



2025:CGHC:4699



2026:CGHC:13850

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Judgment Reserved on 27/01/2026)

(Judgment Delivered on 23/03/2026)

(Judgment Uploaded on 23/03 /2026)

FA No. 3 of 2023

1. Madan Lal Modi (Abated) Through Legal Representatives
 - 1a. Hari Prasad Modi (S/o Madan Lal Modi) (Dead) Through Lrs.
 - 1a(i) Smt. Shakuntala Modi W/o Hari Prasad Modi Aged About 75 Years
R/o Main Road, Korba (Chhattisgarh)
 - 1.a(ii) Anand Modi S/o Hari Prasad Modi Aged About 45 Years R/o Main
Road, Korba (Chhattisgarh)
 - 1a(iii) Sapna Agrawal W/o Ashok Agrawal Aged about 59 Years, Address-
D 101, Maruti Lifestyle Mohaba Bazar, Behind RK Mall Raipur, District
Raipur, C.G. 492001
 - 1a(iv) Pramila Agrawal, W/o Kailash Agrawal, Aged about 56 Years,
Address- Grihsthi Super Bazar, Marwahi Road Pendra District GPM,
C.G.
 - 1.a(v) Mamta Agrawal, W/o Kundan Agrawal, Aged about 53 Years,
Address H No.308, Mahoba Bazar Road, Raipur, District Raipur, C.G.
492001
 - 1a(vi) Arti Gupta, W/o Narendra Gupta, Aged about 50 Years, Address – E
– 541, 28, East Block, Near Radha Krishna Mandir, Samta Colony,
Raipur, District Raipur, C.G. 492001
 - 1b. Murli Dhar Modi, S/o Madan Lal Modi (Dead) Through Lrs.
 - 1b (i) Govind Modi S/o Murli Dhar Modi Aged About 54 Years R/o Main
Road, Korba (Chhattisgarh)
 - 1b(ii) Rajesh Modi S/o Murli Dhar Modi Aged About 50 Years R/o Main
Road, Korba (Chhattisgarh)
 - 1b(iii) Anjana Mittal W/o Krishna Gopal Mittal, Aged about 56 Years,
Address- Ambikapur Road, Mohalain Bhanta, Ward No.7, Korba, Dist.
Korba C.G. 495445



- 1c** Badri Prasad Modi S/o Madan Lal Modi Aged About 72 Years R/o Main Road, Korba (Chhattisgarh)
- 1d** Kailash Chand Modi, (Died), Through Lrs As Are Honble Court Order Dated 06-09-2024
- 1d(i)** Smt. Sharda Modi W/o Late Kailash Chand Modi, Aged About 64 Years R/o Main Road Korba (C.G.)
- 1d(ii)** Gopal Modi S/o Late Kailash Chand Modi, Aged About 37 Years R/o Main Road Korba (C.G.)
- 1.d(iii)** - Monika Modi D/o Late Kaikash Chand Modi Aged About 33 Years R/o Main Road Korba (C.G.)
- 1.d(iv)** - Tripti Agrawal D/o Late Kailash Chand Modi W/o Ventesh Agrawal Aged About 39 Years R/o Vinoba Nagar Bilaspur, (C.G.)
- 1e** Santosh Kumar Modi S/o Madan Lal Modi Aged About 62 Years R/o Main Road, Korba (Chhattisgarh)
- All are R/o Main Road Korba (Chhattisgarh)

--- Appellants

versus

- 1.** Raj Kumar Modi Adoptive Father Shri Prakash Chandra Modi Aged About 58 Years R/o Main Road, Korba, Tehsil and District Korba, C.G.
- 2.** Smt. Abhilasha Mati D/o Shri Prakash Chandra Modi Aged About 49 Years R/o Korba, Tehsil and District Korba, Post Office Korba (C.G.)
- 3.** Ashok Kumar Modi S/o Shri Kishan Lal Modi Aged About 65 Years Caste Agrawal, Occupation Business, R/o Main Road, Korba, Tehsil And District Korba, Post Office Korba (C.G.)
- 4.** Sanjay Kumar Modi S/o Shri Kishan Lal Modi Aged About 58 Years Caste Agrawal, Occupation Business, R/o Main Road, Korba, Tehsil And District Korba, Post Office, Korba (C.G.)
- 5.** Raja Modi S/o Shri Kishan Lal Modi Aged About 48 Years Caste Agrawal, Occupation Business, R/o Main Road, Korba, Tehsil And District Korba, Post Office Korba (C.G.)
- 6.** Smt. Rajkumari Devi D/o Shri Kishan Lal Modi Aged About 73 Years W/o Shri Ganesh Prasad Agrawal, Caste Agrawal, R/o Asharam Govind Ram, Sadar Bazaar Raigarh (C.G.)
- 7.** Smt. Vijay Laxmi Goenka D/o Shri Kishan Lal Modi Aged About 70 Years W/o Shri Omprakash Goenka, Caste Agrawal, R/o Gudyari, Raipur (C.G.)
- 8.** Smt. Meera Goenka D/o Shri Kishan Lal Modi Aged About 68 Years W/o Shri Anjani Kumar Goenka, Caste Agrawal, Occupation Housewife, R/o Samta Colony, Raipur (C.G.)



9. Smt. Asha Bansal D/o Shri Kishan Lal Modi Aged About 66 Years W/o Shri Sudhir Bansal, Caste Agrawal, Occupation Housewife, R/o Durg (C.G.)
10. Smt. Shyama Agrawal D/o Shri Kishan Lal Modi Aged About 62 Years W/o Shri Pradeep Kumar Agrawal, Address C/o Dr. Ankita Tibrewal, Ipgmer And Sskm Hospital, 244, Acharya Jagdish Chandra Bose Road, Gokhel Road, Bhowanipore, Kolkata, West Bengal 700020.
11. Smt. Meena Agrawal D/o Shri Kishan Lal Modi Aged About 60 Years W/o Shri Dilip Kumar Agrawal, Caste Agrawal, R/o Plot No. BI/8, Revenue Plot No. 494(P) Kalunga, Industrial Estate, Beldih, Rourkela Distt. Sundergarh (Odisha) 770031.
12. Smt. Manju Agrawal D/o Shri Kishan Lal Modi Aged About 58 Years W/o Shri Anil Kumar Agrawal, R/o Jawahar Nagar, Raipur (C.G.)
13. Smt. Sangeeta Agrawal D/o Shri Kishan Lal Modi Aged About 55 Years R/o Plot No. BI/8, Revenue Plot No. 494(P) Kalunga, Industrial Estate, Beldih, Rourkela Dist. Sundergarh (Odisha) 770031.
14. Smt. Ginni Bai (Dead Through Lrs.) W/o Shri Chandrabhan Bhopalpuriya, D/o Smt. Laxmi Devi Modi.
- 14 a. Smt. Gita Devi Agrawal W/o Late Gajanand Agrawal (S/o Ginni Bai) Aged About 70 Years R/o Gajanand Medical Store, Main Road Naila Tehsil And District Janjgir-Champa (C.G.)
- 14 b - Rishi Kumar Agrawal S/o Late Chandrabhan Agrawal Aged About 70 Years Chandrabhan Rishi Kumar Medical Store Kachari Chowk, Naila Tehsil And District Janjgir-Champa (C.G.)
- 14 c - Naresh Kumar Agrawal S/o Late Chandrabhan Agrawal Aged About 58 Years R/o Gajanand Medical Store, Main Road, Naila Tehsil And District Janjgir-Champa (C.G.)
- 14d - Tara Agrawal D/o Late Chandrabhan Agrawal Aged About 55 Years R/o Kanha Store, Main Road Jamnipalli, Darri, Korba, District Korba (Chhattisgarh)
15. Smt. Narmadi Bai, Widow Shri Rekhchandra, D/o Smt. Laxmi Devi Modi,(Dead Through Legal Representatives)
- 15 (a) Pawan Agrawal S/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa).
- 15 (b) Vimla Agrawal S/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa)
- 15 (c) Smt. Prema Argawal D/o Shri Rekhachandra Agrawal W/o Shri Gopal Agrawal, R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa)
- 15 (d) Smt. Shuleela Agrawal D/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa)



- 15 (e)** Smt. Lalita Agrawal D/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur, Dist. Sundergarh (Orissa)
- 15 (f)** Smt. Santosh Agrawal D/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa)
- 15 (g)** Smt. Saroj Agrawal D/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur, Dist. Sundergarh (Orissa)
- 16.** Smt. Savitri Devi Agrawal (Dead Through Her Legal Representatives) Widow Of Shri Ploolchandra Agrawal, D/o Laxmi Devi Modi,
- 16(a)** Smt. Madhu Agrawal W/o Late Shri Shiv Agrawal (S/o Savitri Devi) R/o Jugal Paan Masala, Near Saptdeo Mandir, Main Road, Korba, Tehsil And District Korba (C.G.)
- 16(b)** Jugal Agrawal S/o Late Shri Ploolchandra Agrawal R/o Jugal Paan Masala, Near Saptdeo Mandir, Main Road, Korba, Tehsil And District Korba (C.G.)
- 16(c)** Shiv Agrawal S/o Late Shri Phool Chandra Agrawal R/o Jugal Paan Masala, Near Saptdeo Mandir, Main Road, Korba, Tehsil And District Korba (C.G.)
- 16(d)** Smt. Omi Agrawal D/o Savitri Devi W/o Shri Satyanarayan, R/o In Front Of Masjid, Akaltara, Tehsil Akaltara, District Janjgir-Champa (C.G.)
- 16(e)** Smt. Santosh Agrawal W/o Shri Mohan Agrawal (S/o Savitri Devi), R/o Agrasen Mohalla Baluda Road, Akaltara, Tehsil Akaltara, District Janjgir-Champa (C.G.)
- 17.** Radheshyam (Dead Through His Legal Representatives) S/o Shri Dhanraj,
- 17(a)** Smt. Chanda Devi W/o Late Shri Radeshyam Modi Aged About 74 Years R/o Champa, District Janjgir (C.G.)
- 17(b)** Anil Kumar Modi S/o Late Shri Radheshyam Modi Aged About 58 Years R/o Champa, District Janjgir (C.G.)
- 17(c)** Pawan Kumar Modi S/o Late Shri Radheshyam Modi Aged About 56 Years R/o Champa, District Janjgir (C.G.)
- 17(d)** Vinod Kumar Modi S/o Late Shri Radheshyam Modi Aged About 51 Years R/o Champa, District Janjgir (C.G.)
- 17(e)** Smt. Sarita Agrawal S/o Shri Suresh Agrawal Aged About 54 Years D/o Late Shri Radheshyam Modi, R/o Umraroad Kharsiya, District Raigarh (C.G.)
- 17(f)** Smt. Shobha Agrawal W/o Shri Rajesh Agrawal Aged About 49 Years D/o Late Shri Radheshyam Modi, R/o Budhwari Bazar, Post Sakti, District Janjgir-Champa (C.G.)



