

PETITIONER:
SMT. RAMA DUBEY (DEAD) BY LRS.

Vs.

RESPONDENT:
DEPUTY DIRECTOR OF CONSOLIDATION & ORS.

DATE OF JUDGMENT 13/09/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 AIR 1010 1995 SCC Supl. (2) 128
JT 1995 (1) 59 1994 SCALE (4) 666

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Application for substitution is allowed.
2. These appeals arise from the Judgment of the High Court of Allahabad in C.M.W.P. No. 11059/80 dated December 4, 1985 and C.M.W.P. No. 9127/80 of even date.
3. The admitted facts are that Gajadhar and Harjeet are the recorded tenure holders of the lands in Plots No s. 1072 (0.33 acres), 1082 (0.40 acres), 1083 (0.10 acres), 1202 (0.30 acres), 1203 (0.30 acres), 1204 (0.17 acres), 1210 (0.22 acres), 1069/3 (0.10 acres), 1106 (0.73 acres), 1199 (0.16 acres), and 1329 (0.55 acres) situated in Village Mahen Babu, Tehsil Salempur, Distt. Deoria CUP.). On February 20, 1960 they had executed a registered gift deed in favour of their sister's daughter Smt. Rama-the appellant not only in respect of moveable properties but also in respect of immoveable properties. Gajadhar died in 1969. The gift deed comprised of 11 plots of land. Harjeet during his life time had executed a Will on February 1, 1977 in respect of two plots of land. He died on February 22, 1977. During the life time of Harjeet, in 1971, the appellant had filed proceedings before the Consolidation officer to mutate her name in the record of rights as successor in interest on the basis of the gift deed executed by Gajadhar and Harjeet. Though notice was taken to Harjeet and served on him in person, he did not appear. Therefore, the order was passed exparte mutating her name in respect of 11 plots gifted to her under the gift deed dated February 29, 1960. She also filed the proceedings after the demise of Harjeet to mutate her name in respect of 2 plots which were bequeathed to her. Ultimately, the respondent filed the Writ Petitions challenging the orders seeking condonation of delay which was rejected by the Tribunals below. The learned single Judge in the impugned order held that the respondent is a legal heir of the deceased Gajadhar and

Harjeet and the refusal to condone the delay is not valid in law and accordingly, set aside the orders and remitted the matter to the Consolidation Officer to dispose of the matter on merits after recording the evidence and giving opportunity to the parties. Thus, these appeals by special leave.

4. It is not in dispute that during the life time of Harjeet, Rama - the appellant had initiated proceedings in 1971 to mutate her name in the record of rights in respect of 11 plots bequeathed to her jointly by him and his brother Gajadhar under gift deed dated February 29.1960. The finding recorded by the authorities was that although notice was served on him personally, he did not question the claim made by Rama in the consolidation proceedings. The respondent, who is seeking to come as a legal representative of Harjeet, cannot have a higher right of what the owner himself had. The owner who had the notice of the proceedings since remained ex-parte, the respondent cannot stand on a higher footing than him and when the proceedings before the consolidation officer had been allowed to become final, it was not open to the respondent to file after years an application under Section 5 of the Limitation Act to condone the delay and to ask for the benefit of hearing. The Consolidation Officer rightly refused to condone the delay and therefore, the High Court was not right in interfering with the said well reasoned order. Equally, with regard to the Will executed by Harjeet in respect of two plots of land, although proceedings were initiated after the demise of Harjeet in a collateral proceedings initiated by the respondent himself, it was found that the respondents are immically disposed to Harjeet and that Ram was looking after her uncles Gajadhar and Harjeet. In that view of the situation, the Will is not well-founded. When once the Will is not accepted by the authorities, there is nothing left for the respondents to claim their rights as alleged legal representatives of Harjeet. Under these circumstances, the High Court was not also justified in interfering with the order made in respect of the properties covered under the Will

5. The appeals are accordingly allowed. The Writ Petitions stand dismissed.

No Costs.

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