



2026:AHC:61193

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 3660 of 2026

Chulhai

.....Petitioner(s)

Versus

Smt. Kamlawati And Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Akhilesh Kumar Pandey
Counsel for Respondent(s)	:	Ashish Kumar

Court No. - 5

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Himanshu Pandey (AoR No. A/H0155/2012) holding brief of Sri Akhilesh Kumar Pandey, learned counsel for the defendant-petitioner as well as Sri Siddharth Srivastava, learned Senior Advocate assisted by Sri Ashish Kumar, for the plaintiff-respondents.

2. The case of the parties as worded in the petition is that there happens to be a property in dispute, namely Arazhi no. 309, Khata no.550, Area 0.587 hectare. As per the defendant-petitioner, the said land came to be recorded in the name of Sarjami Devi wife of Musai @ Bhulai (since deceased) defendant-respondent IInd set in the revenue records. Smt. Sarjami Devi is stated to have expired in the year 2001 whereafter the name of her husband namely Musai @ Bhulai (since deceased) defendant-second respondent stood mutated in the revenue record on the basis of succession by virtue of issuance of PA-11 on 17.10.2001. The defendant-respondent IInd set Musai @ Bhulai son of Setha executed two registered sale deeds in favour of the defendant petitioners on 31.12,2001 and 22.07.2002. Allegation of the defendant-petitioner is that post execution of the sale deed, the vendor became dishonest and by virtue of manufacturing an unregistered will deed executed by Smt. Sarjami Devi on 12.05.2000 in favour of the only daughter Kamlawati, the plaintiff-respondent allegedly bequeathed her rights in favour of the plaintiff-respondent Ist set, Smt. Kamlawati by alleging that her husband is a person of loose character. A suit for cancellation of sale deed stood instituted by the plaintiff-respondent Ist set, Smt. Kamlawati wife of Sri Vinod being O.S. No.523 of 2002, Smt. Kamlawati vs. Chulhai and others. The said suit stood verified on 26.09.2002. The aforesaid suit stood decreed exparte on 18.04.2003 by the Court of Civil Judge (Junior Division),

Farenda, District Maharajganj. As per the defendant-petitioner, he had no knowledge about the factum of the institution of the suit and passing of the exparte decree. However, for the very first time, the defendant-petitioner came to know about the institution and passing of the judgment and decree dated 18.04.2003 on 19.06.2008 when the proceedings before the Sub-Divisional Officer, Nautanwa were pending in that regard. Thereafter an application under Order IX Rule 13 came to be preferred on 16.07.2008 along with an application under Section 5 of the Limitation Act for condonation of the delay in preferring the application under Order IX Rule 13 of the CPC, however, on 13.01.2011, the Civil Judge (Junior Division) Farenda, Maharajganj in Misc. Case No.60/08/74, Chulhai vs. Kamlawati came to reject the delay condonation application, which was registered as Paper no.6Ka.

3. Assailing the said order, Misc. Appeal No.7 of 2011 came to be preferred by the defendant-petitioner before the Court of Addl. District Judge, Court No.2, Maharajganj being Misc. Appeal No.7 of 2011, which also came to be rejected by the Court of Addl. District Judge, Court No.2, Maharajganj on 18.1.2013. A finding had been recorded by the appellate court that there happens to be two vakalatnamas filed on behalf of the counsel for the defendant-petitioner for inspection of the records pertaining to proceedings emanating in Original Suit No.523 of 2002, instituted by the plaintiff-respondent Ist set and it was the onus and the duty of the plaintiff-respondent to have produced the Advocate, whose signature found place in the vakalatnama and also to adduce evidence in that regard and thereafter the defendant-petitioner preferred an Application no.34Ga on 30.04.2022 for getting the report of the expert for verifying whether the thumb impression was of the defendant-petitioner or not. The said application came to be rejected by the Court of Civil Judge (Junior Division), Farenda, Maharajganj in Misc. Case No.60 of 2008, Chulhai vs. Kamlawati on 07.12.2023, against which an appeal came to be preferred by the defendant-petitioner before the Court of Additional District Judge, Court No.1, Maharajganj being Misc. Appeal No.66 of 2025, which came to be rejected on 13.01.2026 by the Addl. District Judge, Court no.1 Maharajganj.

4. Questioning the order dated 13.01.2026, passed in Civil Appeal No.66 of 2025, order dated 07,12,2013 passed by Civil Judge (Jr. Div.) Farenda, District Maharajganj, order dated 08.01.2013 passed in Misc. Appeal No.7 of 2011 and the order dated 13.01.2011 passed by Civil Judge (Junior

Division) Farendra, District Maharajganj, the present petition has been preferred.