18. Dwarika Das (Dead Through His Legal Representatives) S/o Shri Janki Das, Occupation Business
- 18 (A) Bisambhar Lal (Dead Through His Legal Representative) S/o Shri Dwarika Das Aged About 28 Years
- 18(A)(a) Smt. Geeta Devi Modi W/o Late Shri Prasad Modi Aged About 70 Years R/o Raj Kamal Stores, Main Road, Korba, Tehsil And District Korba (C.G.)
- 18(A) (b) Smt. Vidhya Agrawal W/o Shri Ashok Agrawal Aged About 57 Years D/o Late Shri Vishambhar Prasad Modi, R/o Swaraj Cycle Stores, Mahanadi Complex, Niharika Kosabadi, Korba, Tehsil and District Korba (C.G.)
- 18(A)(c) Rajkumar Modi S/o Late Shri Vishambhar Prasad Modi Aged About 55 Years R/o Rajkamal Stores, Main Road Korba, Tehsil And District Korba (C.G.)
- 18(A)(d) Rakesh Kumar Modi S/o Late Shri Vishambhar Prasad Modi Aged About 51 Years R/o Rajkamal Stores, Main Road Korba, Tehsil And District Korba (C.G.)
- 18(A) (e) Vinay Kumar Modi S/o Late Shri Vishambhar Prasad Modi Aged About 47 Years R/o Rajkamal Stores, Main Road Korba, Tehsil And District Korba (C.G.)
- 18(A) (f) Smt. Shweta Agrawal W/o Shri Madhukant Agrawal Aged About 43 Years D/o Late Shri Vishambhar Prasad Modi, R/o Rishi Colony, Dayalbandh, Bilaspur, Tehsil And District Bilaspur (C.G.)
19. Bhagwan Das Modi S/o Shri Dwarika Das Aged About 72 Years Occupation Business, R/o Vidhyarti Book Depot, Agrasen Chowk, Main Road Korba, Tehsil And District Korba (C.G.) 495677
20. Sushil Kumar S/o Shri Radheshyam Aged About 59 Years R/o Champa, Tehsil Champa, District Janjgir-Champa (C.G.)

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FA No. 206 of 2019

1. Smt. Geeta Devi Modi W/o Late Bishambhar Prasad Modi Aged About 55 Years R/o Rajkamal Stores, Main Road Korba, District Korba Chhattisgarh
2. Smt. Vidya Agrawal W/o Shri Ashok Agrawal Aged About 38 Years D/o Late Bishambhar Prasad Modi, R/o Swaraj Cycle Stores, Mahanadi Comple Niharaka Kosabadi Korba, District Korba Chhattisgarh
3. Shri Rajkumar Modi S/o Late Bhishambhar Prasad Modi Aged About 36 Years R/o Rajkamal Stores, Main Road Korba, District Korba Chhattisgarh



4. Rakesh Kumar Modi S/o Late Bishambhar Prasad Modi Aged About 34 Years R/o Rajkamal Stores, Main Road Korba, District Korba Chhattisgarh
5. Vinay Kumar Modi S/o Late Bishambhar Prasad Modi Aged About 30 Years R/o Rajkamal Stores, Main Road Korba, District Korba Chhattisgarh
6. Smt. Sweta Agrawal W/o Shri Madhukant Agrawal Aged About 28 Years D/o Late Bishambhar Prasad Modi R/o Rishi Colony, Dayalbandh Bilaspur, District Bilaspur Chhattisgarh

--- Appellants

versus

1. Prakash Chand Modi (Dead) Through Lrs
 - 1 (a) Raj Kumar Modi, Adopted S/o Prakash Chand Modi Aged About 25 Years R/o Main Road Korba, Tehsil And District Korba, Chhattisgarh
 - (b) Smt. Abhilasha Modi D/o Prakash Chand Modi Aged About 26 Years R/o Main Road Korba, Tehsil And District Korba, Chhattisgarh
 - (c) Smt. Ganga Devi Modi Wd./o Late Prakash Chand Modi Aged About 50 Years R/o Main Road Korba, Tehsil And Post District Korba, Chhattisgarh
2. Kishan Lal Modi (Dead) Through Lrs
 - 2(a) Ashok Lal Modi S/o Late Kishan Lal Modi Aged About 42 Years Cast Agrawal, Occupation Business, R/o Main Road Korba, Tahsil Post And District Korba Chhattisgarh., District : Korba, Chhattisgarh.
 - (b) Sanjay Kumar Modi S/o Late Kishan Lal Modi Aged About 53 Years , Caste Agrawal, Occupation Business,R/o Main Road Korba, Tehsil And Post District Korba, Chhattisgarh.
 - (c) Raja Modi S/o Late Kishan Lal Modi Aged About 24 Years Occupation Business, R/o Main Road Korba, Tehsil And Post District Korba, Chhattisgarh
 - (d) Smt. Rajkumari Devi D/o Late Kishan Lal Modi Aged About 47 Years W/o Ganesh Prasad Agrawal R/o Sadar Bazar, Raigarh, District Raigarh Chhattisgarh
 - (e) Smt. Vijay Laxmi Goyanka D/o Late Kishan Lal Modi Aged About 45 Years W/o Om Prakash Goyanka, Caste Agrawal, R/o Gadiyari, Raipur, District Raipur, Chhattisgarh
 - (f) Smt. Meera Goyanka D/o Late Kishan Lal Modi Aged About 43 Years W/o Anjani Kumar Goyanka, R/o Samta Colony, Raipur, District Raipur, Chhattisgarh



- (g) Smt. Asha Bansal D/o Late Kishan Lal Modi Aged About 37 Years W/o Sudhir Bansal R/o Durg, New Address Main Road Korba, Tehsil And District Korba Chhattisgarh
- (h) Smt. Shyama Agrawal D/o Late Kishan Lal Modi Aged About 35 Years W/o Pradeep Kumar Agrawal, R/o Tatanagar, Jharkhand , New Address Main Road Korba, Teshil And District Korba Chhattisgarh
- (i) Smt. Meena Agrawal D/o Late Kishan Lal Modi Aged About 30 Years W/o Dilip Kumar Agrawal, R/o Raurkela, Orissa, New Address Main Road Korba, Tehsil And District Korba, Chhattisgarh
- (j) Smt. Manju Agrawal D/o Late Kishanlal Modi Aged About 29 Years W/o Anil Kumar Agrawal, R/o Jawahar Nagar, Raipur, Chhattisgarh
- (k) Smt. Sangeeta Agrawal D/o Late Kishan Lal Modi Aged About 26 Years R/o Raurkela (Orissa), Orissa, New Address Main Road Korba, Tehsil And District Korba, Chhattisgarh., District : Korba, Chhattisgarh
3. Smt. Ginni Bai W/o Chandrabhan Bhopalpuriya D/o Smt. Laxmi, Devi Modi, R/o Gajanan Medical Store, Naila, Tehsil And District Janjgir Champa Chhattisgarh.(Abated).
4. Smt. Narmadi Bai (Dead) Through Lrs
- 4 (a) Pawan Agrawal S/o Rekhchand Agrawal Aged About 45 Years R/o Biramitrapur, District Sundergarh Orrisa
- (b) Vimla Agrawal D/o Rekhchand Agrawal Aged About 42 Years R/o Biramitrapur, District Sundergarh Orissa
- (c) Smt. Prema Agrawal D/o Rekhchand Agrawal Aged About 40 Years W/o Gopal Agrawal R/o Biramitrapur, District Sundergarh, Orissa
- (d) Sushila Agrawal D/o Rekhchand Agrawal Aged About 38 Years R/o Biramitrapur, District Sundergarh, Orissa
- (e) Smt. Lalita Agrawal D/o Rekhchand Agrawal Aged About 35 Years R/o Biramitrapur, District Sundergarh, Orissa
- (f) Smt. Santosh Agrawal D/o Rekhchand Agrawal Aged About 33 Years R/o Biramitrapur, District Sundergarh
- (g) Smt. Saroj Agrawal D/o Rekhchand Agrawal Aged About 30 Years R/o Biramitrapur, District Sundergarh, Orissa
5. Smt. Madhu Agrawal Wd/o Ramavtar Agrawal R/o Jugal Betel Center, Near Saptdev Temple Main Road Korba, Tahsil And district Korba Chhattisgarh.
6. Puranchand (Dead) Through Lrs
- 6 (a) Jugal Agrawal S/o Late Puran Chand Agrawal R/o Jugal Betel Center, Near Saptdev Temple, Main Road Korba Tahsil And District Korba Chhattisgarh.



