

Shri Vinod Mishra, learned counsel for the respondents.

Jagjeevan without entering into evidence and without the Will having been proved."

2. This second appeal under Section 100 of Civil Procedure Code (here-in-after referred as CPC) has been filed for setting aside the judgment and decree dated 30.05.2002 passed in Civil Appeal No.4/2001; Smt. Gaya Dei Vs. Ram Kripal and Others by 6th Additional District and Sessions Judge, Sultanpur, by means of which the appeal has been allowed and the judgment and decree passed by the court below i.e. the trial court has been set aside and the sale deed in question has been cancelled with a direction to the trial court to communicate the cancellation of sale deed to the concerned Sub-Registrar.

3. The appeal has been admitted on the following substantial questions of law:-

"1. Whether the judgement and decree rendered by the lower Appellate Court stands vitiated for non compliance of the mandatory provisions contained under Order XXXXI, Rule 31 C.P.C.

2. Whether even after the clear admissions made by Smt. Gaya Dei that she has not filed any suit for cancellation and she being totally ignorant about the case, the lower Appellate Court could allow the appeal and decree the plaintiffs' suit.

3. Whether the Lower Appellate Court could reverse the findings recorded by the trial court without considering the reasons adopted by the trial court and the evidence relied upon by the trial court.

4. Whether during pendency of the appeal before the Lower Appellate Court, in the matter of substitution consequent on the death of Smt. Gaya Dei, alleged Will set up by the respondents Jagjeevan, being disputed, the Lower Appellate Court could substitute the

4. Learned counsel for the defendant-appellants submitted that the suit for cancellation of sale deed by Gaya Dei in favour of Pudda was filed with general allegations in the plaint, which were denied in the written statement filed by the defendant-appellant nos.1 to 3. The trial court, after considering the pleadings, evidence and material on record and recording the finding that the execution and thumb impression on the sale deed has been admitted by the Gaya Dei and no allegation has been levelled against the transferee and no evidence of any benefit to her confident Ram Lakhan Singh has been adduced, rightly dismissed the suit. He further submitted that the lower appellate court has allowed the civil appeal filed by the plaintiff-respondent without following the provisions of Order-41, Rule-31 CPC. He further submitted that the lower appellate court, without considering that the predecessor-in-interest of the plaintiff-respondent Gaya Dei had executed two sale deeds including the sale deed in question and contested a case of mutation with Smt. Maha Dei and the murder case, therefore, it can not be said that she was not aware with the worldly affairs and entitled for any benefit of Pardanashin lady, held that the thumb impression had been obtained on sale deed in her ignorance and misleading her. The lower appellate court also failed to consider that the plaintiff Gaya Dei admitted in her evidence that she has not filed any suit for cancellation of sale deed and she does not know about the suit and she has come to court twice only. Thus, admittedly, the suit was not filed by her but was got filed by some other person. He further submitted that the financial condition and capability to purchase the

land in dispute by Pudda has not been questioned but the lower appellate court considered the same and also considering the evidence of other witnesses recorded findings on the basis of presumption without any basis and failed to consider the cross-examination of PW-1 Gaya Dei, in which she admitted two sale deeds and sale deed about eleven years back, thus, the sale deed of appellant has been admittedly executed by her.

5. On the basis of above, learned counsel for the defendant-appellants submitted that the impugned judgment and decree passed by the lower appellate court is not sustainable in the eyes of law and it is liable to be set-aside restoring the judgment and decree passed by the trial court. He relied on **Krishna Devi Vs. Siksha Devi; MANU/UP/2018/2020, [(2020) 3 AWC 2230 All]** and **Ali Husain (Dead) Through Legal Representatives Vs. Rabiya and Others; (2019) 9 SCC 353.**

