

AFR

Neutral Citation No. - 2023:AHC:212059

Reserved on 27.10.2023

Delivered on 06.11.2023

Court No. - 48

1. Case :- WRIT - B No. - 861 of 1977

Petitioner :- Ram Adhar

Respondent :- D.D.C. And Others

Counsel for Petitioner :- Sankatha Rai,Om Prakash Pandey,Rajesh Kumar,Vinod Kumar Rai

Counsel for Respondent :- S.C.,Birendra Pratap Singh,C.B. Misra,Pradeep Kumar Mishra,R.K. Upadhyay,Shri Kant

2. Case :- WRIT - B No. - 669 of 1977

Petitioner :- Ram Chandra

Respondent :- D.D.C And Others

Counsel for Petitioner :- C.B.Mishra,R.K. Upadhyay,Rajesh Kumar,Shri Kant

Counsel for Respondent :- Sankatha Rai,Om Prakash Pandey,Rajesh Kumar,S.C.

Hon'ble Saurabh Shyam Shamshery,J.

1. Property in dispute is distributed in various Khatas situated at three villages namely, Surahi, Thari and Binda, Pargana Kolasla, District Varanasi. Details of Khata number, village and name of persons recorded in basic year are mentioned hereinafter:

Khata Nos.	Village	Name of persons recorded
74	Surahi	Ram Adhar, Ram Ujagir, Awadh Narain
61	Surahi	Ram Chandra, Ram Dhari, Srikant, Ram Adhar, Ram Ujagir, Awadh Narain

54	Surahi	Ram Dhari, Ram Adhar, Ram Ujagir, Awadh Narain
71	Surahi	Ram Chandra, Ramdhari, Srikant
170	Surahi	Ram Chandra, Ram Dhari, Srikant, Ram Adhar, Mata Badal
70	Surahi	Ram Chandra, Ram Dhari, Srikant, Ram Adhar
35	Thari	Ram Adhar, Ram Chandra, Ram Dhari, Srikant, Ram Ujagir, Awadh Narain
37	Thari	Ram Chandra, Ram Dhari, Srikant, Ram Adhar
54	Thari	Ram Adhar, Ram Chandra, Ram Dhari, Srikant, Ram Ujagir, Awadh Narain
105	Thari	Ram Adhar, Ram Chandra, Ram Dhari, Srikant, Ram Ujagir, Awadh Narain
36	Thari	Ram Adhar
137	Thari	Ram Adhar, Ram Chandra, Ram Dhari, Srikant, Ram Ujagir, Awadh Narain
47	Binda	Ram Adhar, Ram Chandra, Ram Dhari, Srikant, Ram Ujagir, Awadh Narain

2. During consolidation proceedings several set of objections were filed by petitioner and respondents. The Consolidation Officer has decided objections by three separate orders in respect of each village i.e. orders dated 16.03.1973, 20.08.1973 and 08.10.1973.

3. Being aggrieved on respective grounds, petitioners and respondents have filed seven appeals out of which six were dismissed and only one appeal was allowed in part by order dated 17.10.1974 passed by Settlement Officer of Consolidation.

4. Rival parties thereafter filed seven revisions, before Revisional Authority out of which four were dismissed and three were partly allowed by order dated 15.01.1977 passed by the Deputy Director of Consolidation.