- (b) Shiv Agrawal S/o Late Puran Chand Agrawal R/o Jugal Betel Center, Near Saptdev Temple, Main Road, Korba, Tashil And District Kroba Chhattisgarh.
7. Smt. Omi Agrawal W/o Satyanarayan R/o Infront Of Majid Akaltara, Tahsil Akaltara, District Janjgir Champa Chhattisgarh.
8. Smt. Santosh Agrawal W/o Mohan Agrawal R/o Agrasen Ward, Baloda Road, Akaltara, Tahsil Akaltara, District Janjgir Champa Chhattisgarh.
9. Radhe Shyam Modi (Dead) Through Lrs
- 9(a) Smt. Chanda Devi Wd/o Late Radhe Shyam Modi, Aged About 65 Years Champa, District Janjgir Champa, Chhattisgarh.
- (b) Anil Kumar Modi S/o Late Radhe Shyam Modi Aged About 45 Years R/o Champa, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh.
- (c) Pawan Kumar Modi S/o Late Radhe Shyuam Modi Aged About 45 Years R/o Champa, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh.
- (d) Vinod Kumar Modi S/o Late Radhe Shyam Modi Aged About 42 Years R/o Champa, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh.
- (e) Smt. Sarita Agrawal D/o Late Radhe Shuam Modi Aged About 40 Years W/o Suresh Agrawal, R/o Umra Road, Kharsia, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh.
- (f) Smt. Shoba Agrawal D/o Late Radhe Shyam Modi Aged About 36 Years W/o Rajesh Agrawal, R/o Budwari Bazar, Sakti, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
10. Sushil Kumar S/o Radhe Shyam Aged About 44 Years R/o Champa, Tahsil Janjgir, District Bilaspur, Present District Janjgir Champa, Chhattisgarh
11. Bhagwan Das S/o Late Dwarika Das Aged About 67 Years At Present Occupation Business, R/o Korba, Tahsil Khatgora, District Bilaspur, Present District Korba Chhattisgarh., District : Korba, Chhattisgarh

--- Respondents

For appellants in FA No.3 of 2023	:	Mr. Ravish Agrawal, Sr. Advocate with Mr. Sankalp Kochar, Advocate.
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For respondents No.4 & 7 in FA No.3 of 2023	:	Mr. Prafull N. Bharat, Sr. Advocate; Mr.
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Manoj Paranjpe, Senior Advocate along with
Mr. Siddharth Shukla & Mr. Arpan Verma,
Advocates

For Respondent No.5 in : FA No.3 of 2023	Mr. Pushp Kumar Gupta, Advocate
For Respondent No.12 : in FA No.3 of 2023	Mr. Sourabh Mahant, Advocate
For Respondent No.13 : in FA No.3 of 2023	Mr. Rakesh Singh, Ms. Priyanshi Keshari and Mr. Prakant Sethi, Advocates
For Respondent No.18a : to 18f in FA No.3 of 2023	Mr. Parag Kotecha, Advocate
For Respondent No.19 : in FA No.3 of 2023	Mr. Shailendra Bajpai, Advocate
For appellants in FA No. 206 of 2019	Ms. Priya Mishra, Advocate on behalf of Dr. N.K. Shukla, Senior Advocate

(Hon'ble Shri Justice Arvind Kumar Verma)
CAV Judgment

1. These First Appeals are being considered pursuant to the order dated 28.04.2025 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Nos. 7114–7115 of 2025 and connected matters, whereby the common judgment and order dated 27.01.2025 passed by this Court in First Appeal No. 206 of 2019 and First Appeal No. 3 of 2023 were set aside and the appeals were restored for fresh adjudication. The Hon'ble Supreme Court has set aside the abatement qua late Madanlal and directed that his legal representatives shall stand substituted as plaintiffs, leaving all questions open for consideration. Accordingly, the present appeals are being heard afresh to examine the correctness of the judgment and decree dated 14.12.2018 passed by the learned Second Additional District Judge, Korba in Civil Suit No. 7-A/2014.
2. Since both the appeals arise out of same judgment and decree



dated 14-12-2018 passed by 2nd Additional District Judge, Korba in Civil Suit No. 7-A/2014 and common facts are involved in both the cases, they are heard analogously and are being disposed of by this common judgment. For sake of convenience, the parties have been referred to as shown in the original suit filed before the trial court and issue involved in F.A. No. 3/2023 has been considered as lead case.

3. **FA No. 3 of 2023** has been preferred by plaintiff/appellant Madan Lal Modi through its legal representatives assailing the judgment and decree dated 14-12-2018 passed by 2nd Additional District Judge, Korba in Civil Suit No 7A/14 whereby the suit filed by the co-plaintiffs has been decreed and the suit with respect to the plaintiff Madanlal has been abated, no partition decree in respect of him has been passed by the learned trial Court as the plaintiff Madanlal Modi expired during pendency of the suit and his legal representatives have not been brought on record by other plaintiffs.
4. **FA No 206 of 2019** has been preferred by the appellants/defendants Smt. Geeta Devi Modi and others assailing the judgment and decree dated 14-12-2018 passed by the Additional District and Sessions Judge Korba in Civil Suit No. 7A of 2014 and prayed for setting aside the same.
5. Brief facts as reflected from the records of Civil Suit No 17-A/1976 are that the original civil suit was filed in the month of March, 1976 before the learned trial Court, but due to fire in the District Court, Korba, after recording of some evidence the records were destroyed, thereafter, the file was reconstructed by the learned



Additional District Judge vide its order passed in the month of March, 1996 and concluded the trial and the suit is re-numbered as Civil Suit No. 7A/2014

6. The dispute relates to the properties and business of a Joint Hindu Family consisting of Dhanraj, Dwarkadas, Madanlal, Prakashchand and Kishanlal, who were carrying on business jointly through a firm in the name and style of Dhanraj–Dwarkadas and had acquired several movable and immovable properties from the nucleus of the said joint family business.
7. Owing to disputes amongst the members, a family arrangement was arrived at on 21.12.1963 through the intervention of Panchas whereby the business and the properties were divided and the respective parties entered into possession of their shares. Though the arbitration award embodying the said arrangement was subsequently set aside on technical grounds relating to insufficiency of stamp by order dated 21.01.1966, the arrangement was acted upon and the parties continued to remain in possession of the properties which had fallen to their respective shares.
8. Disputes again arose when certain members denied the partition and asserted joint ownership over properties claimed by others, which led to the institution of a civil suit in the year 1976 seeking declaration of rights in terms of the partition and protection of possession.
9. During the pendency of the suit, one of the original plaintiffs namely Madanlal expired on 11.04.1992 and his legal representatives were not brought on record within the prescribed period of limitation, as a



result of which the suit stood abated qua him. The proceedings in the suit were further delayed owing to destruction of court records in a fire incident in the year 1993, following which the record was reconstructed and the trial proceeded thereafter.

10. Upon conclusion of trial, the learned Second Additional District Judge, Korba by judgment and decree dated 14.12.2018 held that the properties in question were joint family properties and that partition had taken place in the year 1963. While granting declaration in favour of certain plaintiffs, the learned Trial Court declined to grant any relief to the branch of late Madanlal on account of the suit having abated qua him.
11. Aggrieved by the said judgment and decree, the legal representatives of late Madanlal preferred First Appeal No. 3 of 2023 challenging the denial of relief on account of abatement and the contesting defendants preferred First Appeal No. 206 of 2019 questioning the findings relating to partition. Both the appeals were heard analogously by this Court and came to be disposed of by a common judgment dated 27.01.2025.
12. Being dissatisfied with the common judgment dated 27.01.2025 passed by this Court, the parties approached the Hon'ble Supreme Court by filing Special Leave Petitions. The Hon'ble Supreme Court, upon hearing the parties, by order dated 28.04.2025 set aside the abatement qua late Madanlal and directed that his legal representatives shall stand substituted as plaintiffs. The Hon'ble Supreme Court further set aside the common judgment dated 27.01.2025 passed by this Court in First Appeal No. 206 of 2019



and First Appeal No. 3 of 2023 and restored the appeals to their original position for fresh adjudication, leaving all questions open for consideration.

13. Learned Senior Counsel appearing for the appellants in FA No. 3 of 2023 submits that the present appeal now survives for full adjudication on merits in view of the order dated 28.04.2025 passed by the Hon'ble Supreme Court in SLP (C) Nos. 7114–7115 of 2025. It is submitted that the Hon'ble Supreme Court has categorically set aside the abatement qua late Madan Lal Modi directed that his legal representatives shall stand substituted set aside the earlier common appellate orders restored the appeals to their original position and most importantly declared that all contentions of the parties are left open. It is therefore contended that the entire controversy relating to title, possession, schedules and evidentiary foundation must now be examined uninfluenced by the earlier findings. It is further submitted that once abatement is set aside and legal representatives are brought on record, the proceedings revive to the stage prior to death. In this regard, reliance is placed upon the law laid down by the Hon'ble Supreme Court in ***Rangubai Kom Shankar Jagtap vs Sunderbai Bhratar Sakharam Jedhe (AIR 1965 SC 1794)*** wherein it has been held that bringing legal representatives on record at one stage of the suit enures for the entire proceedings including appeal. Further reliance is placed upon the law laid down by the Hon'ble Supreme Court in ***Devram Kini vs G.M. Keni (2003) 10 SCC 691*** wherein it has been held that once legal representatives are brought on record in appeal, the benefit extends to all further stages of the



suit. It is further submitted that the Hon'ble Supreme Court order dated 28.04.2025 operates within this settled framework and restores the appellants to full participatory rights.

14. It is further submitted that an appeal is continuation of the suit and substitution of legal representatives operates for all subsequent stages. Reliance is placed on ***Mithalal Dalsangar Singh vs Annabai (2003) 10 SCC 691*** holding that bringing legal representatives on record at one stage ensures representation in further stages. Also reliance is placed on ***Tota Ram vs Kundan (AIR 1928 Lah 784)*** wherein it has been recognized that failure to implead legal representatives does not vitiate proceedings if no prejudice is caused and representation exists. It is submitted that once abatement is set aside, parties are restored to their original position at the stage of death. Reliance is placed on ***Birbal vs Harlal (AIR 1953 Punjab 252)*** wherein it was held that upon setting aside abatement, proceedings continue from the stage at which death occurred and this principle now stands reinforced by the Supreme Court order dated 28.04.2025.
15. It is further submitted that in view of the above settled law and the express declaration by the Hon'ble Supreme Court that all contentions remain open, the appellants are entitled to full adjudication on reconstruction of record, authenticity of schedules, effect of amendment dated 04.01.2018 and the evidentiary foundation of the decree dated 14.12.2018. It is submitted that reconstruction took place without lawful verification of the appellants who had already been treated as abated. It is further submitted that



substantial changes were introduced in schedules decades after institution and long after reconstruction and such late alteration affecting proprietary rights cannot be treated as clerical. It is therefore submitted that the decree dated 14.12.2018 insofar as it proceeds on altered schedules deserves to be set aside and the matter be adjudicated on authentic pleadings and evidence. schedules, possession and title.