6. Per contra, learned counsel for the plaintiff-respondent vehemently opposed the submissions of learned counsel for the defendant-appellants. He submitted that the lower appellate court had failed to consider the evidence adduced by the defendant-appellants rightly and in accordance with law, therefore, the same has rightly been considered by the lower appellate court in accordance with law and after considering the same in detail and recording the findings thereon allowed the appeal. Thus, the provisions of Order-41, Rule-31 CPC have been followed and since all the issues have been considered by the lower appellate court, therefore, it can not be said to have been vitiated merely because the points for determination have not been formulated. The appeal has been filed on

misconceived and baseless grounds. The substantial questions of law formulated in this appeal does not arise in this appeal, therefore, the appeal is liable to be dismissed with cost. He relied on **Kewal Krishan Vs. Rajesh Kumar and Others; 2022 (156) RD 171, Smt. Dularia Devi Vs. Janardan Singh and Others; 1990 RD (SC) 193, Jokhu Vs. Deputy Director Consolidation, Pratapgarh and Others; 2018 (36) LCD 453 and Laxmi Narain and Another Vs. Smt. Hubraja @ Barki; 1989 (7) LCD 284.**

7. I have considered the submissions of learned counsel for the parties, and perused the records.

8. The suit for cancellation for sale deed was filed by the Gaya Dei alleging therein that she is illiterate Pardanashin village lady, who became widow after few days of her marriage and her whole life passed with the help of neighbours and on her confidants. She was owner and in possession of Gata No.811 as Bhumidhar in continuation of her mother-in-law. Ram Lakhan Singh is residing near her old house and their family used to go each others. He also used to help her in agriculture as per need. She had to contest a case with Ram Dei after death of her mother-in-law, in which also he had helped and got the evidence of his close man Pudda son of Manbhod adduced. The old house of the plaintiff was at an aloof place, therefore, the said Ram Lakhan had helped her in getting a land in his neighbourhood and constructing a new house on the same, on account of which she had more confidence on him. Ram Lakhan Singh asked to the plaintiff that her new house is required to be recorded in the records and for the said purpose he took her to Musafirkhana and got her thumb impression on many papers

and she put the thumb impression with a view that it was required. The said Ram Lakhan had not informed for any execution of sale deed. When the plaintiff demanded a copy of the documents of her agricultural fields on 16.07.1989 from the Lekhpal then she came to know that the name of predecessor-in-interest of the defendant-appellants Pudda has been recorded on the land in question bearing Gata No.811. Then, after inspection from the Tehsil Musafirkhana, she got the copies and came to know that Pudda has got a registered sale deed executed from her, whereas she has not executed the sale deed. Thereafter, after coming to know about the ex-party mutation in favour of the Pudda, she filed an appeal under Section 210 of U.P. Zamindari Abolition and Land Reforms Act, which is pending. The suit for cancellation of sale deed was filed on the grounds that she has not got any money in consideration of sale. She was also not in need of any money on account of which she would had to sell her land. She has not given any party (bhog) and went on pilgrimage, for which she would have to borrow. The sale deed in question is an out come of fraud. Pudda was doing her agriculture and she had full confidence on him. The said Ram Lakhan Singh had put Pudda with her to look after the agriculture of the plaintiff. The plaintiff has no legal heir. The witnesses of the sale deed and Pudda are the confidants to each other.

9. The suit was contested by the defendant-appellants denying most of the averments made in the plaint. It has further been alleged that the plaintiff is a clever lady and knows worldly affairs. However, it was not disputed that the house of the plaintiff was at an aloof place and after murder of Ram Deen, she had lived with Ram Lakhan Singh for same time, from

where Tribhuvan had forcibly taken her away. It was further alleged that the plaintiff has made a concocted story of going to Musafirkhana for recording the name for the new house. Pudda used to live at the house of the plaintiff, for which he was being paid wages. The pattidar of the plaintiff Tribhuvan and others were angry with the sale deed executed by her, therefore after death of Pudda they had also murdered the father of the respondent no.4 Ram Dev, on account of which in the criminal prosecution against them, they have been convicted with life imprisonment. The mother of the defendant-appellant no.4 had moved an application and adopted the written statement filed by the defendant-appellants no.1 to 3.

10. After exchange of pleadings, following six issues were framed by the trial court.

"1. क्या वादिनी का दावा कथनानुसार प्रश्नगत बैनामा मंसूख होने योग्य है?

2. (क) क्या वाद मूल्यांकन कम है ?

(ख) क्या अदा किया गया न्याय शुल्क अपर्याप्त है ?

3. क्या दावा काल बाधित है ?

