

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 17690/2025

[Arising out of impugned final judgment and orders dated 11-11-2024 in RSA No. 194/2024 and dated 13-12-2024 in RP No. 476/2024 in RSA No. 194/2024 passed by the High Court of Delhi at New Delhi]

NAIPAL SINGH @ NEPAL SINGH & ANR.

Petitioner(s)

VERSUS

SMT SAVITRI & ORS.

Respondent(s)

(IA No. 153150/2025 - APPLICATION FOR CONDONATION OF DELAY IN
 FILING THE APPLICATION FOR SETTING ASIDE THE ABATEMENT
 IA No. 153148/2025 - APPLICATION FOR SUBSTITUTION
 IA No. 153147/2025 - CONDONATION OF DELAY IN FILING
 IA No. 153152/2025 - CONDONATION OF DELAY IN REFILING / CURING THE
 DEFECTS
 IA No. 153151/2025 - EXEMPTION FROM FILING DEATH CERTIFICATE /
 CERTIFIED COPY OF DEATH CERTIFICATE
 IA No. 153149/2025 - SETTING ASIDE AN ABATEMENT)

Date : 25-07-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UJJAL BHUYAN
 HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) :

Dr. Sushil Balwada, AOR
 Mr. Kashyap Kumar Dwivedi, Adv.
 Mr. Srilok Nath Rath, Adv.
 Ms. Reena Rao, Adv.

For Respondent(s) :

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

Delay in filing application for setting aside
 abatement is condoned, application for substitution to
 bring on record the legal heirs of the deceased
 respondent No.1 is allowed and abatement, if any, is set
 aside.

Signature Not Verified
 Digitally signed by
 ANITA MALHOTRA
 Date: 2025.07.28
 17:09:18 IST
 Reason:

Delay condoned.

We have heard learned counsel for the petitioners.

The Trial Court had rejected the report of the Local Commissioner on the ground that at the time of inspection, the Local Commissioner did not call upon any person from the side of the defendants nor obtained their signature. This finding of the Trial Court was affirmed by the First Appellate Court which additionally held that the plaintiffs failed to prove their possession over the suit property independently.

In Second Appeal the High Court, after considering the orders of the Trial Court and the First Appellate Court, held that the said two orders did not suffer from any legal infirmity and that no substantial question of law arose.

Learned counsel for the petitioners has placed reliance on a decision of this Court in Civil Appeal No.8285 of 2009 titled "*Ram Lal & Ors. v. Salig Ram & Ors.*" decided on 4th December, 2019 as well as on Order XXVI Rule 10(3) of the Code of Civil Procedure, 1908 to contend that in the event the Trial Court disbelieved the report of the Local Commissioner, it had the discretion to order further inquiry.

We may mention that in *Ram Lal's* case (supra) the report of the Local Commissioner was accepted by the Trial Court as also by the First Appellate Court unlike the present case. This is a crucial distinguishing feature. In any view of the matter, the power under Order XXVI Rule 10(3) of the CPC is discretionary.

In view of the concurrent findings rendered by all the three Courts below, we are not inclined to entertain the Special Leave Petition(s) which is/are accordingly dismissed.

Pending applications also stand disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(AKSHAY KUMAR BHORIA)
COURT MASTER