



सत्यमेव जयते

In the Court of Additional Commissioner, Jammu

(With the powers of Divisional Commissioner)

(Rail Head Complex, Jammu)

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File No
43/Appeal 2018-19

Date of Institution
19.01.2019 and
12.08.2021 (Restoration
application)

Date of Decision
30.06.2022

1. Madan Lal
2. Shashi Bhushan
3. Bharat Bhushan

All sons of Devi Dass, R/o Ward No. 13, Mohalla Sheesh Mahal, Tehsil Haveli
District Poonch

....Appellants

Versus

1. Sunita Kumari W/o Late Ravi Bhushan
2. Rasiya D/o Ravi Bhushan Luthra R/o Ward No. 13, Mohalla Sheesh Mahal, Tehsil Haveli District Poonch

....Respondents

In the matter of :-

Appeal against the impugned order dated 17.11.2018 passed by the court of Ld. Deputy Commissioner, Poonch in an application for condonation of delay u/S 5 of Limitation Act, 1963. Prayer for setting aside the same.

AND

In the matter of:-

Application seeking restoration of appeal titled "Madan Lal & Anr. V/s Sunita Kumari & Ors." dismissed in default on 12.08.2021

ORDER

The present appeal has been filed against the impugned order dated 17.11.2018 passed by the Deputy Commissioner, Poonch in an application for condonation of delay under Section 5 of the Limitation Act, 1963. The appeal was dismissed in default on 12.08.2021 as the appellants were not attending the court since 27.11.2020. The application for restoration of the appeal was filed on 09.11.2021 by the appellant. During the pendency of restoration application, the applicant/appellant has not attended the court for the last five hearings from which it is inferred that the appellants/applicants have lost interest to prosecute the matter. In view of the continued absence of appellants, the matter was taken up for adjudication on the basis of the record annexed with the appeal. Perusal of the copy of the order reveals that the Deputy Commissioner, Poonch has observed as under:-

"The present appeal has been filed on 19.11.2015 along with the main appeal in this court by the appellant through counsel regarding setting aside of mutation No. 3221 of

9/c website.
Readers to
Additional Commissioner
Jammu

Shehar Khas and 960 of Degwar Malayian Tehsil Haveli attested respectively on 07.10.2012 and 15.06.2010.

The grounds on which application for condonation of delay was filed by the appellant (through his counsel) are that the orders passed by Tehsildar Haveli on mutation No. 3221 and 960 were without conducting proper enquiry. She and her daughter are the only legal heirs of Late Ravi Bhushan and their names must have figured in the above mentioned inheritance mutations. The appellant through counsel averred that she came to know about the attestation of mutations under question only on 17.11.2015 and on 19.11.2015, she appealed against the orders on these two mutations. She was ignorant of the fact that her and her daughter's name were intentionally left in these two inheritance mutations. "Ignorance of fact" is ground for condonation of delay u/S 5 of the Limitation Act, 1963. Moreover, since 19.11.2015 her case is being regularly heard in this court so, she plead through her counsel for condonation of delay.

The respondents through their counsel objected to the application for condonation of delay and plead that appellant was separated from her husband during his life time and took all her share in property. They also plead that applicant number 02 Rasyia is not daughter of their deceased brother. Through their counsel they also plead that the applicant were aware of the attestation of mutation No. 3221 and 960 and therefore the application for condonation for delay is not maintainable.

After hearing the arguments of both the sides, perusing written argument with other connected documents and mutation copy which clears that though mutation was attested in public meeting but applicants were not present in that meeting and therefore there is sufficient reason to believe that the applicant may not have acquired the knowledge of attestation of mutation No. 3221 of Shehar Khas and 960 of Dewar Maldyian of Tehsil Haveli respectively on 07.10.2012 and 16.06.2010.

As such the plea of the applicant for condonation of delay u/s 5 of the Limitation Act, 1963 is allowed and the delay is condoned. The main appeal shall accordingly be disposed on next date of hearing."

The order passed by the Deputy Commissioner, Poonch is well reasoned order and does not suffer from any infirmity. As such the main appeal as well as restoration application are hereby dismissed. The interim order issued by this court, if any, shall stand vacated. The case file be consigned to records after due completion. One copy of the order shall go to Deputy Commissioner concerned for reference and record.

Announced
30.06.2022

Sd/-
Pawan Kumar Sharma, JKAS
Additional Commissioner, Jammu
[with the powers of Divisional Commissioner]