4. क्या वाद 34/41 विनिर्दिष्ट अनुतोष अधिनियम से बाधित है ?

5. क्या दावा 331 जमींदारी विनाश अधिनियम से बाधित है?

6. क्या वादिनी किसी अनुतोष को पाने की अधिकारिणी है ?"

11. After framing of issues, the documentary as well as oral evidence was adduced by the parties. Gaya Dei; the plaintiff appeared as PW-1, Brij Lal as PW-2 on behalf of the plaintiff. Devta Deen the defendant-appellant no.2 appeared as DW-1, Ram Das as DW-2, Shanker Bux Singh

as DW-3, Mohd. Zaki son of Mohd. Shafi as DW-4, Ram Lakhan Singh as DW-5 and Shiv Prasad Yadav as DW-6 on behalf of the defendant-appellants. Thereafter, after hearing learned counsel for the parties and considering the pleadings, evidence and material on record, the trial court dismissed the suit. Being aggrieved, the civil appeal was filed by the plaintiff. Before the lower appellate court, the respondent no.2 Hub Lal claiming himself to be the maternal grand father of the defendant-appellant no.4 moved an application for appointment of his guardian on the ground that his mother Janki is mad, therefore, she is not in a position to protect the interest of the minor. However, the lower appellate court held that the mother of the defendant-appellant no.4 Smt. Janki is prudently protecting the interest of the minor and she has rightly adopted the written-statement of the other defendant-appellants no 1 to 3. During pendency of appeal the plaintiff Gaya Dei died, therefore the respondent no.1 was authorised to pursue the proceedings of appeal on the basis of a will of Gaya Dei produced by him. Thereafter the lower appellate court proceeded to consider and decide the appeal considering each and every issue framed by the trial court and allowed the appeal with cost setting aside the judgment and decree passed by the trial court and cancelled the sale deed in question with a direction to the trial court to inform to the concerned Sub-Registrar about it. Hence this second appeal has been filed by the defendant-appellants, which has been admitted on the aforesaid substantial questions of law.

12. The fourth substantial question of law is in regard to procedural lapse on the part of the lower appellate court in deciding the question of legal representative of the plaintiff-appellant before it. The disposal of

the said issue makes respondent no.1 legal representative of Gaya Dei because there is no other successor of the deceased plaintiff-appellant before the lower appellate court, therefore, this court deems it appropriate to consider it first because the proceedings can be continued only after determination of the issue of legal representative as in absence of legal representative the proceedings can be continued after following procedure prescribed in Rule 4A of CPC.

13. The judgment was reserved on 13.09.2001 by the lower appellate court, which was to be delivered on 19.09.2001. Gaya Dei the plaintiff-appellant before lower appellate court, who had filed the suit for cancellation of sale deed died on 16.09.2001, therefore, the application was filed on 17.09.2001 informing the same with a request for abatement. An objection to the same was filed that since the case is fixed for judgment, therefore, there is no question of abatement of appeal under Order-22, Rule-6. The application was filed by respondent no.1 Jagjivan Mishra claiming himself to be the legal representative of the Gaya Dei on the basis of a registered will executed by her on 20.08.1998 in his favour. An application was also filed by one Shesh Narain Dwivedi for his substitution. However, the same was not pressed, therefore, it was dismissed. An objection, to the application filed by the respondent no.1, was filed on the ground that Gaya Dei had not executed any will and the will presented by respondent no1 is forged and fabricated. An application was filed by the defendant-appellant Ram Kripal etc. for their substitution on the basis of sale deed, claiming that they are the legal representatives of the deceased Gaya Dei and since the will deed has been executed

after execution of sale deed, therefore, it has no effect and the judgment could not be pronounced within 14 days, therefore, they should be substituted. An objection was filed by the respondent no.1 stating therein that the will deed was correct and registered and he has right to prosecute the further proceedings.