- 16.** Learned counsel for Respondents No. 3 to 13 in FA No.3 of 2023 would submit that the present appeal, as revived pursuant to the order of the Hon'ble Supreme Court dated 28.04.2025, survives only for limited consideration and does not reopen settled findings of fact recorded by the learned Trial Court in its judgment and decree dated 14.12.2018. It is further submitted that the learned Trial Court, upon appreciation of the reconstructed record following destruction in the fire of 1996, categorically recorded a finding that partition dated 21.12.1963 stood proved and that the original plaintiffs namely Madanlal, Prakash Chandra and Kishanlal were in possession of their respective shares as owners in terms of the said partition. It is further submitted that however, as regards the share of Late Madanlal Modi, the proceedings stood abated and consequently no decree was passed in respect of the property described in Schedule D attached to his plaint. The decree was accordingly passed in favour of the heirs of Late Prakash Chandra and Late Kishanlal Modi declaring their ownership and possession in terms of the partition dated 21.12.1963 and restraining interference by the defendants. It is therefore submitted that the controversy now



stands confined to the entitlement of the appellants to relief in respect of the share of Late Madanlal Modi within the parameters of the original pleadings. It is respectfully submitted that the appellants cannot seek relief beyond the pleadings or prayer in the First Appeal. The law in this regard is well settled in ***Trojan & Co. v. Nagappa Chettiar, AIR 1953 SC 235, Krishna Priya Ganguly v. University of Lucknow, (1984) 1 SCC 307, Om Prakash v. Ram Kumar, (1991) 1 SCC 441*** which hold that no relief can be granted beyond pleadings and prayer. Further, the legal representatives of a deceased party step into the shoes of the original litigant and cannot set up a new or inconsistent case. The settled position of law in this regard flows from the principle embodied under Section 2(11) CPC and recognised in ***Kizhakialathil Puthan Veetil Thavazhi Karnavan v. Manikat Variath, AIR 1935 Madras 52***. It is further submitted that the partition dated 21.12.1963 was duly acted upon and followed by mutation in land records as early as 24.01.1964.

17. It is further submitted that the revenue orders including that dated 14.11.1984 passed in Revenue Case No. 28/A/6/69-70 acknowledged transfers and possession in accordance with the partition and registered sale deeds. Registered sale deeds of 1964 in favour of Madanlal Modi in respect of Khasra Nos. 732/17 and 732/18 were duly proved and possession pursuant thereto was established. Similarly, lands bearing Khasra Nos. 493/13 and 497/49 were sold by Madanlal Modi to his sons under registered sale deeds and possession thereof has remained with them ever since. It is further submitted that no document has been produced by the



defendants to show dispossession from these lands. It is further submitted that subsequent corrections made by order dated 06.01.2018 were merely clerical in nature to bring the schedule in conformity with the partition deed and land records of 1964–65 and did not result in any substitution of property. It is further submitted that comparative analysis of Schedule D from 1963 to 2025 demonstrates continuity and absence of change.

18. It is further submitted that the appellants, being advocates and having actively participated in the proceedings for decades on behalf of co-plaintiffs, had themselves contributed to reconstruction of the record after the fire incident of 1996 and filed numerous documents in support of the case. The reconstructed plaint of 1976 was never challenged at the relevant time and stands accepted. Any challenge at this stage is barred by waiver and estoppel. It is further submitted that remand is unwarranted in view of the evidence already on record and the mandate of Order 41 Rule 24 CPC. It is further submitted that the Hon'ble Supreme Court has consistently held that the appellate court should finally determine the matter where evidence is sufficient and remand should not be made routinely. In this regard reliance is placed upon ***Shivakumar v. Sharanabasappa, (2021) 11 SCC 277, Municipal Corporation, Hyderabad v. Sunder Singh, (2008) 8 SCC 485.*** It is further submitted that further, while exercising jurisdiction under Section 96 CPC, the appellate court must not substitute its own view lightly and must give due weight to findings of the trial court, as held in ***V. Prabhakara v. Basavaraj K., (2022) 1 SCC 115.*** In view of the



above, it is respectfully submitted that the appeal deserves to be dismissed and no interference with the decree in favour of the heirs of Late Kishanlal Modi is warranted and the appellants be restrained from interfering with the lawful possession of the respondents and appropriate costs be imposed in view of the prolonged and unnecessary litigation.

- 19.** Learned counsel for Respondent No.19 in FA No.3 of 2023 would submit that the allegations raised by the Appellants that interpolation or manipulation was carried out in the record is wholly incorrect. It is further submitted that the factual position borne out from the record is that the legal representatives of Late Madanlal Modi themselves continuously participated in the proceedings from 1976 till the passing of judgment on 14.12.2018. After the fire incident of 1996, reconstruction of the record was carried out with participation of the parties including the legal representatives of Madanlal Modi who produced documents and appeared in the proceedings. It is further submitted that after the partition dated 21.12.1963, names were mutated in revenue records on 24.01.1964 in accordance with partition and such entries continue to reflect the respective shares. It is further submitted that subsequent revenue entries including Adhikar Abhilekh dated 27.07.1965 further confirm title of Madanlal over his share. Further, Madanlal himself executed registered transactions including sale of land bearing Khasra Nos. 497/49 and 493/13, upon which mutation entries were made in favour of his successors. These entries are reflected in Exhibits P-29 to P-32 and remain unchallenged.



- 20.** It is further submitted that there has been no alteration in Schedule D at any stage. The properties which were allotted under partition continued in the same status in 1964, 1965, 1976 and even in 2018. It is further submitted that the mutation in favour of the legal representatives of Madanlal has already been carried out in revenue records. Thus the allegation that properties allotted to one party were shifted to another is factually incorrect. It is further submitted that the trial court, upon appreciation of evidence, has determined the share of Madanlal in paragraph 64 of the judgment. This finding has attained finality on facts and was not disturbed on merits.
- 21.** It is further submitted that from the inception of the proceedings, the legal representatives of Madanlal were actively conducting the litigation and were appearing as advocates on behalf of all plaintiffs. It is further submitted that the record including applications and deposition of witnesses confirms this continuous participation. Applications under Order 18 Rule 4 CPC were also filed by LRs of Madanlal.
- 22.** It is further submitted that the belated application filed in appeal under Order 41 Rules 23, 23A and 24 CPC was only intended to reopen settled issues. Out of 28 documents relied upon therein most were already part of record and others were post-decree documents and some were irrelevant. It is therefore submitted that the legal representatives substituted in place of Madanlal cannot set up a new plea beyond the pleadings of the deceased.
- 23.** It is further submitted that the legal representatives step into the shoes of the deceased and cannot introduce a new case or change



the foundation of the original pleadings. Therefore, at the appellate stage, no new claim can be asserted which was never pleaded by Madanlal. It is further submitted that the share of Madanlal stands determined by the trial court his legal representatives were continuously participating in proceedings, they never challenged proceedings for decades and after 33 years cannot reopen settled issues. Therefore, equity demands that the legal representatives of Madanlal receive decree in respect of his determined share in the same manner as other plaintiffs. It is lastly submitted that the appeal may be decided by granting decree in favour of the legal representatives of Late Madanlal Modi in accordance with the trial court determination of his share.

- 24.** Learned counsel for the appellants in FA No.206 of 2019 would submit that the dispute emanates from the arbitral award dated 21.12.1963 whereby partition amongst the five brothers of the family firm Bhagwati Dwarkadas was effected. The said award was challenged under Section 33 of the Arbitration Act, 1940 before the District Judge, Bilaspur wherein on 21.11.1966, the learned District Judge held that the award though existing in fact did not exist in law and was therefore invalid. It is further submitted that the said order was carried in Civil Revision before the High Court of Madhya Pradesh. The High Court analysed the nature of the award and held that even if the award is invalid in law, where parties have by mutual consent acted upon it and entered into separate possession, such possession may continue and the rights arising from such conduct would require adjudication in appropriate proceedings. It is further



submitted that where parties have acted upon a partition arrangement and have remained in separate possession over long years, such conduct cannot be ignored.

- 25.** He would next contend that the arbitration award with regard to partition was never acted upon, therefore, the appellant is entitled to seek determination of rights on the basis of subsequent conduct, possession, mutual arrangement flowing from the partition. It is lastly submitted that the present First Appeal deserves to be allowed and the impugned judgment be reconsidered in light of the legal position that rights arising from subsequent conduct cannot be negated merely on account of invalidity of the arbitral award.
- 26.** Learned counsel for Respondent No. 2 (e) in FA No. 206 of 2019 would submit that the appellants are the legal heirs of Defendant No. 4 Bishambhar Lal Modi, who was the son of Defendant No. 3 Dwarka Das Modi and the present Respondents were the Plaintiffs before the learned Trial Court. It is further submitted that the legal heirs of Dhanraj namely Defendant Nos. 1, 2 and 6 have already accepted the Judgment and Decree dated 14.12.2018 and have acted upon the same by seeking mutation of their respective shares before the competent revenue authority. Defendant No. 5 had initially preferred First Appeal No. 119 of 2019 but subsequently withdrew the same and also acted upon the decree by seeking mutation in the revenue records. Thus, presently the impugned Judgment is being challenged only by one branch of late Dwarka Das Modi through the legal representatives of Bishambhar Modi, whereas the remaining branches of the family including those of



Madanlal, Kishanlal, Dhanraj and Prakash Chand Modi have accepted and acted upon the said Judgment.

- 27.** It is further submitted that Civil Suit No. 15A of 1976 was not a suit for fresh partition but was a suit for declaration and injunction based upon the mutually settled shares between the parties pursuant to the partition effected earlier. The background of the dispute demonstrates that the partition dated 21.12.1963 was challenged by Dwarka Das Modi under Section 33 of the Arbitration Act, 1940 before the District Court, Bilaspur. The learned District Court vide order dated 21.01.1966 held that the award though existing in fact does not exist in law for want of registration and stamp but granted liberty to the parties to seek declaration if they had acted upon the same.
- 28.** It is further submitted that a Civil Revision No. 216 of 1966 was preferred before the High Court of Madhya Pradesh at Jabalpur which, vide judgment dated 24.11.1967, categorically observed that even if the award was invalid, if the parties had acted upon it and were in separate possession by mutual consent, such possession and subsequent conduct could be recognized and determined in an appropriate suit. It is submitted that during the pendency of the Civil Suit, the issue of maintainability was decided by the Trial Court vide order dated 15.07.1980 wherein the suit was held to be tenable. The said finding attained finality as it was never challenged. It is further submitted that the law is now well settled that a family arrangement or partition acted upon by parties does not require compulsory registration if it merely records pre existing rights. Reliance is placed



upon the law laid down by the Supreme Court in ***Kashinathsa Yamosa Kabadi vs Narsinga Bhaskarsa Kabadi AIR 1961 SC 1077***, it has been held that where parties have voluntarily accepted and acted upon an award or settlement, subsequent conduct becomes binding and a plea based upon such conduct is maintainable. Reliance has been placed upon the law laid down by the Hon'ble Supreme Court in ***Sardar Singh vs Krishna Devi (1994) 4 SCC 18*** and ***Kale vs Dy. Director of Consolidation (1976) 3 SCC 119*** wherein it has been held that such arrangements are to be upheld when acted upon for maintaining peace and preserving family property.

