

UPKR010031932024



In the Court of the District Judge, Kasganj.

Present:– Rameshwar, (H.J.S.)

JO Code No. UP6537

Civil Appeal No.-19/2024

1. Yogesh Kumar A/a- 52 years, S/o Late Shri Madan Mohan, R/o Village- Raipur, Pargana-Sidhpura, Tehsil-Patiyali, District Kasganj.
2. Manoj Kumar A/a- 47 years, S/o- Late Shri Madan Mohan, R/o Village- Raipur, Pargana- Sidhpura, Tehsil- Patiyali, District Kasganj.Appellant/Plaintiff

Versus

1. Anil Kumar A/a- 51 years, S/o Late Shri Narayan Vallabh, R/o (Village- Raipur, Pargana- Sidhpura,) Current Resident- Mohd. Mudigilan, Kasba and Post- Soron, Gehsil and District- Kasganj.
2. Satyapal Singh A/a- 52 years, S/o Shri Prakash Chandra, R/o Ambedkar Nagar, Kasba-Amanpur, Pargana and Tehsil-Sahawar, District-Kasganj.

.....Respondent/Defendant

Judgment

1. The appellants/plaintiffs have filed the present civil appeal being aggrieved by the ex-parte judgment and decree dated 27.05.2024 passed by the Court of the Second Civil Judge (Junior Division), Kasganj in Original Suit No. 274 of 2021, Yogesh Kumar and Others vs. Anil Kumar and Others, whereby the trial court dismissed the claim of the plaintiffs ex-parte.
2. Briefly stated, the facts of the case are that the plaintiffs/appellants Yogesh Kumar and Manoj instituted Original Suit No. 274 of 2021 before the trial court against the defendants/respondents Anil Kumar and others, stating that Kashi Prasad alias Kaluram alias Kallu (the predecessor-in-interest of the plaintiffs and defendant no.1 and late Rajiv Kumar) was the owner and in possession, along with other properties, of the following lands:-Arazi Gata No. 18, area 1.59 hectare, and Gata No. 114, area 0.478 hectare, situated in Village Raipur, Pargana Sidhpura,

Tehsil Patiyali, District Etah (presently District Kasganj). Arazi Gata No. 414, area 0.04, and Gata No. 415, area 1.77, situated in Village Dhaulapalas, Tehsil Malakheda, District Alwar, Rajasthan. Land comprised in Gata No. 21/1 and 21/2, area 4.35, situated in Sub-village Vardala (Village Moruchi Khalsa), Tehsil Nadouti, District Karauli, Rajasthan, along with other properties. According to the genealogy, Kashi Prasad alias Kaluram alias Kallu died in the year 1955. After his death, his three sons namely Durga Prasad, Prabhu Dayal and Madan Mohan became the owners and possessors of the properties left by him, each having 1/3rd share therein along with cultivation. Durga Prasad died in the year 1982, and after his death his wife Vimla Devi became the owner and possessor of his 1/3rd share. Vimla Devi executed and got registered a sale deed dated 01.07.1999 regarding her 1/3rd share of the land situated in Mouza Raipur, Pargana Sidhpura, in favour of the plaintiffs, benami through the plaintiffs' father Madan Mohan. Thus, Madan Mohan acquired 2/3rd share in the land situated in Mouza Raipur. Smt. Vimla Devi also executed a sale deed of her 1/3rd share in the land situated at Village Shahar, Tehsil Nadouti, District Karauli, Rajasthan, in favour of Prabhu Dayal. Accordingly, the names of the purchasers were recorded in the revenue records with respect to the lands situated in Village Raipur, District Kasganj and Village Shahar, Tehsil Nadouti, District Karauli, Rajasthan. Thereafter Prabhu Dayal and Madan Mohan, sons of Kashi Prasad alias Kaluram alias Kallu, entered into an oral family settlement regarding the properties including:-Agricultural land situated in Village Raipur, in which Prabhu Dayal had 1/3rd share and Madan Mohan had 2/3rd share. Approximately 7 bighas of land situated in Village Dhaulapalas, Tehsil Malakheda, District Alwar, Rajasthan. About 25 bighas of agricultural land situated in Sub-village Vardala (Village Moruchi Khalsa), Tehsil Nadouti, District Sawai Madhopur (now District Karauli), Rajasthan. One house situated at Mohalla Mudgilan, Soron. One house situated in Village Raipur, Tehsil Patiyali, District Etah (presently Kasganj). One three-khani shop situated in Bada Bazar, Village Shahar, Tehsil Nadouti, District Karauli, Rajasthan. One Jajmani account register (Vahi Pachnautan) valued approximately at Rs.

