

(2016) 09 AHC CK 0210
In the Allahabad High Court
Case No : Writ B No. 34145 of 2014.

Harish Chandra - Petitioner @HASH Board of Revenue And 5 Others

Date of Decision : 14-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 17

Citation : (2016) 133 RD 373

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Vineet Kumar Singh, Advocate, for the Petitioner; C.S.C., Ashish Kumar Srivastava, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri Vineet Kumar Singh for the petitioner and Sri Prem Babu Verma for the respondents.

2. The writ petition has been filed against the order of Board of Revenue dated 29.11.2013 dismissing the recall application of the petitioner filed for recalling the order dated 18.11.1986.

3. It is alleged that in the suit filed by Satya Prakash for partition of joint holding a preliminary decree was passed. In pursuance of the preliminary decree Lekhpal prepared kurra and submitted on 9.6.1992 which was approved by Sub Divisional Officer by order dated 28.8.1992 and he directed for preparation of final decree. The final decree dated 19.10.1992 was prepared. Against the order dated 28.8.1992 an appeal (registered as Appeal No.5 of 1992-93) was filed in the name of Harishchandra, which was dismissed by Additional Commissioner by order dated 7.9.1993 as time barred. Thereafter a second appeal (registered as Second Appeal No.30 of 1992-93) was filed in the name of Harishchandra, which was also dismissed by order dated 18.11.1996 by the Board of Revenue, U.P. Thereafter a recall application has been filed by Harishchandra through an advocate in the second appeal on 28.5.2002 along with a delay condonation application. In the affidavit filed in support of the recall application, it has been

stated that all the plots, which were subject matter of partition suit, were in possession of Harsihchandra alone and he was doing agriculture in it. No dispute was raised by Alwar father of Satya Prakash, who died in the year 1990. Satya Prakash, who was a clever and educated man, was acting as Karta of joint family and he filed the suit in which he obtained a decree of ? share in disputed land in his favour and in pursuance of it kurra was prepared giving all the road side land in the kurra to Satya Prakash. Satya Prakash also got filed an appeal and second appeal against the final decree through some imposter, which were dismissed by orders dated 7.9.1993 and 18.11.1996 respectively. Satya Prakash died in the year 2002 and names of her minor son Harbinder Kumar and his widow Smt. Ilaichi Devi were mutated in the revenue record. Thereafter widow of Satya Prasash tried to transfer her share in the land in dispute then the petitioner made an enquiry. On enquiry through local counsel he came to know about the partition suit and decree passed in it as well as the orders passed in the appeal and the second appeal. All the proceedings were taken by some imposter in the name of Harishchandra. As the decree was obtained by committing fraud on the court as such it is liable to be recalled. Board of Revenue, U.P. heard the recall application and found that in pursuance of the final decree as confirmed by Board of Revenue U.P. decree was executed through police in the year 2004. Thus at least at the time of execution of decree Harishchandra could have knowledge about passing of the decree. There is no explanation of delay in between the period 2004 and 2007 as such delay is not liable to be condoned. Otherwise also Satya Prakash was his real brother having ? share in land in dispute. On these findings Board of Revenue, U.P. rejected the recall application by order dated 29.11.2013. Hence, the present writ petition has been filed.

4. In the writ petition, the petitioner has stated that at the time of execution of decree Harishchandra moved an application on 2.6.2004 before Sub Divisional Officer, Jasrana, Firozabad. On the said application Sub Divisional Officer by order dated 2.6.2004 directed Tehildar, Jasrana not to carry on further proceeding in the execution case and the same be returned. The petitioner, who was an illiterate man, was under bona fide belief that the execution proceeding in pursuance of the order of Sub Divisional Officer dated 2.6.2004 was stopped and matter would be re-heard by Sub Divisional Officer as such he could not take any proceeding upto 2007. In such circumstances, the delay was liable to be condoned but the Board of Revenue, U.P. has illegally refused to condoned the delay.

5. I have considered the arguments of the counsel for the parties.

6. So far as the filing of the application dated 2.6.2004 before executing court is concerned, in the recall application the petitioner has totally concealed this fact. In view of Section 17 of Limitation Act in the cases of fraud limitation starts to run from the date of knowledge of the fraud. In this case partition decree came to the notice of Harishchandra at least on 2.6.2004. This fact has not been denied. Thus material fact has been concealed in the recall application.

7. So far as the allegation that the petitioner is an illiterate person and as the execution was stopped by the order of Sub Divisional Officer, he was under bona fide belief that matter would be re-heard, is concerned, according to the respondents decree was executed before the order of Sub Divisional Officer was brought to the notice of Tehsildar. The execution proceeding was approved by Sub Divisional Officer by order dated 5.6.2004. Thus, the allegation of the petitioner that he was under bona fide belief that the matter would be re-heard is without substance. The decree has already been executed. The execution has been proved by Sub Divisional Officer on 5.6.2004. Therefore, there was no occasion for the petitioner to remain silent. Thus by concealing the material facts the delay has been sought to be condoned, which has been rightly refused by Board of Revenue, U.P. No interference is required by this Court.

8. The allegation that Satya Prakash was allotted his share on the roadside land and the petitioner was allotted back side land is not substantiated by any evidence on record.

9. In view of the aforesaid discussion, the writ petition has no merit and it is dismissed.