

3. The first appeal had been filed by the contesting defendants against the judgment and decree dated 30.04.1973 passed by learned 1st Additional Sub-ordinate Judge, Sasaram in Title Suit Nos. 152 of 1962/35 of 1963.

4. After hearing the parties, vide judgment dated



25.11.2014 passed in First Appeal No. 326 of 1973, the learned single Judge allowed the appeal and the impugned judgment and decree passed by learned 1st Additional Subordinate Judge, Sasaram in title suit was set aside and consequently the petitioners' suit for partition was dismissed.

5. The petitioners did not make any oral application immediately after passing or making of the judgment in the first appeal seeking certificate for appeal to the Supreme Court. They filed a review application vide Civil Review No. 467 of 2017 before this Court against the judgment and decree dated 25.11.2014 passed in First Appeal No. 326 of 1973.

6. Since the review application was barred by the law of limitation and the learned single Judge hearing the limitation petition was not satisfied with the explanation given in the limitation petition filed alongwith the review application for condoning the delay caused in filing the review application, declined to condone the delay and accordingly dismissed the limitation petition as well as the civil review application vide order dated 01.07.2019.

7. Thereafter, at the instance of the petitioners, the



civil review application was again listed before the learned single Judge under the heading “To be Mentioned”.

8. On 15.07.2019 when the matter was taken up, learned counsel for the petitioners tried to impress upon the Court to recall the earlier order dated 01.07.2019 and pass a fresh order on the civil review application filed by the petitioners.

9. However, the learned single Judge did not see any reason to pass a fresh order on basis of the submissions made on behalf of the petitioners. He simply observed that petitioners would be at liberty to exhaust remedy provided under appeal.

10. After the order dated 15.07.2019 was passed, the instant application under Article 134A of the Constitution of India has been filed by the petitioners seeking a certificate of fitness for appeal to the Supreme Court against the judgment and decree dated 25.11.2014 passed in First Appeal No. 326 of 1973.

11. At this stage, it would be apt to extract Article 134A of the Constitution hereinbelow :

*134A. Certificate for appeal to the Supreme Court-
Every High Court, passing or making a judgment,
decree, final order, or sentence, referred to in clause*



(1) of Article 132 or clause (1) of Article 133, or clause (1) of Article 134 -

*(a) may, if it deems fit so to do, on its own motion; and
(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence*

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of Article 132, or clause (1) of Article 133 or, as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in respect of that case.

12. From a reading of Article 134A of the Constitution, it would be manifest that it does not constitute an independent provision in which a certificate can be issued. It is ancillary to Articles 132, 133 and 134 of the Constitution. It is the reason for the use of the words “if the High Court certifies under Article 134A” in Article 132(1) and in Article 133(1) and for the use of the words “certifies under Article 134A” in Article 134(1)(c) of the Constitution. A certificate can be issued by this Court only when it is satisfied that the conditions in Article 132 or Article 133 or Article 134 of the Constitution, as the case may be, are fulfilled.

13. However, where a certificate is granted with



respect to any question, the Supreme Court may permit the appellant to raise a pure question of law not covered by the certificate.

14. Before insertion of Article 134A by the Forty Fourth Amendment of the Constitution of India, there was no provision in the Constitution regarding the time and manner of filing application for issuance of a certificate by the High Court under Articles 132, 133 and 134 of the Constitution. Article 134A of the Constitution provides that every High Court giving a “judgment, decree, final order, or sentence” in its appellate jurisdiction vide Articles 132, 133 and 134 of the Constitution in civil, criminal or other cases involving “a substantial question of law as to the interpretation of Constitution” “may”, on its own determine whether a certificate of fitness of appeal to the Supreme Court is to be given. However, it “shall” do so “as soon as” may be if an “oral application” is made by the aggrieved party “immediately after” passing the judgment, decree, final order, or sentence.

15. The Supreme Court in *State Bank of India & Anr. Vs. S.B.I. Employees Union & Anr.* (A.I.R. 1987 SC 2203) held as under :-

“Clause (3) of Article 133 says that



notwithstanding anything in that Article no appeal shall unless Parliament by law otherwise provides lie to the Supreme Court from the judgment, decree or final order of one Judge of the High Court. Before the introduction of Article 134A of the Constitution by the Forty-fourth Amendment of the Constitution there was no express provision in Articles 132, 133 and 134 of the Constitution regarding the time and manner in which an application for a certificate under any of those articles could be made before the High Court. There was also a doubt as to the power of the High Court to issue a certificate suo motu under any of those articles. Article 134A was enacted to make good the said deficiencies. Article 134A does not constitute an independent provision under which a certificate can be issued. It is ancillary to Article 132(1), Article 133(1) and Article 134(1)(c) of the Constitution. That is the reason for the use of words "if the High Court certifies under Article 134A" in Article 132(1) and Article 133(1) and for the use of words "certifies under Article 134A" in Article 134(1)(c). The High Court can issue a certificate only when it is satisfied that the conditions in Article 132 or Article 133 or Article 134 of the Constitution as the case may be are satisfied. In the instant case such a certificate could not have been issued by reason of clause (3) of article 133 of the



Constitution by the learned Single Judge.”

16. In the instant case, this Court on its own has not found that a substantial question of law as to the interpretation of Constitution is involved which require determination by the Supreme Court. The petitioners also did not make any oral application immediately after passing of the judgment in the appeal. They filed civil review application after the same was barred by the law of limitation. The explanation submitted by the petitioners for condoning the delay cause in filing the civil review application did not satisfy the learned single Judge and he dismissed the limitation petition as well as the civil review application. Thereafter the petitioners have filed the instant application seeking certificate of fitness for appeal to the Supreme Court. Before us also no substantial question of law as to the interpretation of Constitution has been urged. On perusal of the grounds for seeking certificate, it appears that they are questions of facts and appreciation of evidence.

17. As there is long delay in filing the application for certificate of finesse to file appeal to the Supreme Court, and no substantial question of law is involved, we are of the opinion that certification under Article 134A of the



Constitution of Indian is not called for.

18. The application is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

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