

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1328 OF 2017

IN

SPECIAL LEAVE PETITION (CIVIL) NO.27549 OF 2013

DR.VISHWANATH MISHRA

APPELLANT

VERSUS

RATAN SHANKER CHAURASIA (D)THR. LRS.& ANR

RESPONDENTS

O R D E R

Leave granted.

By order dated 23.8.2013, this Court issued notice on the special leave petition as well as on the delay in filing application for substitution and on the substitution application for bringing on record the legal representatives of the deceased respondent no.1.

Learned counsel for the appellant has filed affidavit of dasti service on 13.5.2014, stating therein that the respondents have refused to accept notice.

Delay of 2272 days in filing substitution application is condoned.

Abatement is set aside.

Substitution application for bringing on record the legal representatives of the deceased respondent no.1, is allowed.

We have heard Mr. Jayant K. Mehta, learned counsel for the appellant and perused the record. Despite service of notice, none appears on behalf of the respondents.



question in favour of a third party viz., Rattan Shankar Chaurasia and others. Being aggrieved, the appellant-landlord preferred the revision petition which was also dismissed by the Additional District Judge, Varanasi, on the ground of rival claim of Rattan Shankar Chaurasia to the property. It appears that the rival claim of Rattan Shankar Chaurasia is based on a claim of title in the premises vide order dated 17.5.1988 of the First Additional Civil Judge, Varanasi, whereby it appears that the appellant has been found not to be landlord of the premises in question. As observed earlier, the High Court has dismissed the appellant-landlord's writ petition filed under Article 226 and 227 of the Constitution of India on the ground that the title suit between the appellant - Dr. Vishwanath Mishra and deceased respondent no.1 - Rattan Shanker Chaurasia is pending in appeal and there is a stay operating in favour of the appellant.

Having regard to the circumstances of the case, we are satisfied that the impugned order of the High Court suffers from a misdirection in law. What was necessary for the High Court was to determine as to who is the landlord of the premises in question that is to say to whom the rent of the building was payable. It was not necessary to determine the question of title in such a situation which is secondary. Thus, it would have been appropriate in the interests of justice if the High Court has determined this question.

In the facts and circumstances of the case, we consider it appropriate to set aside the impugned judgment and order

passed by the High Court and remand the case back to the High Court for a decision on the question as to who is the landlord of the premises in question. We order accordingly. The High Court shall also decide the application afresh for release of the premises in question in accordance with such finding. The High Court is requested to decide the matter as expeditiously as possible on its own merits and in accordance with law.

With the aforesaid directions, the appeal is disposed of.

.....J  
[S.A. BOBDE]

.....J  
[L. NAGESWARA RAO]

New Delhi;  
February 01, 2017.

ITEM NO.5

COURT NO.9

SECTION XI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).27549/2013

(Arising out of impugned final judgment and order dated 30/11/2012 in CMWP No. 47311/2000 passed by the High Court Of Judicature at Allahabad)

DR.VISHWANATH MISHRA

Petitioner(s)

VERSUS

RATAN SHANKER CHAURASIA (D)THR. LRS.&amp;ANR

Respondent(s)

(With appln. (s) for c/delay in filing substitution appln. and substitution and interim relief and office report)

Date : 01/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Jayant Kumar Mehta, Adv.  
Mr. Shaurya Kuthiala, Adv.

For Respondent(s) None

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

Delay of 2272 days in filing substitution application is condoned.

Abatement is set aside.

Substitution application for bringing on record the legal representatives of the deceased respondent no.1, is allowed.

Despite service of notice, none appears on behalf of the respondents.

The appeal is disposed of in terms of the signed order.

(Sanjay Kumar-II)  
Court Master

(Indu Pokhriyal)  
Court Master

(Signed Order is placed on the file)