1,05,000/-. At that time, no written document was prepared regarding the said oral family settlement. Under the said oral family settlement, Prabhu Dayal relinquished his 1/3rd share in the agricultural land situated in Village Raipur in favour of Madan Mohan. In exchange, Madan Mohan relinquished his share (approximately 10 bigha 7 biswa) in the agricultural lands situated in Sub-village Vardala (Village Moruchi Khalsa) and Village Dhaulapalas in favour of Prabhu Dayal. Thus Madan Mohan became the owner and possessor of the entire land situated in Village Raipur, while Prabhu Dayal became the owner of the lands situated in Sub-village Vardala and Village Dhaulapalas. Similarly, in the house situated at Mohalla Mudgilan, the western half became the property of Prabhu Dayal, while the eastern vacant half became the property of Madan Mohan. The house situated in Village Raipur, which had been purchased and constructed by Madan Mohan from his personal funds, remained his property. The three-khani shop situated in Bada Bazar, Village Shahar, Rajasthan was kept joint, and the Jajmani register (Vahi Pachnautan) was given to Prabhu Dayal on the condition that he would pay 1/3rd share i.e. Rs. 35,000/- to Madan Mohan. A memorandum of the said family settlement was later reduced into writing as a memorandum of family arrangement dated 26.10.2002 in the presence of witnesses Shyamlal Chaudhary, Virendra Tiwari, Om Prakash, Narayan Vallabh Sharma, Yogesh Kumar and Harishankar Mahere. Prabhu Dayal died in the year 2003. After his death, on the basis of the said oral family settlement, the name of Narayan Vallabh was recorded over the agricultural land situated in Village Dhaulapalas. Thereafter Narayan Vallabh sold the said land through a registered sale deed. Even prior to this, Prabhu Dayal had sold the land situated in Sub-village Vardala (Village Moruchi Khalsa) on the basis of the said family settlement. This clearly shows that the family settlement between Prabhu Dayal and Madan Mohan had been acted upon, and relying upon the same Prabhu Dayal also executed sale deeds regarding the properties which had fallen to his share. However, Madan Mohan, the predecessor of the plaintiffs, could not get his name recorded in the revenue records regarding the land situated in Village Raipur, Tehsil Patiyali, District

Kasganj, because Prabhu Dayal could not come there. Prabhu Dayal had assured Madan Mohan that whenever he would come to Village Raipur, he would give his consent to the concerned department for recording the name of Madan Mohan. Unfortunately, within five to six months after the memorandum of family settlement was written, Prabhu Dayal died, and therefore his consent could not be obtained in favour of the plaintiffs. About four years after the death of Prabhu Dayal, his son Narayan Vallabh got his name recorded in the agricultural land situated in Village Raipur by adopting illegal means. Thereafter, after the death of Narayan Vallabh, his sons defendant no.1 Anil Kumar, Ashok Kumar and late Rajiv Kumar got their names recorded through the concerned Lekhpal vide entry dated 28.07.2017 in Form (Pa ka-11). Rajiv Kumar died issueless on 12.10.2021 and he had never been married. Therefore defendant no.1 is responsible for his acts. Narayan Vallabh and thereafter defendant no.1, Ashok Kumar and late Rajiv Kumar were fully aware that they had no right or share in the agricultural land situated in Village Raipur, and that the entire land belonged to Madan Mohan. Despite this, defendant no.1 and late Rajiv Kumar, with mala fide intention, filed a partition suit dated 16.07.2018 under Section 116 of the U.P. Revenue Code regarding Gata Nos. 18 and 114 situated in Village Raipur. In the said case, the plaintiffs and their father filed their written statement dated 17.10.2018 and also filed a counter-claim under Section 144 of the U.P. Revenue Code seeking declaration of their ownership. When the defendants realized that they would not succeed in the said partition suit, defendant no.1 Anil Kumar, without any authority, executed and got registered a sale deed dated 27.06.2019 in favour of defendant no.2 showing sale consideration of Rs. 5,75,000/-, with respect to 1/9th share in Gata No. 18 (area 1.59 hectare) and Gata No. 114 (area 0.478 hectare). Similarly, late Rajiv Kumar, also without any right, executed another sale deed dated 02.08.2019 in favour of defendant no.2 showing the same consideration amount for 1/9th share in the aforesaid land. At the time of execution of the said sale deeds, defendant no.1 and late Rajiv Kumar neither had ownership nor possession over the disputed land situated in Village Raipur, and therefore defendant no.2 also did not