5. Learned counsel for the defendant-petitioner had sought to argue that the suit so instituted by the plaintiff-petitioner Ist set itself was not maintainable, particularly when the entire claim set up by the plaintiff-respondent Ist set was based upon an unregistered will. Further contention is that even otherwise the sale deed so executed in favour of the defendant-petitioner on 31.12.2001 and 22.07.2002 could not have been declared illegal by the court below, particularly when they were the registered sale deed. Argument is also to the extent that the suit in question stood proceeded in an exparte manner and while inviting attention towards order sheet at page-98, it is contended that though notices were issued on 26.09.2002 and by virtue of the order dated 10.12.2002, the process had not been returned and the next date stood fixed for 08.04.2023, but on an application preferred for pre-postulating the same was allowed on 04.01.2023 while directing for publication in newspaper and without therebeing any order on the order-sheet regarding the service, the suit stood continued and was decided exparte. Contention is to the extent that the defendant-petitioner even disputed the thumb impression on the vakalatnama which is shown to be the basis of knowledge of pendency of the said suit. However, the court below did not appreciate the crucial aspect of the matter that it was the specific stand right from the very inception of the defendant-respondents that they had no knowledge and they could gain knowledge on 19.06.2008 when the proceedings under Section 210 of the Land Revenue Act was pending between the parties. It is also contended that by virtue of the order impugned, defendant-petitioner has been made remediless in that regard.

6. Sri Siddharth Srivastava, learned Senior Advocate, who appears for the plaintiff-respondents Ist set while countering the submissions so made by the learned counsel for the defendant-petitioner submits that whatever might be, there was a publication in the newspaper and the court below has recorded a categorical finding regarding the filing of the vakalatnama by the counsel so nominated by the defendant petitioner and further once the delay condonation application accompanied with an application under Order IX Rule 13 of the CPC for setting aside the judgment and decree dated 18.04.2003 came to be rejected on 13.01.2011, against which an appeal came to be rejected on 18.01.2013, then the proceedings stood closed at that point of time and merely because an application came to be preferred on

30.04.2022, being Paper No.34Ga for getting an expert opinion of the thumb impression which is stated to have been affected upon the vakalatnama would not be a ground to reopen an issue which has already attained finality in that regard.

7. I have heard the submissions so made across the Bar and perused the records carefully.

8. Facts are not an issue. It is not in dispute that an Original Suit no.523 of 2002 came to be instituted by the plaintiff-respondent Ist set against Chulhai and others before the Court of Civil Judge (Jr. Div.), Farenda, Maharajganj on 26.09.2002. The sid suit came to be decreed exparte by the Court of Civil Judge (Jr. Div.) Farenda, Maharajganj on 18.04.2023. An application under Order IX Rule 13 of the CPC along with a delay condonation application came to be preferred by the defendant-petitioner, which came up for consideration before the Court Civil Judge (Junior Division), Farenda, Maharajganj and the delay condonation application seeking condonation of the delay for filing the application under Order IX Rule 13 of CPC being Application no.6Ga came to be rejected on 13.01.2011, against which a Misc. Appeal No.7 of 2011 came to be preferred by the defendant-petitioner which resulted in dismissal on 18.01.2013 by the Court of Addl. District Judge, Court No.2, Maharajganj.

9. Plainly and simply, once the delay condonation application seeking condonation of delay in preferring the application under Order IX Rule 13 CPC came to be rejected, then automatically by operation and fiction of law, the application under Order IX Rul 13 also stood dismissed.

10. Merely because the defendant petitioner preferred an application on 30.04.2022 seeking expert opinion regarding for verifying whether the thumb impression was on vakalatnama or not would not hold that the order dismissing the delay condonation application would revive or the proceedings would be continuation of the same. Pertinently, the delay condonation application seeking condonation of delay in filing the application under Order IX Rule 13 came to be rejected in the year 2011, i.e. 13.01.2011 and appeal whereof was rejected on 18.01.2013. Importantly, the orders passed on 13.01.2011 passed by the trial court and 18.01.2013 passed by lower appellate court are now being challenged by means of the present petition, which has been presented before this Court on 11.03.2026. Even

though, in the application being Paper No.34 dated 30.04.2022 the report of the expert regarding the verification whether the signatures on the vakalatnama were there or not of the defendant petitioner, but the same is post dismissal of the application under Section 5 of the Limitation Act for computation of delay in filing the application under Order IX Rule 13 and after dismissal of the appeal. In the given facts and circumstance, bearing in mind the over all fact situation, this Court does not find the present case to be a fit case for interference.

11. At this stage, learned counsel for the writ petitioner seeks a liberty to take appropriate proceedings as contemplated under law before the competent Court and the delay, if any, be condoned.

12. In the opinion of the Court, no direction is required, particularly when in case, there is any remedy available under law and there is delay also, then it is for the defendant-petitioner to file appropriate proceedings including condonation of delay.

13. Accordingly the writ petition is **dismissed**.

March 24, 2026

N.S.Rathour

(Vikas Budhwar,J.)