29. It is further submitted that the Appellants themselves and their predecessor had admitted the execution and act upon the partition in earlier proceedings. Such admissions constitute the best evidence in view of the law laid down in ***Nagindas Ramdas vs Dalpatram Ichharam AIR 1974 SC 471*** and ***Thimmappa Rai vs Ramanna Rai (2007) 14 SCC 63***. Further, admissions made in pleadings in prior proceedings are admissible in subsequent proceedings as held in ***Basant Singh vs Janki Singh AIR 1967 SC 341***.
30. It is further submitted that once Defendant No. 4 had admitted the partition and acted upon it, the present Appellants stepping into his shoes cannot be permitted to take a contrary stand. The learned Trial Court, after appreciating oral and documentary evidence, returned findings of fact holding that the parties had acted upon the partition and were in separate possession of their respective shares.



These findings are based on preponderance of probability and admissions on record. It is settled law that admissions are substantive evidence and can be relied upon for determination of rights. It is lastly submitted that the present appeal does not demonstrate any perversity or material illegality in the findings recorded by the learned Trial Court warranting interference under Section 96 CPC, therefore, the Judgment and Decree dated 14.12.2018 does not call for interference and the present First Appeal deserves to be dismissed.

- 31.** I have heard learned counsel for the parties and perused the record”, the issues that arise for consideration in the present First Appeal, upon analysis of the pleadings, evidence, earlier proceedings, and the legal position emerging from the orders of various courts, the only necessary issues, in light of the law laid down by the Hon’ble Supreme Court and the binding effect of earlier proceedings, which arise for determination in the present First Appeal are as follows:

1. Whether retrial is necessary and the case is liable to be remanded for afresh adjudication under Order 41 Rule 23 or Rule 23A CPC, 1908?
2. Whether, despite the award dated 21.12.1963 being held invalid for want of registration, the subsequent conduct of the parties and the family arrangement acted upon by them could form the basis of declaration of rights?

- 32.** Brief facts as reflected from the records of Civil Suit No 17-A/1976 are that the original civil suit was filed in the month of March, 1976



before the learned trial Court, by the plaintiff for declaration and injunction mainly contending that;

a) The plaintiffs and the defendants are members of joint Hindu family and governed by Hindu law. The plaintiff has also described its genealogy of the family in the plaint. They are running a registered firm in the name and style of Dhanraj-Dwarikadas which was funded by all the parties. The property purchased through the nucleus of the firm was purchased in the name of Dhanraj-Dwarikdas or sometimes in the name of any partner or in the name legal heirs in which all the five partners of the firm namely Dhanraj, Dwarkadas, Madanlal, Prakashchand and Kishanlal were equally share of 1/5th and this joint family continued upto 21-12-1963. The details of the joint property have been mentioned in the schedule A, B, & C of the plaint.

b) Due to dispute in the family, Dhanraj, Dwarkadas, Madanlal, Prakashchand and Kishanlal have decided to dissolve the firm and decided to go for partition. Accordingly, one Ramkumar Maskara and Dhanshyam Agrawl were appointed as Punch who have given their award on 21-12-1963. Accordingly the properties were dissolved. Details of the property which have been given to the partners have been described in Schedule "D" of the plaint. As per partition, the property which was in possession of the person has been given to them and for settling the sales tax and income tax some property was



kept separately which has been mentioned in Schedule “A” of the plaint. The business which was dissolved has been described in Scheduled “C” of the plaint.

c) All the five shareholders have accepted the agreement dated 21-12-1963 and accordingly, list of partition was also prepared. Accordingly, all the five shareholders were in possession of the property, according to their convenience they have made alteration to it or houses have been constructed which have been described in Schedule “B” and it was given on rent by themselves also. They have also recorded different names in the Patwari record, have also sold some of the property which was fallen in their share and they started new business.

d) In the year 1965 Dwarkadas moved an application under Section 33 of Arbitration Act, 1940 for cancellation of arbitration award which was registered as case No. 3 of 1965 in which Madanlal, Kisanlal and Prakash Chand stated that the partition has taken place and they are in possession of the property and same reply was given by Dhanraj but Dwarkadas has not accepted the same and has denied the separate possession. Learned District Judge vide its judgment dated 21-1-1966 canceled the arbitration award on the count that it has not been properly stamped, but has approved the agreement. Being aggrieved with that order, a revision was preferred by Dhanraj, Madanlal, Kishanlal S/o Prakashchand which was registered as Civil



Revision No. 216 of 1966 and the same has been dismissed on 24-11-1967.

e) After order passed by the High Court, the shareholders are in possession of the respective shares of the property and were doing their separate business and no one has moved any application for cancellation of partition as it was accepted to all. It is further contended that Bajrang Talkies Champa was fallen in the share of Dhanraj and he has paid the tax and from the income Dhanraj has constructed three godowns. It has also been contended that apart from three godowns one house near to the railway station was also fallen in the share of Dhanraj which he sold. It has also been contended that 1/5th share of family house has also been given to Dhanraj and at Korba also Dhanraj was given three houses in his share from where he started taking rent.

f) It is also case of the plaintiff that the defendant No. 3 Dwarkadas has got 12 houses at Korba and 1/4th share in Maruti Rice Mill at Champa and started quarreling with the plaintiff along with defendants and also started selling the property causing loss to them which necessitated them to file a civil suit, therefore, they prayed that the plaintiffs are entitled to get share of the property mentioned in the Schedule "D" of the plaint and the defendants be restrained from interfering in the peaceful possession of the property. It is also the case of the plaintiff that Dwarikadas has taken



the recourse of revenue proceeding which is pending from the date of filing of the suit.

33. The defendants No. 1, 2 and 6 have filed their written statement denying averments made in the plaint mainly contending that;

a) Dhanraj was not the partner of firm Dwarkadas and he is doing his business separately. It has been contended that the property described in Schedule "A, B and C" were not related to joint family, but only some property relates to Dhanraj. It has been admitted by them that the award was passed by the Arbitrator on 21-12-1963, but this award was not accepted by Dwarkadas, therefore, he has not executed the same. It is also denied that all the shareholders are in possession of the property as per the award and they have made any change to it. It was further contended that the firm has self acquired properties which were not divided and therefore, a dispute is arisen. It was also denied that Dwarkadas has not moved any application for setting aside the arbitration award and same was set aside by the Court. Against that order he has preferred revision which was dismissed on 24.11.1967. It has been specifically contended that no observation regarding possession of the property by respective shareholders was made either by the trial court or by the High Court. It has been further contended that the plaintiffs No. 1 and 2 have sold the materials of firm Dhanraj Dwarkadas and have kept Rs.5,00,000/- with them. Thereafter, on 01-07-1975 they



have constituted new firm namely Dhanraj Kisanlal and continued with the same business causing loss to the defendant Dwarkadas. It has been further contended that firm Dhanraj Dwarkadas has to pay lot of tax. It is also contended that the plaintiff with intent to harass Dwarkadas informed Tahsildar that tax liability on the firm can be recovered after selling of the property namely godowns and Maruti Rice Mill at Champa. It has been further contended that the plaintiffs have sold some property without obtaining consent from other shareholders. It has also been contended that the award is not acceptable to all the parties. They are in possession of the property which they were in possession prior to the passing of award by the Arbitrator.

b) It has also been contended that Dhanraj and Dwarkadas started harassing other family members showing their right over the entire family property. As such, no partition has taken place which has caused dispute between the family members. It has also been contended that the plaintiff should have proceeded in accordance with the arbitration law to execute the arbitration award, as such also the civil suit in the form of declaration and partition is not tenable and would pray for dismissal of the suit.

- 34.** The defendants No. 3 and 4 have filed separate written statement mainly denying the existence of arbitration award and also stated that neither the said award has been enforced nor the court



recognized the same, as such it has no value in eyes of law. It has also been contended that the plaintiffs despite the illegal order have made an attempt to enforce the same by adopting illegal modes which have been objected by them. It has also been contended that since the arbitration award has been set aside by the court, therefore, the *lis* has lost its significance. It has been further contended that there is no partition in the eye of law, therefore, question of cancellation does not arise and would pray for dismissal of the suit. It has also been stated that the firm is still in existence and the defendant Bagwandas was not taking rent of the property as he was minor, therefore, Dwarkadas was taking the rent of the property being guardian. It has been contended that the firm does not belong to joint Hindu family as it is a registered firm, as such firm is necessary party to the case, as such the defendants No. 3 and 4 prayed for dismissal of the suit.

- 35.** Defendant No. 5 has filed separate written statement denying the averments made in the plaint specifically stated that the partition has never been enforced and since the award has already been set aside by the High Court, therefore, the schedule which is part of the award has also lost its significance and prayed for dismissal of the suit. It is further contended that Dhanraj and Dwarkadas have transferred the land bearing Khasra No 479/49, 479/29 through registered gift deed in 1970. It is further contended that late Dhanraj and Dwarkadas s/o. Janki Das have given the land to Bhagwandas through registered gift deed land bearing Khasra No 493/13, 194/103 and Khasra No 497/10 have also been transferred to



Bhawandas. It is further contended that the defendant Bhagwandas s/o. Dwarkadas in the year 1967-69 was owner of the land and without any registration the land cannot be transferred. It has been further contended that the land bearing Khasra No. 732/10 is self acquired property which has been sold to Abdul Rahman and after that he is in possession of the said property, as such the said purchaser is necessary party which has not been arrayed as party in this case and would pray for dismissal of the suit.

- 36.** Thereafter on the pleadings of the parties, the learned trial Court has framed the following issues No. 01 to 06 on 15.12.2003 and additional issues No. 7 and 8 on 15.02.2007.