14. The learned lower appellate court, after considering the applications and the objections, found that since the hearing was concluded on 13.09.2000 and the judgment was to be delivered on 19.09.2001, therefore, the question of abatement of appeal under Order-22, Rule-6 does not arise. The lower appellate court held that the pronouncement of judgment is not part of hearing. Thereafter, the lower appellate court proceeded to consider the application filed by the respondent no.1 for substitution on the basis of will executed by deceased plaintiff Gaya Dei on 20.08.1998 of her movable and immovable property and considering the evidence on record, the learned lower appellate court recorded a finding that there is evidence on record that Gaya Dei was living with Tribhuvan prior to her death and the defendant-appellants have admitted in their objection that the respondent no.1 Jagjivan is brother-in-law of Tribhuvan and after considering certain case laws held that since the defendant-appellants are already on record, therefore, it would be justified to declare the respondent no.1 authorised for pursuing the appeal further and accordingly authorised him by means of the order dated 24.10.2001 and fixed the case for hearing as more than 14 days had passed after hearing of the case. Thus, the lower appellate court appears to be of the view that both are legal representative of the deceased Gaya Dei, whereas the court should have decided as to whether the

respondent no.1 would be legal representative of the deceased Gaya Dei or not to pursue the proceedings. The lower appellate court without deciding it conclusively after hearing allowed the appeal and set aside the judgement and decree passed by the trial court and allowed the suit and cancelled the sale deed.

15. Order-22, Rule-5 of CPC provides the determination of question as to legal representative, which is extracted here-in-below:-

"5. Determination of question as to legal representative.—Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

[Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.]"

16. Proviso to the aforesaid rule provides that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question, therefore if a question arises before the court as to who is legal representative of plaintiff or defendant, it is to be decided by the court. If this question arises before an appellate

court, it may direct the subordinate court to try the question and return with evidence recorded, if any, therefore, if for trying the question of legal representative any evidence is required to be recorded, if can be recorded and thereafter considering the same, the question of legal representative can be determined.

17. In the present case, the question as to whether the respondent no.1 is the legal representative of the deceased Gaya Dei or not was before the lower appellate court because he was claiming on the basis of a registered will executed in his favour by Gaya Dei and an objection was filed to the same by the defendant-appellants disputing the will deed and alleging that the will deed is forged and fabricated and it could not have been executed by Gaya Dei after execution of sale deed, therefore, the respondent can not be a legal representative of Gaya Dei. Therefore, it was incumbent upon the lower appellate court to consider the said issue of legal representative of Gaya Dei as per the procedure prescribed under Order-22, Rule-5 of CPC. But the learned lower appellate court without following the procedure as prescribed under law authorised the respondent no.1 to pursue the proceedings of appeal, that too without his substitution, whereas in case the question of legal representative was determined, he should have been made a party in appeal in view of Rule-3 of Order-22.

18. The learned lower appellate court on the one hand held that since the plaintiff, who had filed the appeal, died after the hearing was concluded, therefore, the proceedings did not abate and on the other hand, considered the application of respondent no.1 and allowed without, following the prescribed procedure and

authorized him to pursue the proceedings without his substitution/ impleadment, whereas if there was no abatement under Order-22, Rule-6 CPC, there was no question of authorizing the respondent no.1 to pursue the appeal. Rule-6 of Order-22 CPC is extracted here-in-below:-

"6. No abatement by reason of death after hearing.—*Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.*"

19. In view of above, this Court is of the view that the lower appellate court has not only not followed the procedure prescribed under law but also allowed the application of the respondent no.1 recording contradictory findings, which could not have been done because a dispute was raised in regard to the validity of the will deed on the basis of which, the respondent no.1 had set up his claim for being legal representative of the deceased plaintiff-appellant Gaya Dei before the lower court, which could not have been decided without following the due procedure of law and provisions of section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act.

20. The Hon'ble Supreme Court, in the case of **Jaladi Suguna (deceased) through LRs Vs. Satya Sai Central Trust and Others; (2008) 8 SCC 521**, has held that provisions of Rules 4 and 5 of Order 22 are mandatory and where a question arises as

to whether who should be the legal representative and if there is a dispute as to who is the legal representative, a decision should be rendered on such dispute and only when the question of legal representative is determined by the court and such legal representative is brought on record, it can be said that the estate of the deceased is represented. However, it will be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. It has further been held that though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record. The deceased in the said case was defendant-respondent and in the present case the plaintiff-appellant before the lower appellate court had died, therefore, the provisions of Rule-3 read with Rule-11 of Order-22 CPC would be attracted. The relevant paragraphs 14, 15 and 16 are extracted here-in-below:-