acquire any ownership or possession over the disputed property. The plaintiffs sent a legal notice dated 12.10.2021 through registered post through counsel to the defendants requiring them to cancel the said sale deeds, but the defendants refused to comply. Since both the sale deeds were executed without any ownership rights, they are void documents in the eyes of law. However, if they continue to remain in existence, they may adversely affect the rights and title of the plaintiffs in future, therefore the present suit has been filed for cancellation of the said sale deeds. If the defendants do not accept the said family settlement, the plaintiffs reserve the right to initiate proceedings for cancellation of the sale deeds executed by Prabhu Dayal and Narayan Vallabh in respect of the lands situated in Village Dhaulapalas and Village Moruchi Khalsa (Sub-village Vardala), Rajasthan. Madan Mohan died on 24.11.2019, and the plaintiffs are his only legal heirs and are fully authorized to institute the present suit. The cause of action arose on 26.10.2002, when the memorandum of oral family settlement was written. 27.06.2019 and 02.08.2019, when the impugned sale deeds were executed. 25.09.2021, when the defendants attempted to dispossess the plaintiffs from the disputed land. 29.09.2021, when the defendants refused to cancel the sale deeds. 12.10.2021, when the plaintiffs sent the legal notice. The cause of action arose within the territorial jurisdiction of this Court at Village Raipur, Tehsil Patiyali, District Kasganj, therefore this Hon'ble Court has jurisdiction to hear the suit. For the purpose of determining jurisdiction, the valuation of the suit has been fixed on the basis of the annual land revenue of Rs. 51.10, calculating 1/9th share, and court-fee has been paid accordingly.

Reliefs claimed by the plaintiffs:-(a) A permanent injunction restraining the defendants, their relatives, agents or any other persons from creating any charge, selling, executing gift deed, mortgage deed or otherwise interfering with the peaceful possession of the plaintiffs over the disputed property.

(B) Cancellation of the sale deed dated 27.06.2019 executed by defendant no.1 in favour of defendant no.2, registered in the office of the Sub-Registrar, Patiyali.

(C) Cancellation of the sale deed dated 02.08.2019 executed by late Rajiv Kumar in favour of defendant no.2, registered in the office of the Sub-Registrar, Patiyali.

(D) Award of costs of the suit and advocate's fees in favour of the plaintiffs.

(E) Any other relief which this Hon'ble Court may deem just and proper.
Description of disputed property:-Gata No. 18 (area 1.59 hectare) and Gata No. 114 (area 0.478 hectare) situated in Village Raipur, Pargana Sidhpura, Tehsil Patiyali, District Kasganj.

3. Due to the absence of the defendants, the Trial Court, by order dated 20.10.2023, directed that the proceedings of the suit be carried forward ex parte against the defendants and fixed 29.11.2023 for recording ex parte evidence.
4. The respondents did not appear before the Court despite service of summons. The learned counsel for the appellants appeared and his arguments were heard. On 03.01.2025, the following Points for Determination were framed.
 - 1- Whether family settlement/arrangement/partition deed which has already been acted upon would operate as estoppel against the parties/family members to such family settlement?
 - 2- Whether family settlement/arrangement/partition deed which had already been acted upon requires its registration and is admissible in evidence ?
 - 3- Whether the sale deed dated 27-06-2019 and 02-08-2019 executed by def. No. 1 and Rajeev Kumar in favour of Def. No.2 is void documents in view of admitted family settlement ?
 - 4- Whether the learned trial court did not appreciate the documentary evidence on record filed by the plaintiff ?