“1” क्या वाद पत्र के साथ संलग्न शेड्यूल अ,ब एवं स में बताई गई सम्पत्ति धनराज, द्वारिकादास, मदनलाल, प्रकाशचंद्र एवं किसन लाल की शामिल शरीक सम्पत्ति थी?

“2” अ- क्या उक्त पक्षकारों को पंच फैसले में वाद पत्र के साथ संलग्न शेड्यूल ड के अनुसार सम्पत्ति बंटवारे में मिला था?

ब- क्या पंच फैसले में बताई गई बंटवारे की फेहरिस्त को पक्षकारगण द्वारा मान्य किया गया था तथा वे अपने-अपने हिस्से में काबिज हुये थे?

“3” क्या वादीगण वाद पत्र के साथ संलग्न शेड्यूल “ड” में वर्णित सम्पत्ति के स्वामी एवं आधिपत्यधारी हैं? यदि हां तो प्रभाव ।

“4” क्या वाद पत्र के साथ संलग्न शेड्यूल “क” में वर्णित सम्पत्ति शामिल शरीक सम्पत्ति है तथा पंच फैसला में



उसे टैक्स संबंधी दायित्वों की अदायगी हेतु रखा गया था?

“5” क्या वादीगण याचित स्थायी निषेधाज्ञा का अनुतोष प्राप्त करने के अधिकारी हैं?

“6” सहायता एवं व्यय?

“7” क्या वादग्रस्त जमीन में से सर्वे नंबर 497/49 रकबा 0.50 एकड़ सर्वे नंबर 497/29 रकबा 0.08 एकड़ दि० 18.4.70 के अभिकथित बख्शीशनामा द्वारा धनराज एवं द्वारिकादास द्वारा प्रतिवादी क्र० 5 भगवानदास को अन्य वारिसानों के साथ दिया गया था?

“8” क्या वादग्रस्त संपत्ति में से सर्वेनंबर 493/13 का टुकड़ा 0.50 एकड़ तथा सर्वेनंबर 493/106 रकबा 0.25 एकड़ को दिनांक 03.03.1970 की अभिकथित बख्शीशनामा के द्वारा धनराज एवं द्वारिका दास ने प्रतिवादी क्र० 5 भगवानदास को राजकुमार के साथ एवं सर्वेनंबर 497/10 रकबा 0.16 एकड़ की जमीन को प्रतिवादी क्र० 5 भगवानदास एवं सुशील कुमार को दिया गया था?

37. To substantiate their submissions, the plaintiffs have examined the witnesses namely Kisanlal Modi (PW/1), Pramod Yadav (PW/2), Ghanshyam Mishraaa (PW/3), Lalit Yadav (PW/4), Bhupendra Mishra (PW/5), Ramnarayan Tamboli (PW/6), Bhupendra Upadhyay (PW/7), Santosh Kumar Panikar (PW/8), B.P. Modi(PW/9), Ashok Kumar Modi (PW/10) and C.S. Sidar (PW/11) and exhibited documents from Ex. P-1 to Ex. P-217. To substantiate their stand,



respondents/defendants have exhibited the documents from Ex. D-1 to Ex. D-67) and two defence witnesses were examined.

- 38.** The suit having been instituted in the year 1976 and registered as Civil Suit No. 15-A/1976. It is noted that on 04.03.1993, an incident of fire occurred in the District Court, Korba, wherein the court records were burnt after some unknown person broke open the door and set the files on fire. Consequently, vide order dated 13.03.1996, directions were issued for reconstruction of the record, and thereafter the case proceeded on the basis of the reconstructed file. Upon appreciation of the evidence and material available on record, the learned trial Court passed the impugned judgment and decree dated 14.12.2018, whereby the suit was decreed holding that plaintiff No. 2 shall be the owner of the property in terms of the partition dated 21.12.1963 with respect to the property described in Schedule 'D' of the plaint, except the property bearing Khasra No. 732/1, which remained subject to the judgment and decree passed by the learned Civil Judge Class I and Class IV. It was further directed that plaintiff Kisanlal shall be declared as the title holder of the property described in Schedule 'D' in accordance with the said partition dated 21.12.1963. Additionally, it was held that Prakash Chand shall be declared as the title holder of the property, except Khasra No. 732/1, and the property left in favour of Kisanlal as described in Schedule 'D', in which the defendants were restrained from causing any interference. The learned trial Court also declared that the property described in Schedule 'A' shall remain reserved for reimbursement of the tax liability of the firm Dhanraj Dwarkadas,



and the property mentioned in Schedule 'D' annexed with the plaint shall form part of the share of Prakash Chand and Kisanlal, while the property mentioned in Schedule 'A' shall also form part of the decree. However, the learned trial Court did not grant any decree of partition.

- 39.** The judgment & order rendered by this Court on 27/01/2025 was thereafter assailed before the Hon'ble Supreme Court by way of Special Leave Petition (Civil) Nos. 7114–7115 of 2025. The relevant operative portion of the order passed by the Hon'ble Supreme Court is reproduced hereinbelow:-

“1. Having heard learned senior counsel for the parties, we are of the considered view that interest of justice would be best met, more so when the order of abatement ought to have been set aside and legal heirs of the deceased petitioner brought on record, with the disposal of the present petitions in the following terms:-

(a) The order of the abatement qua deceased-Madan Lal Modi, who died on 11.04.1992 is set aside. His legal representatives, respondents Nos.1 to 10 in F.A. No. 03/2023 would stand substituted as plaintiffs.

(b) Having regard to the order dated 09.08.2024, whereby the Court had fixed the next date of hearing as 06.09.2024, when the matter was adjourned, we set aside the common impugned



orders dated 05.12.2024 and 27.01.2025 passed in First Appeal No.206/2019 and F.A. No.03/2023 by the High Court of Chhattisgarh. As such the appeals are restored to their original number and position, with the legal heirs being brought on record.

2. We direct all the parties to appear before the High Court on 27th June, 2025. We request the High Court to take up the appeals and decide on the same expeditiously and, preferably, within a period of three months. Needless to add, the parties shall not take any unnecessary adjournment.

3. All the contentions of the respective parties are left open, should they desire, to be raised before the appropriate forum, to be decided in accordance with law.

4. Pending applications, if any, shall stand disposed of,"

Finding and Conclusion on both the issues:-

- 40.** It is not in dispute that during the pendency of proceedings, Late Madan Lal Modi expired and the matter, to the extent of his interest, stood abated by the finding given by the trial Court.
- 41.** The abatement thus resulted in an incomplete and ineffective adjudication of the rights arising out of the partition in question. The Hon'ble Supreme Court, in SLP (C) Nos. 7114-7115 of 2025, while setting aside the order of abatement and restoring the appeals, has



categorically directed that the matter be decided afresh after bringing the legal representatives on record.

- 42.** As per Ex. P/1 partition deed executed on 21/12/1963 and as per Ex. P/2, P/3, P/4, P/5 & P/7 show that these are the copy of share of Kishan Lal Modi, Dhanraj, Dwarika, Madanlal and Prakash Chand. As per partition deed dated 21/12/1963 and as per Ex. P/8 Dhanraj, Dwarika, Prakash had accepted the partition and consent was given for forming separate firm on 30/06/1964. The partition list is mentioned in Ex. P/138. It is also pertinent to mention here that as per partition deed dated 21/12/1963 all the parties appeared before the Court of Land Revenue Records, Korba, based on the partition, names of the respective individuals were duly mutated in the land records as per Ex. P-34 & P/38.
- 43.** Therefore, it is crystal clear that the parties have acted upon the partition including Late Madan Lal Modi and Madan Lal Modi share was mentioned in Ex. P/36 dated 24/01/1964. Thereafter, Adhikhar Abhilekha was updated in the name of the parties which shows that Ex. P-175 to 179. The share of Madan Lal was also in the document Ex. P/175 dated 27/07/1965 at that time Madan Lal Modi was alive. It is also pertinent to mention here that Late Madan Lal Modi had sold two properties i.e. Khasra No.493/13, area 3 acres and Khasra No.497/49, area 0.50 acres from his share through separate registered sale deeds dated 12/05/1968 vide Ex. P/170. Therefore, the material on record, including earlier pleadings and conduct, demonstrates that the parties had acted upon the partition and were in possession of their respective shares. However, in



absence of adjudication of the share of Late Madan Lal Modi owing to abatement, the foundational determination of rights remained incomplete. The restoration is not merely procedural but goes to the root of adjudication, as the rights of a necessary party could not earlier be determined as to what portion of the land has been given in partition to Madan Lal has still not been determined by the trial Court. However, Madan Lal Modi and other witnesses have admitted the fact that the partition was acted upon and shares were also allocated. The main ground raised by the legal heirs of Madan Lal Modi is that the Schedule has been changed after the death of Madan Lal Modi. On perusal of record it is found that the counsel for the other plaintiffs have filed the Schedule before the trial Court and application under Order 6 Rule 17 CPC for correction of Khasra number and area has also been filed by the counsel for the plaintiffs on 04/12/2017 but before filing of the said application Madan Lal has died on 11/04/1992 and the application was allowed on 04/01/2018 and by that time the the suit was abated qua the legal heirs of Madan Lal Modi, therefore, the effective determination could not be done. The effect of such non-adjudication is substantive and not merely procedural.

- 44.** The abatement having been set aside by the Hon'ble Supreme Court, therefore, this Court is of the considered view that the rights flowing from the share of the deceased stakeholder had remained un-adjudicated on account of abatement and, therefore, a complete and effective determination of the subject matter of the suit could not be undertaken earlier.



45. Once the Hon'ble Supreme Court has restored the proceedings to enable full and effective determination, this Court cannot proceed to conclusively determine the inter se rights of the parties without first ensuring adjudication of the share of the deceased stakeholder through his legal representatives.
46. The Hon'ble Supreme Court in the matter of ***Rangubai Kom Sankar Jagtap Vs. Sunderbai Bhratar Sakharam Jedhe and Others {AIR 1965 SC 1794} (V 52 C 306)*** has held thus in para 9 which is reproduced hereinbelow:-

"9) Let us now consider the question on principle. A combined reading of Order XXII, R. 3, 4 and 11, of the Code of Civil Procedure shows that the doctrine of abatement applies equally to a suit as well as to an appeal. In the application of the said R. 3 and 4 to an appeal, instead of "plaintiff" and "defendant", "appellant" and "respondent" have to be read in those rules. Prima facie, therefore, if a respondent dies and his legal representatives are not brought on record within the prescribed time, the appeal abates as against the respondent under R. 4, read with R. 11, of O. XXII of the Code of Civil Procedure. But there is another principle recognized by the Judicial Committee in the aforesaid decision which softens the rigour of this rule. The said principle is that if the legal representatives are brought on record within the prescribed time at one stage of the suit, it will enure for the benefit of all the subsequent stages of the suit. The application of this principle to



different situations will help to answer the problem presented in the present case. (1) A filed a suit against B for the recovery of possession and mesne profits. After the issues were framed, B died. At the stage of an interlocutory application for production of documents, the legal representatives of B were brought on record within the time prescribed. The order bringing them enure for the benefit of the entire suit. (2) The suit was decreed and an appeal was filed in the High Court and was pending therein. The defendant died and his legal representatives were brought on record. The suit was subsequently remanded to the trial Court. The order bringing the legal representatives on record in the appeal would enure for the further stages of the suit. (3) An appeal was filed against an interlocutory order made in a suit. Pending the appeal the defendant died and his legal representatives were brought on record. The appeal was dismissed. The appeal being a continuation or a stage of the suit, the order bringing the legal representatives on record would enure for the subsequent stages of the suit. This would be so whether in the appeal the trial Court's order was confirmed, modified or reversed. In the above 3 illustrations one fact is common, namely, the order bringing on record the legal representatives was made at one stage of the suit, be it in the suit or in an appeal against the interlocutory order or final order made in the suit, for an appeal is only a continuation of the suit.



Whether the appellate order confirms that of the first Court, modifies or reverses it, it replaces or substitutes the order appealed against. It takes its place in the suit and becomes a part of it. It is as it were the suit was brought to the appellate Court at one stage and the orders made therein were made in the suit itself. Therefore, that order enures for the subsequent stages of the suit.”

47. Further the Hon’ble Supreme Court in the matter of ***Mithailal Dalsangar Singh and Others Vs. Annabai Devram Kini and Others {(2003) 10 SCC 691}*** has held thus in paras 8 & 10 which are reproduced hereinbelow:-

“8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the



suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

10. In the present case, the learned trial Judge found sufficient cause for condonation of delay in moving the application and such finding having been reasonably arrived at and based on the material available, was not open for interference by the Division Bench. In fact, the Division Bench has not even reversed that finding; rather the Division Bench has proceeded on the reasoning that the suit filed by three plaintiffs having abated in its entirety by reason of the death of one of the plaintiffs, and then the fact that no prayer was made by the two surviving plaintiffs as also by the legal representatives of the deceased plaintiff for setting aside of the abatement in its entirety, the suit could not have been revived. In our opinion, such an approach adopted by the Division Bench verges on too fine a technicality and results in



injustice being done. There was no order in writing passed by the court dismissing the entire suit as having abated. The suit has been treated by the Division Bench to have abated in its entirety by operation of law. For a period of ninety days from the date of death of any party the suit remains in a state of suspended animation. And then it abates. The converse would also logically follow. Once the prayer made by the legal representatives of the deceased plaintiff for setting aside the abatement as regards the deceased plaintiff was allowed, and the legal representatives of the deceased plaintiff came on record, the constitution of the suit was rendered good; it revived and the abatement of the suit would be deemed to have been set aside in its entirety even though there was no specific prayer made and no specific order of the court passed in that behalf.”

- 48.** In view of the aforesaid settled position of law and the specific direction issued by the Hon’ble Supreme Court restoring the proceedings after setting aside the abatement, it is evident that the adjudication rendered earlier without determination of the share and entitlement of Late Madan Lal Modi was incomplete. Once the abatement stood set aside and his legal representatives were brought on record, the matter necessarily required a fresh and effective adjudication qua his rights, as the same has a direct bearing on the inter se entitlement of all parties.
- 49.** It is pertinent to mention here that the Code of Civil Procedure empowers the appellate Court to pass an order of remand in the



following situations and these situations are covered by Order 41 Rule 23, Order 41 Rule 23-A and Order 41 Rule 25 CPC.

23. Remand of case by Appellate Court.-Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases.- Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

25. Whether appellate court may frame issues and refer them for trial to court whose decree appealed from.- where the court from whose decree the appeal is preferred has omitted to frame or try



any issue, or to determine any question of fact, which appears to the appellate court essential to the right decision of the suit upon the merits, the appellate court may, if necessary, frame issues, and refer the same for trial to the court from whose decree the appeal is preferred, and in such case shall direct such court to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the appellate court together with its findings thereon and the reasons therefor within such time as may be fixed by the appellate court or extended by it from time to time.

- 50.** Order 41 Rule 23 CPC provides that where the trial Court has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate Court may remand the case. Order 41 Rule 23-A CPC provides that where the trial Court has disposed of the suit otherwise than on a preliminary point and the decree is reversed in appeal and a retrial is considered necessary, the appellate Court shall have the same powers as it has under Rule 23. Order 41 Rule 25 CPC empowers the appellate Court to frame issues and refer them to the trial Court for determination.
- 51.** On a bare perusal of the above provisions it is crystal clear that the power of remand is not to be exercised routinely and the appellate Court must examine whether the conditions contemplated under the aforesaid provisions are satisfied. The Hon'ble Supreme Court has repeatedly held that remand should not be ordered mechanically



and that the appellate Court should normally decide the appeal itself unless the circumstances of the case make a retrial necessary in the interest of justice.

52. Order 41 Rule 23A of the CPC has been inserted in the Code by Act 104 of 1976 w.e.f. 01/02/1977. Prior to the enactment of the Rule by the amendment, in Rule 23 an order of remand could be passed only on the reversal of the decree disposing of the suit on a preliminary point, yet in other case also the appellate Court has inherent power to remand the case for retrial of the case, when the appellate Court considers it necessary, in the interest of justice, to do so. Under the amending Rule 23A CPC, a suit may be remanded to the trial Court even though such court has disposed of the case on merits and not merely on preliminary point. The ingredients of Rule 23A CPC are as under:-

- (i) the trial Court has disposed of the suit on merits.
- (ii) the decree is reversed in appeal.
- (iii) the appellate Court considers that the retrial is necessary.

53. Thus, with the above conditions being satisfied, the appellate Court can exercise same power of remand under Order 41 Rule 23A CPC.

54. It is also pertinent to mention here that under this Rule only in exceptional circumstances, the Court may exercise the power of remand dehors the Rule 23 and 23A of the CPC. It is also important fact that the order of remand under the Rule 23A of the CPC would be passed only when the decision of the trial Court is wrong and when it is necessary to reverse the order setting aside the decree. Therefore, the necessary conclusion means that the appellate Court has to consider the evidence on record and then to arrive at a



conclusion whether a finding recorded by the trial Court cannot be supported on evidence on record.

55. In *P. Purushottam Reddy and another v. Pratap Steels Limited (2002) 2 SCC 686*, the Hon'ble Supreme Court has explained the scope of remand and has held thus in para 10 & 11 as under:

“10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23-A in Order 41 of the Code of Civil Procedure by the CPC Amendment Act, 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand inasmuch as the subordinate court can try only such issues as are referred to it for trial and having done so, the evidence recorded, together with findings and reasons therefor of the trial court, are required to be returned to the appellate court. However, still it was a settled position of law before the 1976 Amendment that the court, in an appropriate case could exercise its inherent



jurisdiction under Section 151 CPC to order a remand if such a remand was considered pre-eminently necessary *ex debito justitiae*, though not covered by any specific provision of Order 41 CPC. In cases where additional evidence is required to be taken in the event of any one of the clauses of sub-rule (1) of Rule 27 being attracted, such additional evidence, oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23-A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23-A as it is under Rule 23. After the amendment, all the cases of wholesale remand are covered by Rules 23 and 23-A. In view of the express provisions of these Rules, the High Court cannot have recourse to its inherent powers to make a remand because, as held in *Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati* (AIR at p. 399), it is well settled that inherent powers can be availed of *ex debito justitiae* only in the absence of express provisions in the Code. It is only in exceptional cases where the court may



now exercise the power of remand dehors Rules 23 and 23-

A. To wit, the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 41 Rule 31 CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for rewriting the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided.

11. In the case at hand, the trial court did not dispose of the suit upon a preliminary point. The suit was decided by recording findings on all the issues. By its appellate judgment under appeal herein, the High Court has recorded its finding on some of the issues, not preliminary, and then framed three additional issues leaving them to be tried and decided by the trial court. It is not a case where a retrial is considered necessary. Neither Rule 23 nor Rule 23-A of Order 41 applies. None of the conditions contemplated by Rule 27 exists so as to justify production of additional evidence by either party under that Rule. The validity of remand has to be tested by reference to Rule 25. So far as the objection as to maintainability of the suit for failure of the plaintiff to satisfy the requirement of Forms 47 and 48 of



Appendix A CPC is concerned, the High Court has itself found that there was no specific plea taken in the written statement. The question of framing an issue did not, therefore, arise. However, the plea was raised on behalf of the defendants purely as a question of law which, in their submission, strikes at the very root of the right of the plaintiff to maintain the suit in the form in which it was filed and so the plea was permitted to be urged. So far as the plea as to readiness and willingness by reference to clause (c) of Section 16 of the Specific Relief Act, 1963 is concerned, the pleadings are there as they were and the question of improving upon the pleadings does not arise inasmuch as neither any of the parties made a prayer for amendment in the pleadings nor has the High Court allowed such a liberty. It is true that a specific issue was not framed by the trial court. Nevertheless, the parties and the trial court were very much alive to the issue whether Section 16(c) of the Specific Relief Act was complied with or not and the contentions advanced by the parties in this regard were also adjudicated upon. The High Court was to examine whether such finding of the trial court was sustainable or not in law and on facts. Even otherwise the question could have been gone into by the High Court and a finding could have been recorded on the available material inasmuch as the High Court being the court of first appeal, all the questions



of fact and law arising in the case were open before it for consideration and decision.”

56. Further, in ***Municipal Corporation, Hyderabad v. Sunder Singh {J.T. 2008 (7) SC 247}***, while considering the scope of Order 41 Rule 23 CPC, the Hon’ble Supreme Court has held thus in para 11 as under:

“11. It is now well settled that before invoking the said provision, the conditions precedent laid down therein must be satisfied. It is further well settled that the Court should loathe to exercise its power in terms of Order XLI Rule 23 of the code of Civil Procedure and an order of remand should not be passed routinely. It is not to be exercised by the appellate court only because it finds it difficult to deal with the entire matter. If it does not agree with the decision of the trial court, it has to come with a proper finding of its own. The Appellate Court cannot shirk its duties.”

57. Similarly, in ***Ashwinkumar K. Patel v. Upendra J. Patel and others {AIR 1999 SC 1125}***, the Hon’ble Supreme Court has held that the Appellate Court should not ordinarily remand a case under Order 41 Rule 23 of CPC, as such, remand orders lead to unnecessary delay and cause prejudice to the parties and Appellate Court should itself consider material available and should decide the appeal one way or other. It was held thus in para 7 as under:

“7. In our view, the High Court should not ordinarily remand a case under Order 41, Rule 23, C.P.C. to the lower Court merely because it considered that the reasoning of the



lower Court in some respects was wrong. Such remand orders leads to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one-way or other. It could have considered the various aspects of the case mentioned in the order of the trial Court and considered whether the order of the trial Court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima-facie case on the material available. In matters involving agreements of 1980 (and 1996) on the one hand and an agreement of 1991 on the other, as in this case, such remand orders would lead to further delay and uncertainty. We are, therefore, of the view that the remand by the High Court was not necessary.”

- 58.** Now keeping in view the requirements of Order 41 Rule 23-A CPC and law laid down by the Hon’ble Supreme Court, this Court examined the legality and correctness of the impugned judgment of the first appellate court. In the present case the trial Court has disposed of the suit on its merits by recording the evidence on all the issues and not on the preliminary point.
- 59.** Thus, from the aforesaid decisions it is clear that although the power of remand exists, such power must be exercised cautiously and only where the circumstances of the case make a retrial necessary.
- 60.** The trial Court has passed the order on 20/12/2016 dismissed the application filed by the legal heirs of late Madan Lal Modi under



Order 22 Rule 9 (2) read with Section 151 of the CPC and Section 5 of the Limitation Act to bring the legal representatives on record on the ground that Madan Lal Modi has expired on 11.04.1992 and his legal representative could not move the application within limitation, as such the trial Court has abated the suit against him.

- 61.** It is an admitted fact that during the pendency of the civil suit, plaintiff No.1 Madan Lal Modi has expired on 11.04.1992 at that time the suit was abated by the trial Court. In the absence of representation of Madan Lal Modi, plaintiffs No.3 A to 3C have filed the application under Order 6 Rule 17 CPC for amendment in the plaint. The application filed under Order 6 Rule 17 CPC is reproduced hereinbelow:-

2- यह कि वाद के अवलोकन से वादीगण को यह जानकारी हुई की वाद के पुर्नगठन के समय जो वाद पत्र की प्रति पेश की गई है और बाद में वादीगण द्वारा वाद पत्र की प्रमाणित प्रतिलिपि वर्ष 1976 को जो पेश किया गया है उसमें कुछ लिपिकीय त्रुटि है जिसे वादीगण अपना संशोधन आवेदन के माध्यम से सुधार करना चाहते हैं।

3- यह कि वादीगण अपने दावा के अभिवचन के साथ संलग्न शेड्यूल में निम्नानुसार संशोधन समाविष्ट करना चाहते हैं।

अ) यह कि शेड्यूल अ में जहाँ खसरा नं. 433/6 है उसे 439/6 एवं 497/16 के स्थान पर 497/10 एवं 826 के स्थान पर 839 कुल रकबा 8.38 के स्थान पर 8.43 किया जावे इसी तरह उक्त शेड्यूल में 1091/3 के जगह 1094/3, 1099 की जगह 1095, 1144/1 ख को घ किया जावे तथा ग को अ लिखा जावे एवं 497/25 के स्थान पर 497/29 तथा 732/5 रकबा 0.15 के स्थान पर 0.11 लिखा जावे तथा 0.



14 को विलुप्त करते हुए 732/6 के रकबा 0.20 को 0.10 एवं 0.70 को 0.73 तथा 1.50 को 1.29 लिखा जावे।

ब) यह कि शेड्यूल ड में द्वारकादास के हिस्से के खसरा नं. 493/28 को 493/106 पढ़ा जावे।

स) यह कि शेड्यूल ड मदनलाल के हिस्से की खसरा नं. 732/3 को 732/18 एवं 1091/03 को 1094/3 लिखा जावे।

4- यह की उक्त संशोधन से वाद के स्वरूप में किसी भी प्रकार का परिवर्तन नहीं हो रहा है बल्कि वादीगण द्वारा जो लिपिकीय त्रुटि हुई है उसे संशोधन आवेदन के माध्यम से संशोधन करना चाहते हैं।

- 62.** Respondents No.4 A to F have categorically opposed the said application and contended that in the year 1996 the concerned record was burnt. The original plaint was filed in the year 1976 and the schedule which was appended in the said suit in which some changes have been tried to be done. However, the trial Court has allowed the application on 04/01/2018 and before that on account of death of Madan Lal Modi his suit was abated. Therefore, it is crystal clear that at that point of time the legal heirs were not heard.
- 63.** Examining the facts of the present case in the light of the aforesaid principles, it is evident that during the pendency of the civil suit plaintiff No.1 Madan Lal Modi expired on 11.04.1992 and the learned trial Court dismissed the application filed by his legal representatives for setting aside the abatement and consequently the suit stood abated against him. As a result, the legal representatives of late Madan Lal Modi could not participate in the



trial nor could they lead evidence before the learned trial Court, therefore, their legal right was affected.

- 64.** Subsequently, the Hon'ble Supreme Court by order dated 28.04.2025 set aside the abatement qua late Madan Lal Modi and directed that his legal representatives shall stand substituted as plaintiffs. Consequently, the proceedings stand revived to the stage prior to the death of Madan Lal Modi and the legal representatives of the deceased plaintiff are entitled to prosecute the suit on merits.
- 65.** This Court has also examined the evidence available on record, particularly the schedule appended with Exhibit P-137 (1976), the Schedule prepared upon reinstitution in the year 2003 and the subsequent modification dated 06.01.2018, that material variations have occurred in the khasra particulars as well as in the recorded area of the suit lands. Several khasra numbers forming part of the original holding as reflected in the 1976 schedule, such as Khasra Nos. 493/6, 497/10, 839, 1094/3, 1095 and 497/29, are shown in altered form in the later schedules as 433/6, 497/16, 820, 1091/3, 1099 and 457/25 respectively. Likewise, discrepancies are also evident in the 732 series, where both the khasra particulars and the corresponding rakba have undergone variation. Apart from changes in numbering, the total area of the land also reflects inconsistency, the aggregate rakba being 9.68 in the year 1976 schedule, reduced to 8.38 in the year 2003 schedule and subsequently reflected as 8.43 after correction dated 06.01.2018. Further, even in respect of identical khasra numbers appearing in different schedules, variations in rakba are noticeable, indicating internal inconsistency



in the description of the property. Since khasra number and rakba constitute the primary indicia of identity and extent of immovable property, these variations materially affect the identification and situational particulars of the suit land. Such discrepancies cannot be conclusively resolved without a proper evidentiary examination of the revenue record. Accordingly, this Court refrains from returning any final finding on the identity or extent of the land at this stage, leaving the issue open for determination by the learned Trial Court upon remand.

- 66.** Therefore, in the peculiar facts and circumstances of the case and in view of the order passed by the Hon'ble Supreme Court restoring the proceedings qua late Madan Lal Modi. Therefore, in order to ensure that no injustice is caused to any of the parties, and keeping in view the variations appearing in the khasra numbers and description of the property as well as the documents produced by the legal representatives of Late Madan Lal Modi, this Court is of the considered opinion that the controversy requires fresh examination on the basis of evidence and the matter deserves to be adjudicated afresh by the learned trial Court.
- 67.** Accordingly, Issue No.1 is answered in the affirmative and it is held that the matter deserves to be remanded to the learned trial Court for fresh adjudication.
- 68.** In such circumstances, the case squarely falls within the ambit of Order 41 Rule 23-A of the Code of Civil Procedure, which empowers the Appellate Court to remand the matter where retrial is considered necessary notwithstanding disposal of the suit on merits. Since



determination of the share of Late Madan Lal Modi would have a direct bearing on the ultimate rights of the parties and the issues framed in the present appeal, this Court is of the view that remand for limited fresh adjudication is warranted.

- 69.** Since the matter is being remanded for fresh adjudication, in the context of the present dispute, it is also to be examined as to the respective shares and entitlement of the parties in the suit properties, including as to which party is entitled to what portion thereof. The determination regarding allocation and distribution of shares in the suit properties is *per se* connected with the identity, extent and description of the properties and the rights flowing therefrom, which could not be conclusively adjudicated in the absence of complete and proper evidence on record. Issue No. 2 is left open to be determined by the learned trial Court on the basis of the evidence that may be led by the parties.
- 70.** Accordingly, FA No.3 of 2023 is hereby allowed and impugned judgment and decree dated 14.12.2018 is set aside and the suit is remitted back for fresh adjudication. Consequently, FA No.206 of 2019 is disposed of in terms off judgment and decree passed in FA No.3 of 2023. No order as to costs.
- 71.** The Registry is directed to scan the records of the case before sending it back to the trial Court as in earlier occasion the records of the case was burnt.
- 72.** The parties are directed to appear before the learned Trial Court on 04th of May, 2026 without awaiting further notice.



- 73.** The learned Trial Court shall be at liberty to frame additional issues, permit parties to file amendment application as well as application for taking documents on record and lead evidence, if necessary, and adjudicate the matter afresh in accordance with law. Considering that the matter pertains to long pending litigation, the learned Trial Court is requested to decide the matter expeditiously, preferably within a period of Eight months from the date of appearance of the parties.
- 74.** It is directed that the trial Court shall not give unnecessary adjournments and shall conclude the trial on day to day basis and the parties are also directed to co-operate in the trial before the trial Court.
- 75.** Pending applications, if any, shall stand disposed of.
- 76.** A decree be drawn accordingly.

Sd/-

(Arvind Kumar Verma)
JUDGE

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