"14. When a respondent in an appeal dies, and the right to sue survives, the legal representatives of the deceased respondent have to be brought on record before the court can proceed further in the appeal. Where the respondent-plaintiff who has succeeded in a suit, dies during the pendency of the appeal, any judgment rendered on hearing the appeal filed by the defendant, without bringing the legal representatives of the deceased respondent-plaintiff on record, will be a nullity. In the appeal before the High Court, the first respondent therein (Suguna) was the contesting respondent and the second respondent (the tenant) was only a pro forma respondent. When the first

respondent in the appeal died, the right to prosecute the appeal survived against her estate. Therefore, it was necessary to bring the legal representative(s) of the deceased Suguna on record to proceed with the appeal.

15. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, can it be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject-matter of the suit, vis-à-vis other rival claimants to the estate of the deceased.

16. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as

parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 makes it clear that the appeal can be heard only after the legal representatives are brought on record."

21. The Hon'ble Supreme Court, in the case of **Mahanth Satyanand @ Ramjee Singh Vs. Shyam Lal Chauhan And Others; (2018) 18 SCC 485**, has held that the issue of bringing on record the legal representative in a pending appeal has to be dealt with in a manner prescribed under the provisions of Order 22 Rule 5. The Court, before proceeding to decide with the substantive issues involved in the case, first and foremost, shall decide who is the legal representative of the deceased. It has further been held that the statute has clearly mandated that if the question of deciding the legal representative of a legatee arises before an appellate Court, it may direct the subordinate Court to make enquiries by leading evidence, if any, through the

process of trial and record its finding as to who is the legal representative and after considering the finding recorded by the trial Court, the appellate Court can decide and bring on record the legal representative of the deceased. It has also been held that procedural laws are meant to advance justice and a procedure contemplated under the code which is mandatory in nature shall not be skipped or ignored by the Courts. The relevant paragraphs 10 and 11 are extracted here-in-below:-

"10. Apparently, the issue of bringing on record the legal representative in a pending appeal has to be dealt with in a manner prescribed under the provisions of Order 22 Rule 5. From the context of the settled legal position, it is clear that when a question arises before the court in a pending matter as to who will come on record as the legal heir of the deceased, the court shall, before proceeding to decide with the substantive issues involved in the case, first and foremost, shall decide who is the legal representative of the deceased. It is also well settled that when a party dies at the stage of second appeal and there are rival contenders claiming to be the legal representatives of the deceased, as in the present case, there is a burden cast upon the court to first decide as to who is the legal representative of the deceased. Without doing so, the court cannot proceed with the disposal of the case on hand. At the same time, the court cannot make all the contenders as parties. The aspect of deciding legal representative cannot also be postponed with a view to decide the same at the time of final disposal of the appeal on merits. It is significant that the statute has clearly mandated that if the question of deciding the legal representative of a legatee arises before an appellate court, it may direct the

subordinate court to make enquiries by leading evidence, if any, through the process of trial and record its finding as to who is the legal representative. After considering the finding recorded by the trial court, the appellate court can decide and bring on record the legal representative of the deceased.

11. It is indisputable that the procedural laws are meant to advance justice. A procedure contemplated under the code which is mandatory in nature shall not be skipped or ignored by the courts. Whereas, in the instant case, the High Court's approach has diluted the purport of Order 22 Rule 5 CPC and is contrary to the law laid down by this Court in Jaladi Suguna [Jaladi Suguna v. Satya Sai Central Trust, (2008) 8 SCC 521]. Such an approach of the High Court cannot be sustained."

22. In view of above, since the question as to whether the respondent no.1 is legal representative of the plaintiff-appellant Gaya Dei before the lower appellate court or not, in regard to which the dispute was raised by the defendant-appellants, was not decided determining the question in accordance with law, therefore, it requires to be decided in accordance with law.