5. Under the Code of Civil Procedure (CPC), 1908, remand means sending a case back by the appellate court to the lower court (Trial Court) for reconsideration or re-hearing. This process is mainly governed by Order 41, Rule 23, Rule 23A, and Rule 25. The main provisions and situations for remand in civil appeals are as follows:-

Types of Remand and Rules (CPC Order 41)

- **Remand on a Preliminary Point (Rule 23):-** When the lower court has dismissed the case on a preliminary legal point (such as jurisdiction or limitation) instead of deciding the entire suit, and the appellate court reverses that decision, it may send the case back to the trial court to be decided afresh.
- **Remand in Other Cases (Rule 23A):-** If the lower court has decided the case on a ground other than a preliminary point, but the appellate court considers that a **retrial** is necessary, it may exercise the same powers as under Rule 23.
- **Remand on Specific Issues (Rule 25):** If the appellate court finds that an important issue has not been determined or that additional evidence is required, it may send the case back only for recording evidence and returning findings on that specific issue. In such a situation, the entire suit is not remanded; the appellate court retains the power to deliver the final judgment itself.
- **Conditions and Limitations of Remand:-**Limited Power: The Supreme Court has clarified that appellate courts should avoid remanding a case for a de novo trial (a fresh trial) without substantial grounds. If the evidence available on record is sufficient for deciding the case, remand should not be ordered.
- **Appealable Order:** According to **Order 43, Rule 1(u) of the CPC**, an appeal can be filed before the High Court against an order of remand passed under **Rule 23 or Rule 23A**.

Purpose of Remand

- To correct procedural or legal errors committed by the lower court.
 - To allow additional evidence or clarification in the interest of justice.
 - To ensure that the parties are given a proper opportunity to fully present their case.
6. Points for Determination Nos. 1 to 4 are interrelated; therefore, for the sake of convenience, it appears appropriate and just to decide them together.

Points for Determination Nos. 1 to 4-

7. In the present appeal, it is to be examined whether there is any factual or legal error in the judgment passed by the learned court below (trial court) or not.
8. On behalf of the plaintiffs, oral evidence was produced as follows:-PW-1 Yogesh Kumar, son of late Shri Madan Mohan, was examined with his affidavit in chief-examination, evidence paper no. 33A2/1-6. PW-2 Manoj Kumar was examined with his affidavit in chief-examination, evidence paper no. 34A2/1-6. PW-3 Harishankar Mahere was examined with his affidavit in chief-examination, evidence paper no. 35A2/1-3. All the above witnesses were examined before the Court. On behalf of the plaintiffs, the following documentary evidence was also filed:-As per list paper no. 10C1 – one copy of legal notice along with registry dated 12.10.2021, paper no. 11C1. One certified copy of sale deed dated 27.06.2019, paper no. 12C1/1-10. One certified copy of sale deed dated 02.08.2019, paper no. 13C1/1-16. One photocopy of Khatauni extract, paper no. 14C1. One photocopy of family settlement, paper no. 15C1/1-3. One certified extract of Khatauni, paper no. 16C1/1-3. One photocopy of Bhumi Prabandh Jamabandi Khatauni, paper no. 17C1. One photocopy of Aadhaar Card, paper no. 18C1/1-2. One final order dated 06.09.2019, paper no. 19C1. One status-quo order form dated 14.11.2018, paper no. 20C1/1-2. Further, as per list paper no. 36C1, one original family settlement dated 26.10.2002, paper no. 37A1/1-3, was also filed.
9. In the original suit, the appellant/plaintiff, while producing his evidence as PW-1 Yogesh Kumar, submitted his affidavit evidence (paper no. 33A2/1 to 33A2/6) and stated that Kashi Prasad alias Kaluram alias Kallu (the predecessor-in-interest of the plaintiffs and defendant no. 1 and late Rajeev Kumar) was in possession and ownership, along with other properties, of the following lands: Arazi Gata No. 18 area 1.59 hectares and Gata No. 114 area 0.478 hectares situated in Village Raipur, Pargana Sidhpura, Tehsil Patiyali, District Etah (now District Kasganj); Arazi Gata No. 414 area 0.04 and Gata No. 415 area 1.77 situated in

