

Bhimsen vs Board Of Revenue And Others on 30 April, 2025

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Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67253

Court No. - 6

Case :- WRIT - B No. - 9978 of 1992

Petitioner :- Bhimsen

Respondent :- Board Of Revenue And Others

Counsel for Petitioner :- Anand Prakash Paul,Brij Bhushan Paul,Chandra Kumar Rai,Faujdar

Counsel for Respondent :- G.N.Verma,Madhur Prakash,R.S. Chauhan,Rajeev Giri,S.C.,S.S. Sh

Hon'ble Saurabh Shyam Shamshery,J.

Order on Delay Condonation Application No. 17 of 2025

1. This is an application seeking condonation of delay in filing recall application.
2. Delay in filing application is explained satisfactorily. It is hereby condoned. The application is accordingly allowed.

Order on Recall/ Restoration Application No. 17 of 2025

1. The applicants are legal heirs of Original Respondent-2, Phool Chand. Original Respondent-2 died on 20.01.2002. During pendency of the writ peititon, Writ Petitioner had filed a Civil Misc.

Substitution Application No. 71942 of 2002 on 17.04.2002 to brought on record legal heirs of deceased Respondent-2.

2. As per office report dated 17.03.2005, notices were issued to proposed legal heirs by RP/AD vide order dated 17.04.2002 fixing 30.07.2002 but neither acknowledgment nor undelivered cover were received back as well as none appeared on behalf of proposed legal heirs.

3. In aforesaid circumstances, this Court vide order dated 18.03.2005 has allowed said Substitution Application by following order:

"This is an application for substitution of respondent no. 2. The application is within time. No counter affidavit has been filed. The application is allowed. Let necessary amendment be made accordingly."

4. Necessary amendments were carried out and thereafter this writ petition remained pending till finally decided vide order dated 11.11.2024 i.e. after about 19 years and as per order sheet in between it was listed as many as on more than two dozen dates, however, none of the legal heirs of Original Respondent-2 (since deceased)/applicant has come forward to place their case.

5. The writ petition was finally heard and disposed of vide order dated 11.11.2024 and relevant part thereof is mentioned hereinafter:

"6. Learned advocates for petitioner submits that in the aforesaid order, learned Court has returned a finding that there was an error apparent on record and also returned a finding that total land remained in share of party after consolidation operation was 21.64 and not 21.07.

7. Learned advocates next submits that later part whereby area calculated for purpose of partition was absolutely wrong as the same was without any basis.

8. Learned counsel for respondents 3 to 5 has supported the above submissions, however, no one has appeared on behalf of legal heirs of respondent-2.

9. Court has considered the above submissions, however, problem lies in paragraph 4 of impugned order which has already quoted above.

10. It appears that above referred calculation was based on calculation given by learned counsel for parties before Court below. Court has also calculated the above referred area of land which comes about 51.35 acres whereas it ought to have 54.23 acres. Still since, basis of calculation is not on record not referred in order, therefore, there is an error of calculation.

11. Learned counsel for rival parties have fairly submitted that since basis of above calculation is before this Court, therefore, though this writ petition is pending for more than 3 decades, still if this matter is remanded back to Board of Revenue, division of property may be conducted more precisely on basis of material available, after hearing rival parties.

12. In aforesaid circumstances, order dated 02.12.1991 is set aside and matter is remitted back to Board of Revenue to pass a fresh order on review petition.

13. Court also takes note that so far as error in regard to area i.e. whether it is 21.64 or 21.07, there is already a finding that at present area is 21.64, therefore, same shall remain in force.

14. This writ petition is disposed of with above observations.

15. Since this case is very old, therefore, Board of Revenue will decide the review petition within six months.

16. Parties will be at liberty to file amended cause title before Court concerned."

6. As referred above, the dispute is with regard to calculation of exact share of parties as well as that share of Respondent-2 (since deceased) was increased in by way of order passed in the review application filed by petitioners and since the Court was of the view that there is an error with regard to calculation of share and basis of it was not placed on record, therefore, matter was remitted back to Board of Revenue to decide the review application afresh after giving opportunity of hearing to all necessary parties. A liberty was granted to parties to file amended cause title also and therefore it could not be disputed that applicants/legal heirs of original respondent-2 still can raise all legally permissible arguments before the Board of Revenue in Review Application.

7. Now the legal heirs of Original Respondent-2 have filed this Recall/ Restoration Application No. 16 of 2025 under Order IX, Rule 13, read with Section 151 CPC and Chapter XXII, Rule 1 of the Rules of the Court.

8. Sri Anupam Kulshrestha, learned counsel appearing for applicants/ legal heirs of Original Respondent-2, has placed the case that all applicants/ legal heirs of deceased Respondent-2 (except applicant no.4/respondent - 2/1) were residents of Haryana, Mathura and Agra Districts and none of them were staying at the Village Allahepur Chhatikara, Tehsil and District Mathura. Notices were sent on address of their native place and not at the address where applicants were actually residing. Petitioner was well aware about the residential address of applicants, however, in order to avoid their appearance, wrong address were mentioned and as such they were never served.

9. Learned counsel by referring to contents of application submits that applicants came to know about disposal of writ petition on 03.03.2025 when the deponent (Respondent-2/3) went to village for celebrating Holy festival with his brother, namely, Sundar Lal thereafter they contacted their present counsel since earlier counsel who represent Original Respondent-2 was not traceable and thereafter present application was filed. As referred above, delay in filing present application has been condoned.

10. Learned counsel further submits that by order dated 11.11.2024 they are highly prejudiced. He also submits that Respondent-2/2, Uma Shankar died on 24.11.2021 and petitioner has filed a Substitution Application No. 11 of 2023, however, the same was not decided and writ petition was

finally disposed of.

11. By referring relevant provisions of Code of Civil Procedure, learned counsel submits that it is a fit case that order passed on 11.11.2024 be recalled and writ petition be restored to its original number and be heard finally, though he has not disputed that all other respondents are not aggrieved by aforesaid order.

12. Per contra, Sri Rajeev Giri, learned counsel appearing for other respondents, submits that since matter is only remitted back to Revisional Authority to decide review application afresh and applicants can still place their case before said Authority and review application can still be decided on merit, thus no prejudice is caused to them.

13. As referred above substitution application to bring legal heirs of deceased respondent no. 2 was allowed on 18.03.2005 and for 19 years, none of the applicant has tried to contact advocate for original respondent no. 2 or to check status of the writ petition. It is also not their case that during those 19 years, none of them has visited their native place, as well as it is also not their case that they were not aware about the litigation.

14. The applicants are not rusty villagers rather they are working in government departments. Applicant Niranjana Prasad has retired as a Sub Divisional Engineer from the office of Chief Engineer, Palwal on 31.01.2017 and has not disclosed that he never visited his native place. Other applicant Umashankar @ Om Prakash is staying at Agra with his son, after his retirement on 31.01.2016 and he has also not disclosed that he never visited his native village Allahepur, Chhatikara, Tehsil and District- Mathura.

15. According to contents of applications Sundar Lal (Applicant no. 4/Respondent no. 2/1) is still living in same village i.e. Allahepur, Chhatikara, Tehsil and District- Mathura and has disclosed also, and therefore, a contention that service of notice of substitution application was not complete due to incorrect address is absolutely false so far as said applicant is concerned.

16. In aforesaid circumstances, applicants have failed to demonstrate that during 19 years, they have no occasion to know about the pendency of present case, which they immediately came to know after order dated 11.11.2024 were passed, when they casually visited their native place on Holi festival, Therefore, the contents of the application are not correct and applicants are not bonafide and only intention is to delay the proceedings.

17. Court also takes note that applicants have also failed to show any circumstance that they are remotely prejudiced by order dated 11/11/2024, since case is remanded to Board of Revenue to decide the review application as fresh after giving proper opportunity of hearing to all parties including applicants also.

18. In aforesaid circumstances non disposal of substitution application to bring legal heirs of 2/2 i.e 2/2/1, 2/2/2 and 2/2/3 since this Court has permitted to amend the cause title before the Board of Revenue and since now they are before this Court, therefore, they are also not prejudiced, therefore,

it is directed that they will also be given opportunity of hearing.

19. Court also takes note that applicants have never informed about their address to the petitioner, since they were well aware that they were required to be brought on record.

20. In aforesaid circumstances, present application is rejected.

Order Date :- 30.4.2025 Sinha_N.