23. It is also noticed by this Court that though an objection has been raised by the defendant-appellants that the respondent no.1 is the brother-in-law of Tribhuvan and the lower appellate court has also considered the same but in the will deed placed on record as Paper No.15-Ga/1, it has been stated that after death of the husband of Gaya Dei, she was being looked after by the son of the daughter of her maternal uncle, who is like her son and even at this stage of old age also Jagjivan

Mishra is serving her in each possible manner, therefore, the relationship of respondent no.1 with the deceased Gaya Dei does not seem to be clear. An application was also moved by Jagjivan Mishra but in the present case he has been impleaded as Jagjivan. Though parentage is same but it has not been objected, although Vakalatnama has been signed by Jagjivan Mishra.

24. In view of above, this Court is of the view that the lower appellate court has decided the issue as to whether the respondent no.1 is legal representative of the plaintiff-appellant Smt. Gaya Dei before the lower appellate court or not without following the due procedure of law and recording contradictory and perverse findings, therefore, this Court is of the view that the same should be decided first by the lower appellate court before considering the other substantial questions of law and decide this appeal finally because it may have impact on the entitlement of the respondent no.1 not only after disposal of this appeal but in the further proceedings also as the matter is old and appeal is pending since a long time. This court deems it appropriate to direct to the lower appellate court to determine the question as to whether the respondent no.1 is the legal representative of the deceased Gaya Dei or not in accordance with law and the observations made here-in-above in this order after considering the respective pleadings and affording opportunity to the parties to lead evidence on the same. The fourth substantial question of law stands decided accordingly.

25. The matter is remitted to the lower appellate court to decide the aforesaid issue as to whether the respondent no.1 is legal representative of the plaintiff Gaya Dei or

not afresh in accordance with law and observations made here-in-above in this order expeditiously and within a period of three months without granting unnecessary adjournment to either of the parties and fixing at least one date in a week and, if possible, on day to day basis and send the order so passed alongwith the evidence adduced by the parties, if any. The determination of the issue earlier made by the lower appellate court shall be subject to fresh determination made by the lower appellate court under this order and abide by the same.

26. The case shall be listed immediately after receipt of the order passed by the lower appellate court with the record or in the week commencing 21.04.2025, whichever is earlier for further hearing.

27. The lower court record shall be remitted forthwith to the concerned appellate court so that it may reach before the date fixed before the lower appellate court for appearance in this order. The parties shall appear before the lower appellate court on 15.01.2025.

(2024) 12 ILRA 74

**APPELLATE JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 05.12.2024

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

First Appeal No. 388 of 2015
With

First Appeal No. 357 of 2016
With

First Appeal No. 1104 of 2003
With

First Appeal No. 1138 of 2003

Natthan Singh

Versus

...Appellant

State of U.P. & Ors.

...Respondents

Counsel for the Appellant:

Madan Mohan, Rakesh Pande, Shailesh K. Upadhyay, Shailesh Upadhyay

Counsel for the Respondents:

Ashok Mehta, Prabhat Tripathi, S.C., Subodh Kumar

A. Acquisition Law – Land Acquisition Act, 1894 – Section 6 – Award – Determination of compensation – Doctrine of merger – Applicability – High Court passed an order dated 10.01.2002 in Ran Singh's case enhancing the compensation, against which S.L.P. of acquiring body (CPWD and UOI) was dismissed *in limine* with certain observation regarding impleadment – C.P.W.D./U.O.I. were not parties to the lis culminating into the order dated 10.01.2002 – Effect – Held, the adjudication made by this Court in Ran Singh's case would not amount to merger or confirmation of this Court's judgment dated 10.01.2002 in the Supreme Court's orders, at least affecting or prejudicing any right of acquiring body. (Para 9, 23 and 24)

B. Acquisition Law – Land Acquisition Act, 1894 – Sections 9 & 25 – Award – No claim was raised in pursuance to the notice issued u/s 9 – No dispute regarding service of notice has been raised – Effect – Entitlement of over amount to the award – Bar of Section 25 – Applicability – Held, S. 25, as existed on the date of issuance of notifications, would operate as a statutory obstruction standing against the claimants to claim any higher compensation over and above Rs. 1.90/- per Sq. Yd. as determined by the S.L.A.O. under the initial award. (Para 26 and 32)

First Appeal of tenure holders dismissed and of St. allowed. (E-1)

List of Cases cited: