



2025:CGHC:4699



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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved on 5-12-2024

Delivered on 27-01-2025

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., 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, 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., District : Korba, Chhattisgarh
4. Rakesh Kumar Modi S/o Late Bhishambhar Prasad Modi Aged About 34 Years R/o Rajkamal Stores, Main Road Korba, District Korba Chhattisgarh., 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., 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 ., District : Bilaspur, Chhattisgarh

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versus

1. Prakash Chand Modi (Dead) Through Lrs (A) Raj Kumar Modi, Adopted S/o Prakash Chand Modi Aged About 25 Years R/o Main Road Korba, Tehsil And Post District Korba, Chhattisgarh., District : Korba, Chhattisgarh.



- 1.1 - (B)** Smt. Abhilasha Modi D/o Prakash Chand Modi Aged About 26 Years R/o Main Road Korba, Tehsil And District Korba, Chhattisgarh., District : Korba, Chhattisgarh.
- 1.2 - (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., District : Korba, Chhattisgarh.
- 2.** Kishan Lal Modi (Dead) Through Lrs (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.
- 2.1 - (B)** Sanjay Kumar Modi S/o Late Kishan Lal Modi Aged About 53 Years Occupation Business,r/o Main Road Korba, Tehsil And Post District Korba, Chhattisgarh., District : Korba, Chhattisgarh
- 2.2 - (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., District : Korba, Chhattisgarh.
- 2.3 - (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., District : Raigarh, Chhattisgarh.
- 2.4 - (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., District : Raipur, Chhattisgarh
- 2.5 - (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., District : Raipur, Chhattisgarh
- 2.6 - (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., District : Korba, Chhattisgarh.
- 2.7 - (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., District : Korba, Chhattisgarh
- 2.8 - (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., District : Korba, Chhattisgarh
- 2.9 - (J)** Smt. Manju Agrawal D/o Late Kishanlal Modi Aged About 29 Years W/o Anil Kumar Agrawal, R/o Jawahar Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
- 2.10 - (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 (A) Pawan Agrawal S/o Rekhchand Agrawal Aged About 45 Years R/o Biramitrapur, District Sundergarh Orissa., District : Sundargarh, Orissa.
- 4.1 - (B) Vimla Agrawal D/o Rekhchand Agrawal Aged About 45 Years R/o Biramitrapur, District Sundergarh Orissa., District : Sundargarh, Orissa
- 4.2 - (C) Smt. Prema Agrawal D/o Rekhchand Agrawal Aged About 40 Years W/o Gopal Agrawal R/o Biramitrapur, District Sundergarh, Orissa., District : Sundargarh, Orissa.
- 4.3 - (D) Sushila Agrawal D/o Rekhchand Agrawal Aged About 38 Years R/o Biramitrapur, District Sundergarh, Orissa., District : Sundargarh, Orissa
- 4.4 - (E) Smt. Lalita Agrawal D/o Rekhchand Agrawal Aged About 35 Years R/o Biramitrapur, District Sundergarh, Orissa., District : Sundargarh, Orissa.
- 4.5 - (F) Smt. Santosh Agrawal D/o Rekhchand Agrawal Aged About 33 Years R/o Biramitrapur, District Sundergarh, Orissa., District : Sundargarh, Orissa.
- 4.6 - (G) Smt. Saroj Agrawal D/o Rekhchand Agrawal Aged About 30 Years R/o Biramitrapur, District Sundergarh, Orissa., District : Sundargarh, Orissa.
5. Smt. Madhu Agrawal Wd/o Ramavtar Agrawal R/o Jugal Betel Center, Near Saptdev Temple Main Road Korba, Tahsil Anddistrict Korba Chhattisgarh.
6. Puranchand (Dead) Through Lrs (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.
- 6.1 - (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 (A) Smt. Chanda Devi Wd/o Late Radhe Shyam Modi, Aged About 65 Years Champa, District Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
- 9.1 - (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.
- 9.2 - (C) Pawan Kumar Modi S/o Late Radhe Shyam Modi Aged About 45 Years R/o Champa, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh.
- 9.3 - (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.
- 9.4 - (E) Smt. Sarita Agrawal D/o Late Radhe Shyam Modi Aged About 40 Years W/o Suresh Agrawal, R/o Umra Road, Kharsia, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh.
- 9.5 - (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 Janjgir Champa, Chhattisgarh, 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

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FA No. 3 of 2023

1. Madan Lal Modi (Abated) Through Legal Representatives 1(A) Hari Prasad Modi (Dead) Through Lrs. S/o Madan Lal Modi.
- 1.1 - A(I) Smt. Shakuntala Modi W/o Hari Prasad Modi Aged About 75 Years R/o Main Road, Korba (Chhattisgarh)
- 1.2 - A(Ii) Anand Modi S/o Hari Prasad Modi Aged About 45 Years R/o Main Road, Korba (Chhattisgarh)
- 1.3 - (B) Murli Dhar Modi (Dead) S/o Madan Lal Modi Through Lrs.
- 1.4 - B(I) Govind Modi S/o Murli Dhar Modi Aged About 54 Years R/o Main Road, Korba (Chhattisgarh)
- 1.5 - B(Ii) Rajesh Modi S/o Murli Dhar Modi Aged About 50 Years R/o Main Road, Korba (Chhattisgarh)



- 1.6 - (C) Badri Prasad Modi S/o Madan Lal Modi Aged About 72 Years R/o Main Road, Korba (Chhattisgarh)**
- 1.7 - (D). Kailash Chand Modi, (Died), Through Lrs As Are Honble Court Order Dated 06-09-2024**
- 1.7.1 - (D) (I) Smt. Sharda Modi W/o Late Kailash Chand Modi, Aged About 64 Years R/o Main Road Korba (C.G.)**
- 1.7.2 - (D) (ii) Gopal Modi S/o Late Kailash Chand Modi, Aged About 37 Years R/o Main Road Korba (C.G.)**
- 1.7.3 - (D) (iii) Monika Modi D/o Late Kaikash Chand Modi Aged About 33 Years R/o Main Road Korba (C.G.)**
- 1.7.4 - (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.)**
- 1.8 - E. Santosh Kumar Modi S/o Madan Lal Modi Aged About 62 Years R/o Main Road, Korba (Chhattisgarh)**

--- Appellants.

versus

- 1. Raj Kumar Modi Adoptive Father Shri Prakash Chandra Modi Aged About 58 Years W/o Shri Ganesh Prasad Agrawal, Caste Agrawal, R/o Asharam Govind Ram, Sadar Bazaar Raigarh (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 Santa 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. Bl/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. Bl/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.
- 14.1 - 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.)
- 14.2 - 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.)
- 14.3 - 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.)
- 14.4 - D. 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 (Dead Through Legal Representatives) Widow Shri Rekhchandra, D/o Smt. Laxmi Devi Modi,
- 15.1 - (A) Pawan Agrawal S/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa).
- 15.2 - (B) Vimla Agrawal S/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa)
- 15.3 - (C) Smt. Prema Argawal D/o Shri Rekhachandra Agrawal W/o Shri Gopal Agrawal, R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa)
- 15.4 - (D) Smt. Shuleela Agrawal D/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa)



- 15.5** - (E) Smt. Lalita Agrawal D/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur, Dist. Sundergarh (Orissa)
- 15.6** - (F) Smt. Santosh Agrawal D/o Shri Rekhchandra Agrawal R/o Near Sati Mandir, Birmitrapur Dist. Sundergarh (Orissa)
- 15.7** - (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,
- 16.1** - (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.)
- 16.2** - (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.)
- 16.3** - (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.)
- 16.4** - (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.)
- 16.5** - (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,
- 17.1** - (A) Smt. Chanda Devi W/o Late Shri Radeshyam Modi Aged About 74 Years R/o Champa, District Janjgir (C.G.)
- 17.2** - (B) Anil Kumar Modi S/o Late Shri Radheshyam Modi Aged About 58 Years R/o Champa, District Janjgir (C.G.)
- 17.3** - (C) Pawan Kumar Modi S/o Late Shri Radheshyam Modi Aged About 56 Years R/o Champa, District Janjgir (C.G.)
- 17.4** - (D) Vinod Kumar Modi S/o Late Shri Radheshyam Modi Aged About 51 Years R/o Champa, District Janjgir (C.G.)
- 17.5** - (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.)
- 17.6** - (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
- 18.1** - (A) Bisambhar Lal (Dead Through His Legal Representative) S/o Shri Dwarika Das Aged About 28 Years Nil
- 18.2** - (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.)
- 18.3** - (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.)
- 18.4** - (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.)
- 18.5** - (A)(D) Rakesh Kumar 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.)
- 18.6** - (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.)
- 18.7** - (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.)

--- Respondents

For appellants in FA No.3 of 2023	:	Mr. Ravish Agrawal, Sr. Advocate with Mr. Sankalp Kochar, Mr. Anand Dadariya and Ms. Harneet Kaur, Advocates.
For respondents	:	Mr. J.K. Gilda, Sr. Advocate with Mr. Siddharth Shukla, Manoj Paranjpe, Mr. Ravish Verma, Mr. Prakash tiwari, Mr. Parag Kotecha, Mr. Hari Agrawal, Mr. An,urag Dayal Shrivastava, Mr. Saumya Rai with Mr. Prakash Sethi, Mr. Aman Keshwarwani, Mr. Rishikant Mahobiya and Mr ArpanVerm and Mr. Pushp Kumar Gupta, Advocates.



For appellants in FA No. 206 of 2019	Dr. N.K. Shukla, Sr. Advocate with Ms. Priya Mishra and Mr. Dinesh Kumar Bhole, Advocates.
For respondents	Mr. Ravish Verma, Mr. Parag Kotecha. Mr. Siddharth Shuikla, Mr. Manoj Paranjpe, Mr. Shailendra Bajpai, Mr. Prasoon Kumar Bhaduri, Mr. Hari Agrawal, Mr. Pushp Kumar Gupta, Mr. Rishikant Mahobia and Mr. Prakant Sethi, Advocates.

(Hon'ble Mr. Justice Narendra Kumar Vyas)

CAV Judgment

1. 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.
2. **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.

3. **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.

4. During pendency of the appeal before this Court various interim applications have been filed, since some of the interim applications go to the root of the appeal, therefore, they are being disposed of along with final judgment and decree passed by this Court. The interim applications filed in **FA No. 3/2023** are disposed of in following manner:

A) I.A. Nos. 01 of 2022 and I.A. No. 02 applications seeking leave to file first appeal under Section 96 CPC R/W Order 41 Rule 1 Read with Section 151 of CPC and condonation of delay.

Since both the applications go to the maintainability of the appeal, as such the same shall be considered by this Court at the time of final judgment as the defendants have raised objection with regard to maintainability of the appeal. Accordingly, I.A. No. 1 and 2 are disposed of.

B) I.A. No. 3 under Order 39 Rule 1 and 2 CPC has filed by the appellant.

Since this Court has already granted interim protection in FA No. 206 of 2019, as such it is not required to be decided at this juncture by this Court. Accordingly, I.A. No. 3 of 2022 is disposed of.

C) I.A. No. 04 of 2023 & 07 of 2023 were filed which is for service of notices on defendants No. 2 to 7, 9 to 13 through service of process



on the advocate under Order 3 Rule 3 CPC alternatively through substituted service under Order 5 Rule 20 of the CPC by publication in the daily newspaper where the defendants are residing. This Court on 21.04.2023 has directed service of notice to Respondents No. 2 to 5, 6 to 11, 13, 18 A(a), 18 A(f) through paper publication which is published in the respective places where the defendants are residing as mentioned in the appeal memo. Accordingly, the notice for appearance of these defendants were published on 13.06.2023 Dainik Bhaskar, Times of India Hindi and English editions. Accordingly, paper publication was made and the parties have represented through their respective counsels as reflected in the order dated 21.09.2023. Accordingly, I.A. No. 4 is disposed of.

- D) I.A. No. 5 of 2023 for taking dasti service reports on record. Respondent No. 4(d), 15(a), 15(b), 15(d) to 15(g), 16(a) to 16(d), 18(A) (a) to 18(A)(f) were served notice through Dasti service which was taken on record. Accordingly, I.A. No. 5 is disposed of.
- E) IA No. 6 of 2023, application for modification/correction in the order dated 21.04.2023 was filed. It has lost his significance as the matter is heard finally on 05.12.2024, accordingly, the same is disposed of.
- I.A. No. 08 of 2023 for clarification of order dated 21st June 2023 on behalf of the respondent No. 4. Since this court has already granted status quo as it exists on the date of passing of the order, as such this interim application is not required to be decided by this Court at this stage, accordingly, it is disposed of.



- F) I.A. No. 9 of 2023, application under Section 151 of CPC for stopping and demolition of the illegal construction filed by respondent No. 8. Since this court has already granted status quo, therefore, if there is any breach of interim order which is an injunction, the respondent No. 8 has remedy of filing application under Order 39 Rule 2(A) CPC for breach of injunction, as such the same is disposed of granting liberty to the respondent to take recourse under the provisions of CPC.
- G) I.A. No. 10 of 2023 Application under Order 22 Rule 3 CPC has been filed for substitution of legal heirs of Appellant No. 1d i.e. Kailash Chand Modi. The same has already been allowed and legal representative of deceased appellant Kailash Chand Modi, i.e. Smt. Sharda Modi, Gopal Modi, Monika Modi and Tripti Agrawal were arrayed as 1d(i), 1d(ii), 1d(iii) and 1d(iv). I.A. No. 11 of 2024, application under Order 22 Rule 3 CPC for substitution of legal heirs of plaintiff Madan Lal Modi with I.A. No. 12 of 2024 application under order 22 Rule 9 CPC and I.A. No. 13 of 2024 under Section 5 of the Limitation Act for condonation of delay. These applications are disposed of with observation that the same shall be considered considered by this Court at the time of finally deciding the appeal, as this issue goes to the real controversy between the parties and bone of contentions made by the parties moves around it.
- H) The respondent No. 9 has filed IA No. 14 of 2023 for dismissal of the appeal as the appeal hits by Order 43 Rule 1(K) of the CPC. The contentions made in this application go to the merit of the appeal and detailed argument has already been advanced by the



respective counsel therefore, the applications will be disposed of at the time of final hearing. I.A. No. 15 has been filed by the appellant under order 39 Rule 2-A read with Section 151 of the CrPC for breach of violation of order dated 21.06.2023. The appellant has liberty to file separate application for violation of order passed by this Court on 21.06.2023 under the provisions of CPC, accordingly, this application is disposed of reserving liberty to the appellant to take recourse as per law. I.A. No. 16 of 2024 for vacation of status quo on behalf of the respondent No. 4. Since this court has already fixed the appeal for final disposal in motion hearing, listed on various occasions and now the matter is already reserved for judgment and decree, this application has lost its significance, accordingly it is disposed of.

5. The interim applications filed in **FA No. 206/2019** are disposed of in following manner:

A) I.A. No. 1 of 2019 has been filed by the appellant which is an application under Order 41 Rule 5 of the CPC. Since this Court while hearing the appeal has already granted interim order that in both the cases, no third party interest shall be created by either side till the next date of hearing and the matter is already reserved for judgment, accordingly, IA No. 1/2019 is disposed of.

B) I.A. No 2 of 2019 which is an application for modification of Hon'ble Court order dated 12.09.2019 which has already been rejected on 03.10.2019. I.A. Nos. 3 and 4 of 2019, applications for condonation of delay in filing process fees i.e.. The appellant has paid process fees and respective respondents have already entered appearance,



as such both the applications are disposed of.

- C) I.A. No. 5 of 2020 for grant of temporary injunction. This application is disposed of in terms of order passed by this Court on 02.05.2019 and 25.07.2019. I.A. No. 6/2020, application for urgent hearing. This application has lost its significance, as the cases are reserved for judgment by this Court. Accordingly, I.A. No. 6 of 2020 is disposed of. I.A. No. 7 of 2020 for reviving the interim order dated 02.05.2019. This application has become infructuous in view of subsequent continuation of interim order dated 02.05.2019 and 25.07.2019. This is an application for urgent hearing in the interest of justice i.e. I.A. No. 8 of 2020. This application has become infructuous by efflux of time.
- D) I.A. No. 9 of 2024 Order 22 Rule 4 CPC for substitution of legal heirs of deceased respondent No.3 Smt. Ginni Bai who expired during pendency of the appeal. This application was allowed and notice to the legal heirs of deceased respondent No. 3 was served through Humdast in FA No. 3 of 2023. I.A. No. 10 of 2024 for condonation of delay in paying process fees. This application is allowed as this Court has already directed to pay process fee for service of notice through Humdast. I.A. No. 11 of 2024 under Order 3 Rule 5 CPC. This is an application for service of notice to the respondents through their counsel which was considered and allowed and their counsels have entered appearance. Accordingly, I.A. No. 11 is allowed.
- E) I.A. No. 12 for taking document on record as per compliance of order dated 24.10.2024 service of notice through Hamdast service in FA



No. 03 of 2023 along with FA No. 206 of 2019 both are linked matter. This application is allowed. Notice to Smt. Asha Bansal D/o. Ginni Bai has already been served and legal heirs of late Ginni Bai namely Shiv Agrawal, Smt. Madhu Agrawal, Smt. Abhilasha Modi and Smt. Sangita Agrawal have been served notice but Smt. Meera Goyanka has refused to accept the notice, the same was taken on record.

6. 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
7. The plaintiff has filed suit 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 propert, 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) I 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.
- 8.** 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.



9. 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.
10. 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.

11. During pendency of the civil suit plaintiff No. 1 Madanlal expired on 11.04.1992 and substitution application was dismissed on 17.10.1992 and abated the suit against plaintiff No. 1. Thereafter, on behalf of the plaintiff No.1 an application under Order 6 Rule 17 read with Section 151 of the C.P.C was filed on 27.08.1997. The same was rejected by the learned trial Court on 18.02.1998 by recording its finding that in the application it has not been mentioned that before destruction of record due to fire whether any application was moved by the plaintiffs to bring the legal representatives of the plaintiff No. 1, 3 and defendant No. 1. The trial Court has also recorded its finding that from the perusal of the application, it does not reflect what action they have taken to bring the legal representatives on record even otherwise, the application should have been filed under Order 22 of the C.P.C. accordingly, it has rejected the application under Order 6 Rule 17 read with Section



151 of the C.P.C. The order sheet dated 25.08.1998 would reflect that the parties have also shown their willingness to settle the issue accordingly, the matter was placed before the Lok Adalat on 29.08.1998 but the dispute could not be resolved. Thereafter, the matter was taken up by the Court. The order sheet dated 03.09.1998 reveals that the defendant No. 2 Radheshyam has moved an application for transfer of the case from the trial Court accordingly the trial Court has adjourned the proceedings for obtaining necessary orders from the learned District Judge, Korba. On behalf of defendant No. 4, an application under Order 22 Rule 3 C.P.C. read with Section 151 was filed for bringing the legal representatives on record which was allowed by the trial Court on 01.10.1999.

- 12.** On 09.07.1998, on behalf of legal representatives of the plaintiff No. 1 an application under Order 22 Rule 3 C.P.C. was moved to bring the legal representatives on record. On 14.07.1998, on behalf of legal representatives of plaintiff No. 1 a copy of the application dated 17.10.1992 along with Section 5 of the Limitation Act, its reply, reply of application dated 29.08.1992 submitted by plaintiff- Sanjay Kumar under Order 22 Rule 3 C.P.C. read with Section 151 C.P.C., application dated 09.07.1998 under Order 6 Rule 17 C.P.C. for bringing the legal representatives on record, its reply submitted by defendant No.2 Radheshyam under Section 5 of the Limitation Act and his rebuttal affidavit were filed. The same was provided to all the defendants and matter was fixed on 22.07.1998 for reply and argument. During pendency of this application, an application was



filed under Order 22 Rule 3 C.P.C. read with Section 151 C.P.C. for bringing legal representatives of plaintiff No. 2 on record which was allowed by the trial Court by recording its finding that Prakashchand expired on 22.07.1999 and within limitation the application has been filed. Thereafter, the matter was adjourned for argument on the application dated 09.07.1998 which was filed under Order 22 Rule 3 C.P.C. read with Section 151 C.P.C.. The said application was rejected by the trial Court vide its order dated 07.07.2001 by recording its finding that earlier also the same application has been rejected by the previous presiding officer. The learned trial Court in the same order has allowed the application to bring the legal representatives of defendant No. 3 Laxmi Devi on record. The learned trial Court has partly allowed the application under Order 22 Rule 3 C.P.C. by adding legal representatives of plaintiffs and defendants except of plaintiff – Madanlal.

- 13.** 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 सरीक 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?

- 14.** On 19.02.2004, an application under Order 1 Rule 10 C.P.C. on behalf plaintiff No. 1 was submitted before the trial Court to array his legal representatives as party to the suit. The same was rejected by the trial Court by recording its finding that when the legal representatives of deceased plaintiff could not succeed to bring the legal representatives on record of the case, they have moved this application vexatiously to array them as party to the suit, therefore, dismissed the application with cost of Rs. 250/-. The order sheet of the trial Court further reflects that on 10.04.2007, an application



under Order 1 Rule 10 C.P.C. was moved on behalf of the legal representatives of plaintiff No.1 to array them as party to the case which was rejected by the trial Court on 20.12.2016. Thereafter, application Order 22 Rule 9 (2) read with Section 151 C.P.C. and Section 5 of the Limitation Act was filed on 28.07.2017 to bring the legal representatives on record mainly contending that the plaintiff Madanlal expired on 11.04.1992 and inadvertently his legal representatives could not move application within limitation, as such the trial Court has abated the suit against him on 17.10.1992. It has also been contended that without impleading them the suit cannot be properly decided. It has also been contended that the plaintiff No. 1' son Hari Prasad Modi and Murli expired and Kailash Chand Modi has moved an application which was rejected on 18.01.2003. Therefore, they have moved an application for setting aside the abatement order dated 17.10.1992. The defendant No. 5 has filed reply to the application mainly contending that the order of abatement has not been challenged by the legal representatives of plaintiff No. 1, as such it has attained finality and this application hopelessly barred by limitation, as such prayed for rejection of the application. The defendant No. 4 has also filed reply contending that after 25 years, the present application has been filed and already this Court has rejected the application on 17.07.2001 to bring the legal representatives of Madanlal Modi on record which has not been challenged. Thereafter, application under Order 1 Rule 10 C.P.C has been filed which has been dismissed by the trial Court, as such prayed for rejection of the application. The learned trial



Court considering the submission made by the parties has rejected the application vide its order dated 03.08.2017 and fixed the matter for plaintiffs' evidence on 26.08.2017.

- 15.** 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 have examined DW/1 Raj Kumar and Modi (DW./2).
- 16.** This case has long checkered history as the suit was filed in the year 1976 registered as Civil Suit No.15-A/1976, there was fire in the District Court, Korba on 4-3-1993 as some one had broken the door and set the records on fire. Thereafter, the Court vide order dated 13-3-1996 has directed for reconstruction of the file. Accordingly the files were reconstructed and thereafter the trial has begun. Learned trial Court after appreciating the evidence and material on record had passed the impugned judgment and decree dated 14-12-2018 by decreeing the suit that the plaintiff No.2 will be owner of the property as per partition on 21-12-1963 with regard to property mentioned in Schedule "D" of the plaint, except the property bearing Khasra No. 732/1 which is subject to judgment and decree passed by the learned Civil Judge Class 1 and Class IV. It



has also directed that the plaintiff Kisanlal will be declared as title holder of the property described in Schedule “D” of the plaint as per partition dated 21-12-1963. It is also directed that Prakash Chand will be declared as title holder of the property except Khasra No 732/1 and the property which has been left for Kisanlal as described in Schedule “D” in which defendants will not make any interference. It is also declared by the learned trial Court that the property described in Schedule “A” will be reserved for reimbursement of tax liability of firm Dhanraj Dwarkadas and the property mentioned in Schedule “D” attached with the plaint will be part of Prakash Chand and Kisanlal and property mentioned in Schedule “A” will be part of the decree. Learned trial Court vide its judgment and decree has not granted any decree of partition and declaration with regard to present appellants who are the legal representatives of plaintiff No. 1 as the suit so far as it relates to the present appellants the suit has been abated. Being aggrieved with this the judgment and decree, the plaintiffs/appellants have filed the First Appeal before this Court which is registered as FA No 3 of 2023 and one of the defendant namely Smt. Geeta Devi Modi and others have filed the appeal which is registered as FA No 206 of 2019 against the same judgment and decree wherein they have supported the case of the appellants in appeal No. 03/2023. The appellants in appeal No. 3/2023 have filed application seeking leave to file first appeal under Section 96 C.P.C read with Order 41 Rule 1 C.P.C. mainly contending that during the proceeding before the Tahsildar it came to the appellants knowledge that the judgment and



decree have been passed in favour of other plaintiffs and the suit in relation to them was abated, therefore, they have moved this application to grant leave to file appeal. The appellants have also filed I.A. No. 2/2023 seeking condonation of delay reiterating the same stand taken in the leave to file appeal and have also contended that there is delay of 2 years in filing the instant appeal excluding the period from April 2020 to 28.02.2022 which has been exempted by the Hon'ble Supreme Court of India for calculation of period of delay on account of Covid 19 Pandemic. It has been further contended that legal heirs of original plaintiff Madan Lal have similar interest in the suit as that of other plaintiffs and they were deprived from enjoying the fruits of decree granted in favour of other plaintiffs only on account of the facts that they were not brought on record within the period of limitation which causes grave injustice to them without there being any adjudication of their substantive rights on merits, as such it has prayed for condonation of delay in filing appeal.

17. Learned Sr. Counsel Mr. Ravish Agrawal, Sr. Advocate with Mr. Sankalp Kochar, Mr. Anand Dadariya and Ms. Harneet Kaur, Advocates, would submit that the impugned Judgment & Decree is cryptic, cavalier and contrary to law and the same is liable to be set-aside in so far as it refrains from decreeing the share of late Madan Lal. Madan Lal passed away on 11.04.1992 where-after two applications were preferred by present appellants under Order 22 Rule 3 CPC seeking their substitution were dismissed on 17.10.1992 and 07.07.2001 on account of being barred by limitation.



He would further submit that various applications under Order 1 Rule 10 of the CPC were also filed on different dates at different stages of the suit including some being filed before the issues were settled by the learned trial court which were also dismissed merely on the ground of the delay and technicalities, completely overlooking the principles of Ex- Debito Justice for adjudication of substantive rights of the legal representatives of Madanlal Modi. He would further submit that the power under Order 1 Rule 10 is very extensive and there is no limitation curtailing or restricting the power of the Court to add parties. He would further submit that this appellate Court by virtue of wide powers under Order 41 and in order to do complete justice can decree the suits of present appellants. To substantiate their submission they would refer to the judgment passed by the Hon'ble Supreme Court in case of **Amarjit Singh Klara Dead by Lrs. v. Pramod Gupta Dead by, Lrs.(2003) 3SCC 272; Chandramohan Ramchandra Patil v. Bapu Koyappa Patil (2003) 3 SCC 552; Azgar Barid v. Mazambi, (2022) 5 SCC 334** and judgment of the Hon'ble High Court of Himachal Pradesh in case of **Baldev Singh & Ors. State of H.P. AIR 2007 HP 32** and would pray for setting aside the impugned judgment and decree dated 14.12.2018 so far as it holds the suit to have abated in respect of the present appellants.

- 18.** Learned Sr. Counsel Mr. Nirmal Kumar Shukla with Mr. Shailendra Shukla, Advocate in F.A. No. 206/2019 would submit that learned trial Court has erred in holding that the properties described in Schedule A,B,C, were joint property of Dhanraj, Dwarika Das,



Madan Lal, Prakesh Chand and Kishanlal and in holding that the property was allotted due to partition affected by Arbitration. He would further submit that learned trial Court has erred in holding that plaintiffs are entitled for decree of perpetual injunction and the properties mentioned Schedule "k" to be joint family property and kept to meet future liabilities, therefore, would pray for quashment of the impugned judgment and decree dated 14.12.2018. He would further support the submission made by learned Senior Counsel in F.A. No. 3/2023. He would further submit that the Arbitration Award was set aside by the learned District Judge against that a civil revision was filed which has also been dismissed, it means there was no partition among the members of the joint Hindu family and right to demand partition and separate possession is recurring right. To substantiate this submission he has referred to the judgment of High Court of Allahabad in case of **Radhelal vs. Mulchand {1946 A.I.R. (All.) 820}**.

19. Learned counsel for respondents No. 4 and 7 in FA No. 03/2023 have submitted written submissions mainly contending that the first appeal is not maintainable as the plaintiff Madanlal expired on 17.04.1992 and within 90 days they have not brought the legal representatives of the deceased plaintiff on record, as such the suit stands abated. It has been further contended that the application under Order 22 Rule 4 of the C.P.C. has been dismissed on 17.10.1992 but the same was never subjected to challenge before the appellate forum, as such, it has attained finality. It has been further contended that the appellants have filed application under



Order 1 Rule 10 C.P.C. so many times which have been dismissed and against that no appeal has been preferred, as such, appeal under Section 96 read with Order 41 C.P.C. is not maintainable. It has been further contended that the appellants have never filed any application for setting aside the abatement whereas any order under Order 22 Rule 9(2) C.P.C. refusing to set aside is appealable order under Order 43 Rule 1(k) of the C.P.C. It has been further contended that the appeal is barred by limitation as the judgment and decree was passed on 14.12.2018 and the appellants have preferred this appeal after lapse of 5 years and the explanation given by the appellants is not satisfactory, therefore, the present appeal is not maintainable. To substantiate this submission he has referred to the judgment of **Madan Naik v. Hansubala Devi, (1983) 3 SCC 15 Gurbachan Kaur, (2017) 13 SCC 414 Para 8, Gurnam Singh v. Para 16 to Para 20, Mangluram Dewangan v. Surendra Singh, (2011) 12 SCC 773 Para 8 to Para 18, Pathupati Subba Reddy (died) By Lrs. & Others Vs. The Special Deputy Collector [2024 INSC 286- Para 26]**. The respondent No. 4 has also submitted documents which have been already exhibited before the trial Court to substantiate his submission. The respondent No. 4 has also submitted written synopsis in person reiterating the facts of the case.

20. Learned counsel for respondent No. 5 (FA No. 03/2023) reiterating the stand taken by the respondents No. 4 and 7 would submit that since no rights of the appellants have been conclusively determined by the impugned judgment and decree, therefore, the appeal under



Section 96 of the C.P.C. is not maintainable. To substantiate this submission he has referred to the judgment of Hon'ble High Court of Patna in case of **Sampati Devi vs. Phulpati Devi {(2011) SCCOnline Pat 376}**. It has been further contended that since the suit has been abated on account of non-bringing the legal representatives on record, the only recourse is available with the appellants to move an application for setting aside the abatement, as such, the appeal is not maintainable. To substantiate his submission he has referred to the judgment of Full Bench of Madhya Pradesh in case of **Mitthulal vs. Badri Prasad {AIR 1981 M.P. 1}** and also judgment of Hon'ble Supreme Court in case of **Mangluram Dewangan vs. Surendra Singh and Others {2011 (12) SCC 733}** and would submit that if an application for setting aside abatement is dismissed then appeal under Order 43 Rule 1(k) of C.P.C. is maintainable. He would further submit that the appellants appeal is also liable to be dismissed on account of delay and laches and negligence on part of the appellants. To substantiate this submission he has referred to the judgment of Hon'ble Supreme Court in case of **Bhagwan Swaroop and Anr vs. Moolchand and Others {1983 (2) SCC 132}** and also submitted judgment of Hon'ble Supreme Court in case of **Gangabai vs. Vijay Kumar and Others { 1974 (2) SCC 393}**, **Badni vs. Sirichand {1999 (2) SCC 448}**. He would further submit that in absence of any satisfactory explanation the application for setting aside abatement is liable to be dismissed by this Court and would pray for dismissal of the appeal.



21. Learned Sr. Counsel Mr. Jugal Kishore Gilda with Mr. Prasoon Bhaduri, Advocate for respondent No. 11 in FA No. 03/2023 reiterating the stand taken by the learned counsel for the respondents No. 4 and 7 would submit that the appeal is not maintainable and would submit that from 1992 till date year 2024 more than 30 years have passed and the order dated 17.10.1992 is not merged in final order dated 14.12.2018 by which the suit was decreed, therefore, in any case any attempt to hold that the order dated 17.10.1992 as invalid is not permissible as the present appeal is barred by limitation and hopelessly delayed. To substantiate his submission regarding effect of abatement he would refer to the judgment of Hon'ble Supreme Court in case of **Ramagya Prasad Gupta vs. Shri Murli Prasad {1973 (2) SCC 9}**, **Budhram vs. Bansi {2010 AIR SCW 5071}**, **Pathupati Subba Reddy (Died) by Lrs and Others vs. The Special Deputy Collector (LA) {2024 INSC 286}**. He would further submit that the plea of Covid related restriction preventing the appellants from presentation of appeal are also suspicious and it is not a genuine reason therefore, the appeal deserves to be dismissed on account of delay and latches. He would further submit that the law does not come to aid of the indolent, tardy and lethargic litigant and legal rights ought to have been asserted within a reasonable time or within a time fixed in Statute and would pray for dismissal of the appeal. He would further submit that the conduct of the appellants is unfair and they have not come before the Court with clean hands, therefore, the appeal deserves to be dismissed as per the law laid down by the Hon'ble



Supreme Court in case of **Sangram Singh vs. Election Tribunal, Kotah {AIR 1955 SC 425}**. Respondent No. 11 has also submitted written synopsis in both the appeals and also annexed the documents reiterating the stand taken by his counsel and prayed for dismissal of the appeal. It has also been stated that he has earlier submitted first appeal No. 119/2019 which has been withdrawn by him on 23.01.2023 due to family settlement. The said application for withdrawal was supported by the affidavit of respondent No. 11 Bhagwan Das.

- 22.** It is pertinent to mention here that this Court vide its order dated 05.12.2024 directed all the parties to the case to file written synopsis within two weeks. Only the appellants, respondents No. 4, 5, 7, 11 have filed their written submission. Rest of the respondents despite sufficient opportunities granted by this Court have not filed their written submission for the reasons best known to them.
- 23.** From the above factual matrix the points for determination by this Court are :-
- (i) Whether in view of the objection raised by the respondents that as per Order 43 Rule 1(k) C.P.C. the present appeal under Section 96 of the C.P.C. is maintainable or not?
 - (ii) Whether the appeal preferred against the order dated 17.10.1992 after lapse of 31 years and challenging the judgment and decree dated 14.12.2018 is barred by limitation and no sufficient reason has been assigned by the appellants for condonation of delay ?
 - (iii) Whether the judgment and decree dated 14.12.2018 is liable to be set aside in view of the fact that the plaintiffs/ appellants are the members of joint Hindu Family and no partition decree has been passed against them?

Findings on Point No. (i)



24. To determine the point No. 1, it is expedient for this Court to go through provisions of Order 43 Rule 1(k) C.P.C.. From perusal of this provision it is quite vivid that an order under Rule 9 of Order 22 of the C.P.C. refusing to set aside the abatement or dismissal of suit, the appeal is maintainable under this order. In the present case suit has not been abated as whole or dismissed but the learned trial Court while decreeing the suit has not granted decree in favour of the appellants as the suit has been abated so far as it relates to the appellants in F.A. NO. 3/2023 but the trial Court has granted decree of partition in favour of other plaintiffs, as such, the appellants in this appeal has not only challenged the order setting aside the abatement but also challenged the denial of partition decree in favour of the appellants. Therefore, the objection raised by the respondents that appeal is not maintainable deserves to be rejected. Accordingly the point No. 1 is answered in favour of the appellants and it is held that the appeal is very much maintainable as it is composite appeal challenging the judgment and decree granting partition in favour of other plaintiffs except the present appellants. In view of above factual matrix, the judgment cited by the respondents in case of **Manglu Ram Dewangan vs Surendra Singh and Others {2011 (2) SCC 773}** is not applicable as in that case the order was passed dismissing the application under Order 22 Rule 3 C.P.C. only which is not decree as defined in Section 2(2) of the C.P.C. but in the present case the learned trial Court has passed the judgment and decree granting partition among all the family members except the appellants. Therefore, the judgment



cited by the respondents in this regard is distinguishable and not applicable to the facts of the case. Similarly, other judgments in case of **Rameshwar Prasad and Others vs. Shambhari Lal Jagannath and Another { AIR 1963 SC 1901 }**, **Union of India vs. Ram Charan (Deceased) Thr. His Legal Representatives {AIR 1964 SC 215}**, **Madan Naik (Dead) by Legal Representatives and Others vs. Mst. Hansubala Devi and Others {(1983) 3 SCC 15}**, **Pandit Sri Chand and Others vs. Jagdish Parshad Kishan Chand and Others {AIR 1966 SC 1427}**, **Ramagya Prasad Gupta and Others vs. Shri Murli Prasad and Others {(1973) 2 SCC 9}** are distinguishable and not applicable to the present facts of the case. It is pertinent to mention here that appellants have filed seeking leave to file first appeal under Section 96 C.P.C. read with Rule 1 and Section 151 of the C.P.C. as they aggrieved persons and their rights to get property of joint Hindu Family are being adversely affected by the said judgment and decree therefore, leave was sought which is granted as all the parties have appeared before this Court and participated in the proceedings. As such, also the objection raised by the respondents regarding maintainability of the appeal lost its significance.

Findings on Point No. (ii)

- 25.** The record of the case would demonstrate that the Plaintiff Madan Lal expired on 11.04.1992 and first application under Order 22 Rule 3 C.P.C. was filed on 29.07.1992 which was dismissed on 17.10.1992 thereafter, there was fire in the court and records were burnt, as such the trial Court in the year 1996 had directed for



reconstruction of file and appellants have moved an application under Order 22 Rule 3 C.P.C. on 09.07.1998 which was rejected on 07.07.2001. Thereafter, the appellants moved an application under Order 1 Rule 10 C.P.C. which was rejected on 18.11.2001. Thereafter, another application under Order 1 Rule 10 C.P.C. was rejected by the trial Court on 23.09.2004. Again, an application under Order 1 Rule 10 C.P.C. was rejected on 22.08.2008 and 29.07.2017. Thus, it is quite vivid that the plaintiffs were diligent to implead the legal representatives on record which have been dismissed on the count of delay and latches whereas the law with regard to condonation of delay in filing application under Order 22 Rule 9 C.P.C. clearly stipulated that the Courts should be liberal in condoning the delay, allowing the application and merely because the earlier application filed under Order 22 Rule 4 C.P.C. was dismissed as not maintainable. It will not prohibit the plaintiffs from filing another application and order passed under Order 22 Rule 4 C.P.C. will not act as *res judicata*. Even, Order 1 Rule 10 C.P.C. enables the Court to add to any person as party at any stage of proceedings, if the persons whose presence in the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. This issue has come up for consideration before the Hon'ble Supreme Court in case of **Pankajbhai Ramesh Bhari Zalavadiya vs. Jethabhai Kalabhai Zalavadiya {(2017) 9 SCC 700}** and Hon'ble Supreme Court in para 10,11,12, 16, 17 and 20 has held as under :-

10. Order 1 Rule 10 of the Code enables the Court to add any person as a party at any stage of the proceedings, if



the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the Court to substitute a party in the suit who is a wrong person with a right person. If the Court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the Court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the Court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the Court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit.

11. In the case of Vijay Kumar Motilal Mirakhanwala (supra), a bench by majority held that the legal representatives of a party can be added under Order 1 Rule 10 of the Code, but the date on which they were impleaded shall be the date on which the suit was instituted by or against them. In the said matter, this Court on facts held that the suit was barred by limitation as per Section 22 of the Limitation Act of 1908. This Court, though it concluded that the Court has got the power to join a particular person as a party under Order 1 Rule 10 of the Code, did not interfere in the matter inasmuch as this Court found that the suit was barred by limitation. It is relevant to note that the said suit was of the year 1958. Since the Limitation Act, 1963 (now in force) was at that time not in existence, this Court applied the old limitation law and held that the suit was barred by limitation. As of now, the proviso to Section 21(1) of the Limitation Act 1963 empowers the Court to direct that the suit shall be deemed to have been instituted on an earlier date, where the omission to include a new plaintiff or defendant was due to a mistake made in good faith. Therefore, it is open to the plaintiff in the matter on hand to prove "good faith" on his part in not including the legal representatives of deceased defendant no. 7, during the course of trial of suit.

11. It would be relevant to note that in the Case of Bhagwan Swaroop and Ors. vs Mool Chand and Ors., 1983 (2) SCC 132, this Court observed thus:



"4. It is true that it was incumbent upon the appellants to implead the heirs and legal representatives of deceased respondent 1 in time. It is equally true that the appellants were negligent in moving the proper application. We would not question the finding of the High Court that appellants 2, 3 and 4 knew about the death of the deceased respondent 1. This being a suit for partition of joint family property, parties are closely interrelated and it is reasonable to believe that at least some of the appellants must have attended the funeral of deceased respondent 1, as contended on behalf of the contesting respondent 2. There is some force in the contention that when a specific provision is made as provided in Order 22, R. 4, a resort to the general provision like Order 1, Rule 10 may not be appropriate. But the laws of procedure are devised for advancing justice and not impeding the same. In *Sangram Singh v. Election Tribunal, Kotah* (AIR 1955 SC 425), this Court observed that a code of procedure is designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. This was reaffirmed in *Kalipar Das v. Bimal Krishna Sen*(1983) 1 SCC 14.

5. In a suit for partition, the position of plaintiffs and defendants can be interchange-' able. It is that each adopts the same position with the other parties. Other features which must be noticed are that the appeal was filed somewhere in 1972. It has not come up for hearing and the matter came on Board only upon the application of the second respondent intimating to the Court that the 1st respondent had died way back and as his heirs and legal representatives having not been substituted, the appeal has abated. Wheels started moving thereafter. Appellants moved an application for substitution. The matter did not end there. Heirs of deceased respondent 1 then moved an application for being brought on record. If the application had been granted, the appeal could have been disposed of in the presence of all the parties. The difficulty High Court experienced in granting the application disclosed with great respect, a hyper-technical approach which if carried to end may result in miscarriage of justice. Who could have made the most serious grievance about the failure of the appellants to substitute the heirs and legal representatives of deceased respondent 1? Obviously the heirs of deceased respondent 1 were the persons vitally interested in the outcome of the appeal. They could have contended that the appeal against them has abated and their share has become unassailable. That is not their case. They on the contrary, want to be impleaded and substituted as heirs and legal representatives of



deceased respondent They had absolutely no grievance about the delay in bringing them on record. It is the second respondent who is fighting both the appellants and the 1st respondent who wants to derive a technical advantage by this procedural lapse. If the trend is to encourage fairplay in action in administrative law, it must all the more inhere in judicial approach. Such applications have to be approached with this view whether substantial justice is done between the parties or technical rules of procedure are given precedence over doing substantial justice in Court. Undoubtedly, justice according to law; law to be administered to advance justice.”

16. In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial Court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 of the CPC, in order to do justice between the parties. Merely because of the non- mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the Courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add any one as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice.

17. The expression “to settle all questions involved” used in Order 1 Rule 10 (2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter thereof. The Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person



who has purchased the property and whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties.

20. Having regard to the totality of the narration made supra, there is no bar for filing the application under Order 1 Rule 10, even when the application under Order 22 Rule 4 of the Code was dismissed as not maintainable under the facts of the case. The legal heirs of the deceased person in such a matter can be added in the array of parties under Order 1 Rule 10 of the Code read with Section 151 of the Code subject to the plea of limitation as contemplated under Order 7 Rule 6 of the Code and Section 21 of the Limitation Act, to be decided during the course of trial.

- 26.** So far as the contention raised by the defendants that appeal has been filed after 31 years of rejection of the application under Order 22 Rule 3 C.P.C. and against the judgment and decree dated 14.12.2018 the appeal has been filed on 13.11.2022 after about 4 years, as such also it is barred by limitation and the application for condonation of delay filed by the appellants deserves to be rejected is being considered. The appellants have also filed I.A. No. 2/2022 for condonation of delay wherein it has been contended that the appellants were pursuing demarcation proceeding before the authority then only it came to the knowledge of the appellants that impugned judgment and decree has been passed wherein the claim of the appellants has been rejected. It has also been contended that the Tahsildar has passed demarcation order on 07.09.2021 in favour of one Sanjay Modi one of the defendants which was objected by the appellants Badri Prasad Modi on 07.09.2021 which was challenged by the defendants Sanjay Kumar Modi before this Court and this Court set aside the order dated 27.09.2021. wherein also



the appellants were not impleaded as party to the case. Thereafter, a writ petition WPC No. 1508/2022 was preferred wherein this Court passed by the order which was challenged by Sanjay Modi by filing writ appeal No. 329/2022 and Hon'ble Division Bench passed the order on 12.07.2022. thereafter, the present first appeal has been filed on 13.11.2022. Thus, the respondents have not disputed this facts. Thus, it is quite vivid that there is sufficient cause, reason explanation for not preferring the appeal within the stipulated time period. As such, the delay in preferring the appeal is deserved to be condoned by this Court, accordingly, it is condoned. Even otherwise it is well settled position of law that for condoning the delay the sufficient cause has to be considered and the period is immaterial but there must be sufficient cause in not preferring the appeal. The Hon'ble Supreme Court in case of **Allala Bhagavanth Rao vs Garvandula Vijayalaxmi and others {2016 (4) ALT 43} -**

12. The word 'sufficient cause' is not defined either in the Limitation Act or in the C.P.C.; the reason appears to be that there is no straight jacket formula to decide whether the cause shown for condonation of delay is sufficient cause or not. Depending on the facts and circumstances of each case, the Court can exercise discretion and decide the sufficient cause. Sufficient cause shall be construed liberally without adopting any pedantic approach. It cannot be stretched to frustrate the very intention of Legislature in specifying the period for filing appeal or petition etc.

13. In *Lanka Venkateswarlu (Died) by L.Rs.v.State of A.P.*, (2011) 1 UPLJ 242 (SC), the apex Court heavily laid on the Courts when to allow the petitions, though no sufficient cause is made out, and ruled as follows: "We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation, especially in cases where the



Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers."

"14. In fact, the petitioner did not make out any sufficient cause except making a bald unsubstantiated allegation in the affidavit. If such lame excuses for condoning the delay are accepted as sufficient causes, virtually denuding or jettisoning the substantive law of limitation.

15. In view of the law declared by the apex Court basing on the concept of real justice, substantial justice the Courts cannot allow petitions under Section 5 of Limitation Act, when no sufficient cause is made out. Therefore, basing on lame excuse or unsubstantiated cause, it is difficult to condone the delay, liberally construing the word sufficient cause."

27. In *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* {(2012) 5 SCC 157}, the Hon'ble Apex Court held as under:

"What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the costs.

What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has



been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years."

28. In Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy{(2013) 12 SCC 649}, the Hon'ble Apex Court broadly culled out the following principles:

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former



doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.



d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters.

29. In Majji Sannemma alias Sanyasirao Vs. Reddy Sridevi and others {2021 SCC OnLine SC 1260}, the Hon'ble Apex Court observed:-

"17. In the case of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd. [(1962 2 SCR 762] (supra), it is observed and held as under:--

In construing s.5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

18. In the case of P.K. Ramachandran Vs. State of Kerala [(1997) 7 SCC 556], while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the



period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

19. In the case of Pundlik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project [(2008) 17 SCC 448], it is observed as under:--

"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

20. In the case of Basawaraj Vs. Special Land Acquisition Officer [(2013) 14 SCC 81], it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature."

30. In Kilaru Appa Rao Vs. Sunku Prathapa Reddy {2022 (6) ALT (TS)}, the Hon'ble Court observed:-



"11. The dictum of law is that the delay if inordinate, should not be condoned by adopting casual or liberal approach. Courts are not expected to condone the delay in the following circumstances:-

- "1. When the reason urged is found to be concocted.
2. When the party who seeks for condonation of delay is found to be thoroughly negligent.
3. In case condonation of inordinate delay leads to substantial injustice to the opposite party due to the subsequent events.
4. The inordinate delay, if condoned, results in unending uncertainty and consequential anarchy. The list is illustrative and not exhaustive."

31. Again the Hon'ble Supreme Court in case of **Mool Chandra and Union of India and Another {2024 Online SC 1878}** has held:-

20. Be that as it may. On account of liberty having been granted to the appellant to pursue his remedy in accordance with law, yet another O.A. No.2066 of 2020 along with an application for condonation of delay came to be filed. The delay was not condoned by the Tribunal on the ground that it was filed more than one year after the impugned order came to be passed. No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of "sufficient cause", irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.

21. In this background when we turn our attention to the facts on hand, it would emerge from the records that appellant being aggrieved by the dismissal of the O.A. No.2066 of 2020 on the ground of delay had approached the Delhi High Court challenging the same. The High Court on the ground of penalty imposed being a minor penalty, refused to entertain the writ petition or in other words confirmed the order impugned before the Tribunal on merits. This Court in Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara and Another reported in 2009 (3) SCC 525 has taken a view that while deciding an application for condonation of delay the High Court



ought not to have gone into the merits of the case. It has been further held:-

“5. While deciding an application for condonation of delay, it is well settled that the High Court ought not to have gone into the merits of the case and would have only seen whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it. We ourselves have also examined the application filed under Section 5 of the Limitation Act before the High Court and, in our opinion, the delay of 178 days has been properly explained by the appellant. That being the position, we set aside the impugned order of the High Court. Consequently, the appeal filed before the High Court is restored to its original file. The High Court is requested to decide the appeal on merit in accordance with law after giving hearing to the parties and after passing a reasoned order.”

22. If negligence can be attributed to the appellant, then necessarily the delay which has not been condoned by the Tribunal and affirmed by the High Court deserves to be accepted. However, if no fault can be laid at the doors of the appellant and cause shown is sufficient then we are of the considered view that both the Tribunal and the High Court were in error in not adopting a liberal approach or justice oriented approach to condone the delay. This Court in *Municipal Council, Ahmednagar and Anr. Vs. Shah Hyder Beig and Ors.* 2000 (2) SCC 48 has held:

“6. Incidentally this point of delay and laches was also raised before the High Court and on this score the High Court relying upon the decision in *Abhyankar case* (N.L. *Abhyankar v. Union of India* [(1995) 1 Mah LJ 503]) observed that it is not an inflexible rule that whenever there is delay, the Court must and necessarily refuse to entertain the petition filed after a period of three years or more which is the normal period of limitation for filing a suit. The Bombay High Court in *Abhyankar case* [(1995) 1 Mah LJ 503] stated that the question is one of discretion to be followed in the facts and circumstances of each case and further stated:

“The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay.”



32. A conspectus of above the judgments referred to above (Supra), the Hon'ble Apex Court observed that length of delay is no matter, acceptability of the explanation is the only criterion. It was further held that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Rules of limitation are not meant to destroy the rights of parties and they are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. Hon'ble Apex Court also cautioned that if the delay is occasioned by party deliberately to gain time then the Court should lean against acceptance of the explanation. The explanation should not be fanciful and concocted. The Courts while dealing with an application to condone delay should keep in mind the right accrued to other side and should deal with such application with utmost care and caution.
33. Under such circumstances as per the expressions of Hon'ble Apex Court, while condoning the delay, the Court must see whether the deponent explained sufficient rights of parties alone is not the criteria, unless sufficient cause is shown, that in case of inordinate delay, condoning the delay does not arise.
34. In the present case, the appellants have shown sufficient cause in not preferring the appeal against the impugned judgment and decree dated 14.12.2018 therefore, the delay of 1339 days deserves to be condoned and accordingly it is condoned. So far as the judgments cited by the respondents in **Pathupati (supra)** is concerned, the Hon'ble Supreme Court is also held that in order to advance substantial justice though liberal justice oriented approach



should have been adopted if sufficient cause has been explained or there is no inordinate delay or no negligence on part of the parties. So far as legal position is concerned, it is not in dispute but every case has to be dealt according to the factual matrix prevailing in the case. In the present case as discussed above, the appellants have shown sufficient cause and due diligence in contesting the cases in various forums. Therefore, it cannot be held that the plaintiffs are entitled to non-suited on the count of delay. In fact, by the impugned judgment and decree though appellants are members of the joint Hindu Family, their rights have been adversely affected, as the trial Court has not granted any decree in their favour on account of suit become abated, as such, also the delay in preferring the appeal deserves to be condoned, accordingly, it is condoned. Thus, Point No. 2 is answered in favour of the appellants.

Findings on Point No.. 3

- 35.** It is not in dispute that plaintiffs are the members of joint Hindu Family property and by the impugned judgment and decree no share has been granted to them, but, the trial Court has granted decree of partition in favour of other plaintiffs, which definitely adversely affects the interest and also against the Hindu Law as all the coparceners in the joint Hindu Family property are entitled to get shares in the property. Since, the trial Court without considering the share of the plaintiffs have granted the decree of partition, therefore, judgment and decree dated 1412.2018 deserves to be set aside and the matter is remitted back to the trial Court wherein the trial Court will allow the appellants to become the legal representatives



of the deceased Madanlal and to contest the case by allowing them to lead evidence, to file documents and the defendants are also at liberty to amend their pleadings if they so desire to lead any further evidence. The trial Court will consider the evidence which has already been adduced by the other plaintiffs and defendants while deciding the suit afresh.

- 36.** Consequently, the appeal is allowed and judgment and decree is set aside and the suit is remitted back for adjudication as per afore-stated directions. Consequently, the First Appeal No. 206/2019 which has been filed by Smt. Geeta Devi and others is disposed off in terms of judgment and decree passed in Appeal No. 3/2023.
- 37.** No order as to costs.
- 38.** 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.
- 39.** I.A.No. 1/2022, I.A.No.2 of 2022, I.A.No. 1 of 2024, I.A.No. 12 of 2024, and I.A.No.14/2023 are disposed of in terms of final judgment and decree passed by this Court and other interlocutory applications, if any, are pending, they are also disposed of in the light of judgment and decree passed by this Court today.

Sd/-
(Narendra Kumar Vyas)
JUDGE

Raju