Village Dholapalas, Tehsil Malakheda, District Alwar, Rajasthan; and Sub-village Vardala (Village Moruchi Khalsa), Tehsil Nadoti, District Karauli, Gata Nos. 21/1 and 21/2 area 4.35, along with other properties. According to the above genealogy, Kashi Prasad alias Kaluram alias Kallu died in the year 1955, and after his death his three sons, namely Durga Prasad, Prabhudayal and Madan Mohan, became owners and possessors of the properties left by him, each having 1/3rd share along with the agricultural land. Durga Prasad died in the year 1982, and after his death his wife Vimla Devi became the owner and possessor of his 1/3rd share. Out of her 1/3rd share, Vimla Devi executed and got registered a sale deed dated 01.07.1999 of the land situated in Mauza Raipur, Pargana Sidhpura, in favour of the plaintiffs benami through the plaintiffs' father Shri Madan Mohan. Consequently, Madan Mohan became the owner of 2/3rd share in the land situated in Mauza Raipur, Pargana Sidhpura. Further, Vimla Devi executed a sale deed of her 1/3rd share of land situated in Village Shahar, Tehsil Nadoti, District Karauli, Rajasthan in favour of Prabhudayal. Accordingly, the names of the purchasers were recorded in the revenue records of Mauza Raipur, Pargana Sidhpura (present District Kasganj) and Village Shahar, Tehsil Nadoti, District Karauli. Thereafter, Prabhudayal son of Kashi Prasad alias Kaluram alias Kallu and Madan Mohan son of Kashi Prasad alias Kaluram alias Kallu entered into an oral family settlement regarding the following properties:-The land situated in Village Raipur, in which Prabhudayal had 1/3rd share and Madan Mohan had 2/3rd share. About 7 bighas of land situated in Village Dholapalas, Tehsil Malakheda, District Alwar, Rajasthan. About 25 bighas of agricultural land situated in Sub-village Vardala (Village Moruchi Khalsa), Tehsil Nadoti, District Sawai Madhopur (now District Karauli), Rajasthan. One house situated in Mohalla Mudgilan, Soron. One house situated in Village Raipur, Tehsil Patiyali, District Etah (now Kasganj). One three-shop unit in Bada Bazar, Village Shahar, Tehsil Nadoti, District Karauli, Rajasthan, and one Jajmani Pachnautan register valued approximately at ₹1,05,000. This family settlement was oral and no written document was prepared at that time. Under the said oral family settlement:-Prabhudayal

relinquished his 1/3rd share in the agricultural land situated in Village Raipur, Pargana Sidhpura in favour of Madan Mohan, and Madan Mohan relinquished his share (about 10 bighas 7 biswa) in the agricultural lands situated in Sub-village Vardala (Village Moruchi Khalsa) and Village Dholapalas, Rajasthan in favour of Prabhudayal. Thus, Madan Mohan became the owner and possessor of the entire land situated in Village Raipur, whereas Prabhudayal became the owner of the land situated in Sub-village Vardala and Village Dholapalas. In the house situated at Mohalla Mudgilan, the western half belonged to Prabhudayal and the eastern vacant half belonged to Madan Mohan. The house situated in Village Raipur, which had been constructed by Madan Mohan from his own funds, remained his property. The three-shop unit situated at Bada Bazar, Village Shahar, Rajasthan was kept joint. The Jajmani Pachnautan register was given to Prabhudayal on the condition that he would pay 1/3rd share (₹35,000) to Madan Mohan. In this regard, a memorandum of family settlement dated 26.10.2002 was prepared in the presence of witnesses Shyamlal Chaudhary, Birendra Tiwari, Om Prakash, Narayan Vallabh Sharma, Yogesh Kumar and Harishankar Mahere. Prabhudayal died in the year 2003, and after his death the name of Narayan Vallabh was recorded in the agricultural land situated at Village Dholapalas on the basis of the oral family settlement. Thereafter Narayan Vallabh sold the said land through a registered sale deed, and earlier Prabhudayal had also sold the land situated in Sub-village Vardala (Village Moruchi Khalsa) on the basis of the family settlement. This clearly shows that the family settlement between Prabhudayal and Madan Mohan had become effective, and relying upon it Prabhudayal even executed sale deeds of the properties. However, Madan Mohan, the predecessor of the plaintiffs, could not get his name recorded in the land situated in Village Raipur, Tehsil Patiyali, District Kasganj, because Prabhudayal could not come there. Prabhudayal had assured Madan Mohan that whenever he came to Village Raipur he would give his consent to the concerned department for recording Madan Mohan's name. Unfortunately, within five to six months after the memorandum of family settlement was written, Prabhudayal died, and his consent in

favour of Madan Mohan or the plaintiffs could not be recorded. About four years after the death of Prabhudayal, his son Narayan Vallabh got his name fraudulently recorded in the agricultural land situated in Village Raipur. After the death of Narayan Vallabh, his sons Defendant No. 1, Ashok Kumar and late Rajeev Kumar got their names recorded in (Pa ka-11) through the Halka Lekhpal on 28.07.2017. Rajeev Kumar died unmarried on 12.10.2021, and therefore Defendant No. 1 is responsible for his acts. Narayan Vallabh, Defendant No. 1, Ashok Kumar and late Rajeev Kumar were well aware that they had no right or share in the agricultural land situated in Mauza Raipur and that Madan Mohan was the sole owner of the entire land. Despite this, Defendant No. 1 and late Rajeev Kumar, with mala fide intention, filed a partition suit under Section 116 of the U.P. Revenue Code on 16.07.2018 regarding Gata Nos. 18 and 114 situated in Village Raipur. In the said suit, the plaintiffs and their father filed their written statement on 17.10.2018 and also filed a counter-claim under Section 144 of the U.P. Revenue Code for declaration of their ownership. When Defendant No. 1 and late Rajeev Kumar realized that they could not succeed in the partition suit, Defendant No. 1 Anil Kumar, without any right, executed and registered a sale deed dated 27.06.2019 in favour of Defendant No. 2, showing 1/9th share in Arazi Gata No. 18 area 1.59 hectares and Gata No. 114 area 0.478 hectares for a sale consideration of Rs. 5,75,000. Similarly, late Rajeev Kumar also sold his alleged 1/9th share in the said land to Defendant No. 2 through a sale deed dated 02.08.2019 for ₹5,75,000. At the time of execution of these sale deeds, Defendant No. 1 and late Rajeev Kumar neither had possession nor ownership over the disputed land situated in Mauza Raipur, and therefore Defendant No. 2 also acquired no ownership or possession over the disputed property. The plaintiffs sent a legal notice dated 12.10.2021 through registered post via counsel to Defendant Anil Kumar for cancellation of the said sale deeds, but he orally refused to comply. Since both the sale deeds were executed without any ownership rights, they are void documents in the eyes of law. However, if they remain in existence, there is a likelihood that the proprietary rights of the plaintiffs may be affected in future. If the

defendants do not accept the family settlement, the plaintiffs reserve their right to initiate proceedings for cancellation of the sale deeds executed by Prabhudayal and Narayan Vallabh regarding the lands situated in Village Dholapalas and Village Moruchi Khalsa (Sub-village Vardala) in Rajasthan. Madan Mohan died on 24.11.2019, and the plaintiffs are his sole legal heirs and are authorized to file the present claim.

10. In addition, PW-2 Manoj Kumar and PW-3 Harishankar Mahere submitted their respective affidavits of evidence, being paper no. 34A2/1 to 34A2/6 and paper no. 35A2/1 to 35A2/3, respectively, and supported the statements mentioned in the plaint of the suit.
11. After examining the oral and documentary evidence produced by the plaintiffs, the Trial Court, by means of the impugned order dated 27.05.2024, dismissed the claim of the plaintiffs ex-parte. Being aggrieved by the said order, the appellants/plaintiffs have filed the present appeal on the following grounds:-
12. That the impugned judgment and order dated 27.05.2024 passed by the court below is against the facts and law and is also erroneous in the eyes of law. The court below failed to consider the admitted position between the parties that the defendants had entered appearance before the court and had not denied the fact of the family settlement/partition that had taken place between their forefathers. The court below did not consider the documentary as well as oral evidence produced by the appellants at all and, while passing the impugned judgment and order, did not record any concrete findings. The court below also failed to consider the settled principles of law and, ignoring the material available on record, dismissed the suit of the appellants without framing any issues. The court below further failed to consider that, in accordance with the admitted family settlement, the defendants were not the owners of the disputed land, and the alleged sale deeds were void and invalid from the very beginning. The court below, by misinterpreting various judgments of the Hon'ble High Court and the Hon'ble Supreme Court, has illegally dismissed the suit. While passing the impugned judgment and order, the

court below failed to exercise its judicial discretion, thereby committing a serious illegality. On the above grounds, it has been prayed that the appeal be allowed and the impugned judgment and order dated 27.05.2024 passed by the court below be set aside.

13. With regard to a family settlement, it is a well-established principle of law that a family arrangement entered into with the object of resolving disputes relating to property among family members is encouraged by the courts. The Hon'ble Supreme Court in ***Kale & Others vs. Deputy Director of Consolidation (1976) 3 SCC 119*** has laid down that if the parties have acted upon a family settlement, it shall be considered valid and does not require registration. In the present case, the family settlement dated 26.10.2002 produced by the plaintiffs has been written merely as a memorandum of remembrance. Through their evidence, the plaintiffs have attempted to establish the fact that the parties had acted upon the said settlement. PW-1, PW-2 and PW-3, in their respective testimonies, have supported the said family settlement. It is also evident from the record that the defendants did not appear before the Trial Court and did not controvert the evidence produced by the plaintiffs. In such a situation, while examining the evidence presented by the plaintiffs, it was necessary for the Court to carefully evaluate the same. A perusal of the judgment of the Trial Court clearly indicates that the Court did not consider in detail the oral as well as documentary evidence produced by the plaintiffs, nor did it explain why the evidence produced was unreliable. In the opinion of the Appellate Court, even in a situation where the evidence is ex parte, it was judicially expected of the Court to properly examine each piece of evidence and record clear findings. Apart from this, it is also a matter for consideration that if the family settlement produced by the plaintiffs had in fact been acted upon by the parties, then the question regarding the validity of the sale deeds executed by the defendants would arise. However, the Trial Court has not recorded any clear finding on this important aspect as well.

The Hon'ble Supreme Court in ***Thulasidhara & another Vs. Narayanappa & others 2019 0 Supreme (SC) 593*** has propounded the following legal

position: "That even if the family settlement was not registered it would operate as complete estoppel. (Para 9.4)"

"A family arrangement is binding on the parties and operates as estoppel. It precludes any of the parties who have taken advantages under the agreement from revoking or challenging the same."

The family settlement was regarding the adjustment of co-owned property existing at that time. The family settlement was not creating new rights but was recording the adjustment of the pre-existing 1/3rd share. The document on record, Paper No. 37A1/1-3 (Original Family Settlement dated 26.10.2002) and the statement of witness PW-3 Harishankar Mahere, prove that this document is merely a 'Memorandum'. It was a voluntary adjustment of 'Pre-Existing Rights' of ancestral properties between Prabhu Dayal and Madan Mohan. Prabhu Dayal's 1/3rd share in Raipur land and Madan Mohan's share in the ancestral properties of Rajasthan were at the center of this settlement. Since it was only recording pre-existing rights, registration is not mandatory.

In this regard, the Hon'ble Supreme Court in *Thulasidhara & another Vs. Narayanappa & others 2019 0 Supreme (SC) 593* established this legal position: "That even without registration a written document of family settlement/family arrangement can be used as corroborative evidence. (Para 9.5)"

14. Additionally, the Amin's report with the map (Paper No. 32C2/1-3) available on file confirms the plaintiff's possession. This is an integral part of the record, as Order 26, Rule 10(2) of the Code of Civil Procedure clearly provides- "The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record."

However, the learned Trial Court neither invited objections to the Amin's report not decided the same, and kept in pending. The Amin's report was not considered, at the time of decision whereas the report was fundamental to the decision of the said case. On the contrary, the impugned judgment was rendered without determining the fate of the report. The Trial Court has disregarded the evidence available on record and, while passing the impugned order, has flouted the fundamental legal

principles of pleadings. It appears necessary in the interest of justice to analyze and appreciate the evidence available on the case file and to decide the matter on its merits. Thus, the learned Trial Court has committed an error of both fact and law. Accordingly, the judgment and decree of the lower court dated 27.05.2024 are liable to be set aside.

15. On the basis of the aforesaid facts and circumstances, the Court arrives at the conclusion that the judgment dated 27.05.2024 passed by the Trial Court is contrary to law and facts, and therefore liable to be set aside, and the appeal deserves to be allowed.

Order

The Civil Appeal No. 19/2024 filed by the appellants is allowed. The judgment and decree dated 27.05.2024 passed by the Court of Second Civil Judge (Junior Division), Kasganj in Original Suit No. 274/2021 are hereby set aside. The matter is remanded to the Trial Court for fresh consideration, with the direction that the Trial Court shall hear the parties and, after proper evaluation of the evidence available on record, pass a fresh decision in accordance with law.

Date-12.03.2026

(Rameshwar)
District Judge,
Kasganj.

The judgment was signed and dated by me today in open court and pronounced accordingly.

Date-12.03.2026

(Rameshwar)
District Judge,
Kasganj.