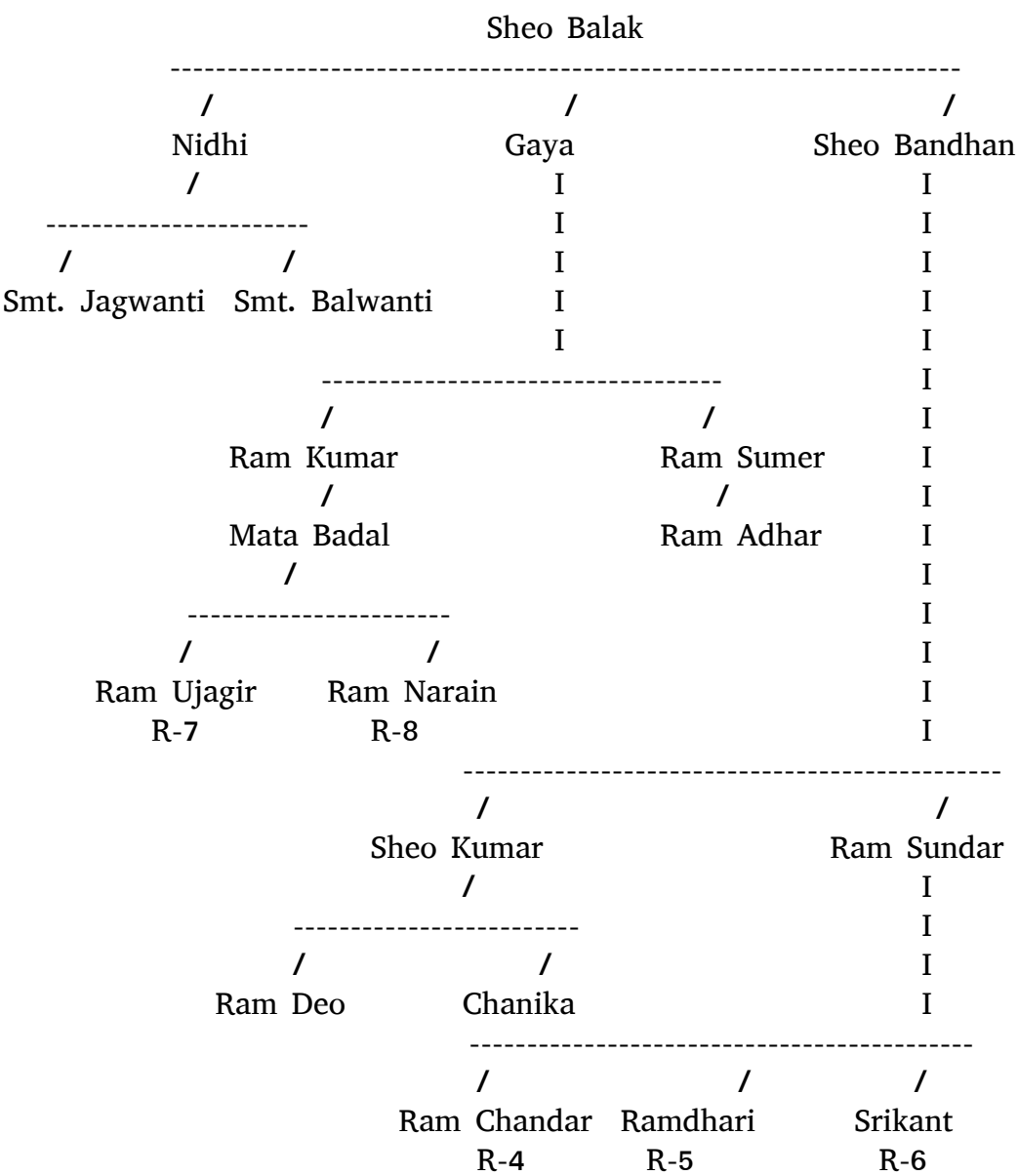
5. In aforesaid circumstances, both parties have approached this Court by way of filing two writ petitions, i.e., Writ-B No. 861 of 1977 (*hereinafter referred to as "First Writ Petition"*) by Ram Adhar and Writ-B No. 669 of 1977 (*hereinafter referred to as "Second Writ Petition"*) by Ram Chandra.

6. Heard Sri Om Prakash Pandey, learned counsel for petitioner in First Writ Petition (Respondent in Second Writ Petition) and Sri R.K. Upadhyay, learned counsel for petitioner in Second Writ Petition (Respondent in First Writ Petition), at length. The issues which arose for consideration by this Court could be summarized in following manner:

(I) The pedigree as mentioned in the impugned orders as well as referred below was not in dispute that Nidhi, Gaya and Shiv Bandhan were sons of Shiv Balak (common ancestor of petitioner and respondents as well). However, dispute was about respective date of their death, i.e., original petitioner-Ram Adhar (contesting respondent in Second Writ Petition) claimed that firstly Shiv Bandhan died thereafter Nidhi and lastly Gaya died and accordingly he claimed 2/3 share, whereas claim of contesting-respondents (petitioner in Second Petition) was that firstly Gaya died, thereafter Nidhi and lastly Shiv Bandhan died, therefore, being grandson of Shiv Bandhan they claimed 5/9 share, therefore, Court has to scrutinize respective claims and

findings recorded by authorities on above issue, that whether findings are legally sustainable or not?

Pedigree



(II) Whether, a compromise entered by Smt. Jagwanti, allegedly major daughter of Nidhi on her behalf and on behalf of her younger minor sister, Balwanti with others would be a legally acceptable compromise or it would hit by Section 8(2) of Hindu Minority and Guardianship Act, 1956 (*hereinafter referred to as “Act, 1956”*) being an unregistered document?

(III) Whether, an unregistered written family settlement executed by Panchs on a written request of parties being agreed for partition would be admissible in evidence in view of Section 17 of the Registration Act, 1908 (*hereinafter referred to as "Act, 1908"*) or what would be its effect if it was already implemented?

7. Heard learned counsel for parties at length who have drawn attention of this Court on relevant parts of impugned orders and counter affidavits filed on their behalf.

Re: Issue-I

8. In this regard counsel for both parties have narrated respective favourable part of impugned orders. However, both parties have not been successful in pointing out exact date of death of Shiv Bandhan, Nidhi and Gaya. Authorities below have given findings on basis of entry of their names in revenue records. All three authorities have held that Nidhi died after death of his two brothers, namely, Shiv Bandhan and Gaya and for that relevant findings returned by all three authorities are mentioned hereinafter:

The Consolidation Officer has passed three separate orders in respect of land in dispute situated in three villages.

Order dated 16.03.1973 passed by Consolidation Officer (Village Surahi)

"इस प्रकार सर्वप्रथम यह देखना है कि निद्धी गया शिव बन्धन मे सबसे पहले कौन मरा जबानी शहादत इस सम्बन्ध में महत्वपूर्ण नहीं है। राम आधार ने आकार पत्र 61 दाखिल किया जिसमें राम आधार का हिस्सा 1/3 दर्ज किया गया है नकल खातौनी सन् 1309 फ० ग्राम सुरही दाखिल किया जिसमे खाता नंबर 34 में निद्धी, गया पेसराम शिवबालक व हिस्सा

बराबर दर्ज है, खाता सं० 35 शिव कुमार, राम सुन्दर पुत्र गण शिव बन्धन व हिस्सा बराबर दर्ज है, खाता सं० 52 मे निद्धी, गया का हिस्सा बराबर दो हिस्सो बराबर, दो हिस्सा शिव कुमार राम सुन्दर व हिस्सा बराबर 1 हिस्सा दर्ज है खाता सं० 87 निद्धी गया शिव कुमार राम सुन्दर का नाम दर्ज है नकल खतौनी बंदोबस्त ग्राम सुरही बाबत सन् 1291 फ० दाखिल किया गया जिसके अनुसार खाता सं० 45 शिव बन्धन के नाम तनहा दर्ज है इस प्रकार राम अधार के विद्वान अधिवक्ता ने इस बात पर बल दिया कि यह प्रमाणित है कि शिव बन्धन सबसे पहले मरे क्योंकि सन् 1309 फ० मे शिव कुमार राम सुन्दर पुत्र गण शिव बन्धन दर्ज है निद्धी व गया का नाम एक साथ दर्ज है इसलिए यह भी प्रमाणित है कि निद्धी व गया एक साथ रहते थे, राम चन्दर आदि ने अपने इस कथन की पुष्टि मे कि निद्धि सबसे वाद मे मरे नकल आदेश असिसटेन्ट कलकटर प्रथम श्रेणी वाराणसी मुकदमा नंबर 10 ग्राम सुरही सुमेर बनाम निद्धि तारीख फैसला 19.01.1904 ई. दाखिल किया इस आदेश मे यह स्पष्ट लिखा गया है कि निद्धि मरने के पहले सुमेर से अलग ये सुमेर निद्धि के वारिस नही हो सकते क्योंकि बलवन्ती जगवन्ती वारिस लड़कियां वारिस है इस प्रकार यह स्पष्ट हो जाता है कि निद्धि अपने भाईयो मे सबसे बाद मे मरे।"

(Emphasis supplied)

Order dated 08.10.1973 passed by Consolidation Officer (Village Thari)

“ -----रामअधार ने अपने ब्यान मे वंशतालिका को प्रायः स्वीकार करते हुए स्पष्ट किए है कि निद्धि व गया एक मे रहते है तथा शिव बन्धन अन्यत्र रहते है जिसमे शिव बन्धन पहले मर गए तब निद्धि मरे, निद्धि गया व शिव बन्धन अन्श बराबर था, निद्धि के मरने पर जगवन्दी , बलवन्ती तथा रामसुमेर मे मुकदमे बाजी हुई थी जिसमे सुलहनामा हुआ था सुलहनामा से निद्धि का अन्श राम सुमेर को मिला था।-----”

X

X

X

X

X

“रजिस्टर नं 3 के उल्लेख से पता चलता है कि निद्धि 1904 के पहले अथवा 1903 के आस पास मरे 1904 में राम सुमेर तथा वलवन्ती जगवन्ती में जो सुलह हुआ वह विवादित भूमि के बारे में हुआ था इसका कोई स्पष्टीकरण नहीं है न तो उसमें शिव बन्धन के शाख वाले पक्ष थे न तो उसके कार्यान्वयन का कोई प्रमाण है अतः नियमानुसार निद्धि के उत्तराधिकार रूप में उभय पक्ष निद्धि की भूमि पावेंगे।”

(Emphasis supplied)

Order dated 20.08.1973 passed by Consolidation Officer (Village Binda)

“शिव बन्धन के समय है इस बात का कोई प्रमाण सिवाय राम आधार के मौखिक कथन के नहीं है कि भूमि विवादित शिव बालक के समय से फरीकैन के खानदान में चली आ रही है आराजी निजाई शिव बालक के समय की साबित नहीं है इस तनकीह का निर्णय इसी प्रकार से किया जाता है।”

(Emphasis supplied)

Order dated 17.10.1974 passed by Settlement Officer of Consolidation

“----निद्धी को कोई पुरुष सन्तान नहीं थे तथा निद्धी की मृत्यु गया व शिवबन्धन के बाद हुयी निद्धी के मृत्यु के पहले गया के लड़के राम कुमार की मृत्यु हुयी अतः निद्धी का हिस्सा इस खाते में राम सुमेर शिव कुमार व राम सुन्दर को मिलना चाहिए और इनके अनुसार राम सुन्दर व शिव कुमार का निद्धी के हिस्से को मिलाकर 5/9 भाग मिला निद्धी की मृत्यु गया से पहले होने की कोई मौलिक गवाही नहीं है राम आधार ने अपने ब्यान में यह कहा है कि उसने अपने पिता से यह सुना है कि निद्धी की मृत्यु गया से पहले हुयी थी इस गवाही से यह मानना कि निद्धी गया से पहले मरे सही प्रतीत नहीं होता इस वाद में सुलहनाना दिनांक 20.06.1904 ई० की नकल पेश की गयी है इस सुलहनामे पर राम सुन्दर के हस्ताक्षर हैं जो राम चन्दर आदि के मूरिस थे राम सुन्दर हस्ताक्षर जाली व फरजी होने का

कोई प्रमाण नहीं है इस सुलहनामे मे निद्धी का हिस्सा उनकी लड़कियो जगवन्ती, बलवन्ती व गया की शाख का माना इस सुलहनामे पर राम सुन्दर के हस्ताक्षर इस बात को साबित करते है कि निद्धी का पूरा हिस्सा गया के लड़को का था । च.अ. ने इस आधार पर बंटवारा किया सारे सही है निद्धी व राम सुन्दर के मृत्यु का अस्पष्ट प्रमाण न होने के आधार पर राम चन्द्र आदि की अपील स्वीकार नहीं की जा सकती।

X X X X

---- जैसा कि पहले निष्कर्ष निकाला जा चुका है यह सिद्ध नहीं हो पाया निद्धी की मृत्यु गया से पहले हुयी या बाद मे अतः यह माना जाना न्यायोचित होगा कि निद्धी का हिस्सा दोनो पक्षो को बराबर – बराबर मिले यही आधार च.अ. ने अपने निर्णय मे दिया है।"

"अपील नं० 29 खाता नं० 47 के बारे मे है। खाता नं० 47 के गाटा नं० 676, 601, 682, 686, पर रामअधार पुत्र रामसुमेर, अवध नरायन , राम उजागिर पुत्र गण माता बदल रामचन्द्र। रामधारी व श्रीकान्त पुत्रगण राम सुन्दर का नाम वर्ग 1 मे अंकित है, रामअधार की आपत्ति है कि यह भूमि शिव बालक की पैदा हुई है। शिव बालक के तीन लड़के निधि गया, तथा शिव बंधन थे। शिव बन्धन सबसे पहले मरे तथा निधि गया से पहले मरे, निधि की कोई सन्तान नहीं थी। अतः उसका सम्पूर्ण हिस्सा गया की शाख को मिलना चाहिये। इस प्रकार राम अधार का आराजी निजाई में 1/3 हिस्सा होता है। इस अपील के बारे मे भी उपरोक्त निष्कर्ष नहीं है कि निधि गया के बाद मरे। राम अधार ने अपनी मौखिक गवाही मे कहा है कि निधि, गया व शिव बन्धन ने अपने ब्यान मे कहा कि पहले कौन मरा मे कहा है कि निधि, गया, व शिव बन्धन ने अपने बयान में कहा कि पहले कौन मरा मैं नहीं बता सकता किसी पक्ष की तरफ से कोई फौती दाखिल नहीं है अतः इस निष्कर्ष पर पहुचना संभव है कि गया पहले मरे या निधि।"

(Emphasis supplied)

Order dated 15.01.1977 passed by Deputy Director of Consolidation

“ -----पक्षों को यह स्वीकार है कि निद्धी की मृत्यु गया और शिव बन्धन के पश्चात हुयी अर्थात् निद्धी सबसे अन्त में मरे।-----”

(Emphasis supplied)

9. A consolidated reading of all orders referred above and in absence of exact date of death of Nidhi, Gaya and Shiv Bandhan and that there was no trustworthy oral evidence as well as that no other document was placed, this Court is of the view that reasons given by Consolidation Officer on basis of revenue entries that Nidhi died after death of his two brothers, which was substantially upheld by Appellate as well as Revisional Authorities, would be a correct finding and since no substantial evidence to contradict the same was placed on record, either before Appellate or Revisional Authorities or before this Court, on this issue, therefore, I find no reason to interfere with concurrent findings.

Re: Issue-II

10. Learned counsel for petitioner in First Petition has vehemently urged that since land in dispute was agricultural, therefore, bar imposed in Section 8(2) of Act, 1956 would not be applicable and for that he has placed heavy reliance on a judgement passed by Coordinate Bench of this Court in **Sursati Devi vs. Joint Director of Consolidation, Basti and others, 1982 AllJ 1473** and relevant paragraphs of judgment are mentioned hereinafter:

“[56] In none of these cases this question was raised whether the provisions of S. 8 of the HM & G. Act would apply to agricultural land or not nor this question was

considered. The said decisions, therefore are of no assistance to the learned counsel for the opposite party to meet the aforesaid point. As already observed above since the Parliament could not make law relating to transfer of agricultural land the provisions contained in S. 8 of H.M & G. Act cannot be made applicable to agricultural land merely on the ground that State Legislature had not made any law on the subject. The provisions of S. 8 of the H.M & G. Act should be so construed as to bring the said Act within the competence of Central Legislature to enact such law. As already observed above, there is a general presumption that a Legislature does not intend to exceed its jurisdiction and when a Legislature with restricted powers makes use of a word of such wide and general import, as referred in S. 8 of the Act. without defining, the term 'immoveable property' mentioned therein, one cannot escape from the conclusion that the term 'immoveable property' used in the section is with reference to that kind of property in respect of which it is competent to legislate and to no other property. In Entry 6 of List III agricultural property has been expressly excluded and as such the Parliament had no jurisdiction to make laws in respect of it. It cannot, therefore, be said that since the State Legislature has not as yet enacted any law on the subject and as such S. 8 of the H.M & G. Act should be made applicable also to agricultural land.

[57] Any inconsistency or repugnancy between State and Central Legislature is regulated by Art. 254 of the Constitution but such a question would only arise when both the Legislatures had made laws on the subject. It is well settled that the absence of legislation by the appropriate State Legislature on any topic enumerated in

List II cannot confer any power upon the Central Legislature to enact law on that topic which otherwise does not fall within its legislative competence, (see A.G Alberta v. A.G Canada. 1943 AIR(PC) 76).

[58] In this view of the matter I am of the opinion that the consolidation authorities have legally erred in holding that the impugned transfer was void as no permission was taken by the natural guardian while making transfer of the land in question to the petitioner.” (Emphasis supplied)

11. Per contra, Sri R.K. Upadhyay, learned counsel for contesting-respondents in First Petition and for petitioner in Second Petition, has supported the findings returned in impugned order in this regard.

12. Learned counsel for both parties have not placed a subsequent judgment passed by other Coordinate Bench of this Court in **Badri Vishal and others vs. Raj Narain, Neutral Citation No. 2013:AHC:LKO:5514** wherein the view taken in **Sursati Devi (supra)** was deferred by reasons and relevant part of judgement is mentioned hereinafter:

“In view of the authorities as mentioned above, it is quite clear that under Section 4 (b) of Hindu Minority & Guardianship Act, 1956, guardian of minor means a person having the care of the person of a minor or of his property or of both his person and property. Under Section 5 (b) of this Act the Act has overriding effect of any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

In view of these provisions textual Hindu law which is the general law is no more in force and Hindu Minority &

Guardianship Act, 1956 is a special law which has got an overriding effect over any other law. In this aspect of the matter, a study of U.P. Zamindari Abolition and Land Reforms Act shows that there is no such provision in the entire Act which deals with the powers of natural guardian. Since the Act is silent on the point of rights of minor and powers of natural guardian is special law i.e. Hindu Minority & Guardianship Act, 1956 and Section 4 of Guardian and Wards Act shall prevail and prior permission must have been obtained of the learned District Judge under Section 8 of the Act.

In view of this matter I respectfully disagree with the law laid down by a Single Judge of this Court in Smt. Sursati Devi's case (supra) and I conquer with the law laid down by the Hon'ble Apex Court as well as various authorities as mentioned above and in view of law laid down by this Court in Banshi's case (supra), Hari Mohan's case (supra) and Murari Lal's case (supra). Particularly, because the State legislature while enacting U.P. Z.A. & L.R. Act has purposely omitted to deal with properties held by a minor keeping in view of the fact that such matters have already been dealt with by the Parliament in Hindu Minority and Guardianship Act and under Guardian and Wards Act.”

(Emphasis supplied)

13. I have carefully perused the judgments **Sursati Devi (supra)** and **Badri Vishal (supra)** and I am of considered opinion that the view taken later on in **Badri Vishal (supra)** is more appropriate and, therefore, compromise in question, being executed without permission, would hit by Section 8(2) of Act, 1956 and legal consequence of it would fall.

Re: Issue-III

14. Learned counsel for petitioner in First Writ Petition has vehemently placed reliance on a judgment passed by Supreme Court in **Kale vs. Deputy Director of Consolidation, 1976(3) SCC 119** and relevant part of judgment are mentioned hereinafter:

“9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise Kerr on Fraud at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

“The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.”

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term “family” has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which

he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

“A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term “family arrangement” is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.”

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

“(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and

the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.” (Emphasis supplied)

15. Per contra, learned counsel for contesting-respondents submitted that the family settlement has already been executed, therefore, there was no need of its registration. Learned counsel submitted that in order to maintain peace and harmony in a family, a settlement executed about a century ago may not be disturbed. Learned counsel has referred relevant part of impugned order passed by Deputy Director of Consolidation in this regard, which is reproduced hereinafter:

"निद्धी की मृत्यु के बाद पक्षों के मध्य एक पारिवारिक समझौता हुआ जैसा कि 1908 के एकरारनामा से जाहिर है इस एकरारनामा मे राम सुमेर , राम सुन्दर शिव कुमार माता बदल पक्षकार थे। इस एकरारनामा से सम्बन्धित एक सालसी फैसला भी हुआ जिसमे निद्धी का ½ अंश रामचन्दर आदि के पूर्वज को और राम सुमेर माता बदल को दिया गया यह पारिवारिक बंदोबस्त इसका समर्थन सालसी फैसले से होता है का क्रियान्वयन हुआ जैसा कि ग्राम थरी और सुरही के नकल खतौनी 1334 फ० से स्पष्ट है जिसमे राम सुमेर माता बदल का एक हिस्सा बराबर और शिव कुमार राम सुन्दर का एक हिस्सा बराबर दिखाया गया है। इस पारिवारिक बंटवारा से दोनो पक्ष बाधित है 1976 ए.एल.आर पृष्ठ संख्या 173 काले एवं अन्य बनाम उपसंचालक एवम् अन्य मे प्राविधान आया है कि पारिवारिक समझौता यदि अपंजीकृत भी है परन्तु उसका क्रियान्वयन हो गया है तो उससे पक्षगण पाबन्द है और वह उनके मध्य विवन्धन का

असर रखेगा वर्तमान मुकदमे में उपरोक्त परिस्थिति एवं साक्ष्य से जाहिर है कि 1098 में पक्षों के मध्य पारिवारिक समझौता हुआ इससे वे पाबन्द हैं इसलिए निम्नी का ½ अन्श रामचन्दर श्रीकान्त रामधारी को मिला मौजा सुरही में रामअधार ने खाता संख्या 71 के बारे में बल नहीं दिया इसलिए अधीनस्थ न्यायालय द्वारा दिया गया निर्णय सही है।----”

(Emphasis supplied)

16. The aforesaid judgment in **Kale (supra)** has been followed in **Korukonda Chalapathi Rao and another vs. Korukonda Annapurna Sampath Kumar, 2021 SCC OnLine SC 847** and relevant part of judgment is mentioned hereinafter:

“35. If we apply the test as to whether the Khararunama in this case by itself ‘affects’, i.e., by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it merely refers to what the appellants alleged were past transactions which have been entered into by the parties, then, going by the words used in the document, they indicate that the words are intended to refer to the arrangements allegedly which the parties made in the past. The document does not purport to by itself create, declare, assign, extinguish or limit right in properties. Thus, the Khararunama may not attract Section 49(1)(a) of the Registration Act.

36. As far as Section 49(1)(c) of the Registration Act is concerned, it provides for the other consequence of a compulsorily registrable document not being so registered. That is, under Section 49(1)(a), a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or

extinguishment. Section 49(1)(c) in effect, reinforces and safeguards against the dilution of the mandate of Section 49(1)(a). Thus, it prevents an unregistered document being used ‘as’ evidence of the transaction, which ‘affects’ immovable property. If the Khararunama by itself, does not ‘affect’ immovable property, as already explained, being a record of the alleged past transaction, though relating to immovable property, there would be no breach of Section 49(1)(c), as it is not being used as evidence of a transaction effecting such property. However, being let in evidence, being different from being used as evidence of the transaction is pertinent [See Muruga Mudallar (supra)]. Thus, the transaction or the past transactions cannot be proved by using the Khararunama as evidence of the transaction. That is, it is to be noted that, merely admitting the Khararunama containing record of the alleged past transaction, is not to be, however, understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the Khararunama and the receipt would produce any legal effect on the immovable properties in question.

37. As far as stamp duty goes, on our finding regarding the nature of the document, viz., Khararunama, being record of the alleged transactions, it may not require to be stamped. We notice the following conclusion of the Division Bench of the Madras High Court in A.C. Lakshmipathy v. A.M. Chakrapani Reddiar AIR 2001 Mad 135:

“42. To sum up the legal position

xxx xxx xxx

(V) However, a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered.” (Emphasis supplied)

17. In order to appreciate the rival submissions on above issue, I have carefully perused relevant documents, i.e., Ikrarnama Panchnama as well as decision of Panch with regard to settlement. According to Ikrarnama Panchnama, parties to family settlement have agreed to enter into a family settlement and further agreed that they would be bound by decision taken by Panch. The next document was a copy of decision of Panch wherein terms of family partition were clearly mentioned.

18. In aforesaid circumstances, the findings returned by Revisional Authority would be relevant wherein **Kale (supra)** was considered and it was held that since family settlement has already been executed, therefore, even if it is unregistered, it would have legal consequences. The family settlement was executed and recorded in revenue records as well. The family settlement is also very old, i.e., more than a century old. The finding that family settlement was already executed way back, has not been contradicted by any substantial argument or document on record, therefore, despite it being an unregistered document, still it could be accepted in evidence. It may also be noted that parties to family settlement have decided to have settlement and written down it and thereafter referred to Panch for actual settlement, therefore, as referred above, Panch order was only a record and it may not require any registration. Above all, purpose of a family settlement is to keep peace and harmony

in a family and to disturb it after a century would also not be in interest of family.

19. Learned counsel for petitioner in First Writ Petition has also placed reliance on Section 22 of North Western Provinces Tenancy Act, 1901 (*hereinafter referred to as “Act, 1901”*) that succession of tenancy could devolve on collateral relationship, if other descendants were not available. However, proviso to Section 22 provides that no collateral relationship shall be entitled to inherit who did not share in the cultivation of holding at the time of tenant’s death. Learned counsel has failed to point out any document on record, that original petitioner had share in cultivation. Therefore, any reliance on said provision would sans merit.

20. In view of above discussion, all the issues raised are decided against petitioner, therefore, **First Writ Petition is dismissed.**

21. Now the Court deals with Second Writ Petition. In this regard learned counsel for petitioner in Second Writ Petition has narrated his version as mentioned in writ petition as well as in the counter affidavit filed in First Writ Petition.

22. Learned counsel for petitioner has read out grounds raised in writ petition and for reference same are mentioned hereinafter:

“(a) Because the respondent no. 1 committed an error in giving 1/2 share in the holdings nos. 35 and 54 of village Thari to the petitioners in as much as the respondents nos. 2 and 3 had held that Sheo Kumar had 1/2 share and the respondent no. 1 without setting aside that finding illegally assumed that Niddhi was the sole tenure holder of the said holdings.

(b) *Because the holding no. 105 of village Thari was acquired by five persons and every one of them had 1/5th share and as the petitioners inherited the shares of their father Ram Sunder as well as their collaterals Ram Deo and Chanika they had 3/5th share and the respondents nos. 1 to 3 committed an error in giving 1/3rd share to the petitioners.*

(c) *Because the share of the petitioners in the holding no. 61 Kha of village Surhee was 2/3rd and the finding of the respondents nos. 2 and 3 is clearly erroneous and the respondent no. 1 had ignored to give any clear finding in respect of the said holding.*

(d) *Because the holding no. 61 Ga of village Surhee was ancestral and the ancestral share of the petitioners was 1/3rd and they had also got 1/2 of the share of Niddhi and thus the share of the petitioners was 1/2. The respondents nos. 2 and 3 committed an illegality in giving 1/3rd share to the petitioners and there was no clear finding by the respondent no. 1 in his order.*

(e) *Because the plots nos. 64, 71, 154, 222 etc. of holding no. 170 of village Surhee were exclusive holding of the petitioners and the respondents nos. 1 and 3 gave an erroneous finding in respect of the said plots without giving any cogent reason.*

(f) *Because the petitioners have 3/5th share in plots nos. 69, 70, 105, 155 etc. of the holding no. 170 of village Surhee and the respondents nos. 1 to 3 committed an error in giving the petitioners only 1/2 share without giving any reasons.”*

23. As referred above grievance of the petitioner is only with regard to allotment of share in the holdings of Village Thari and Surahi and prayer made in writ petition is also only to this extent.

24. The findings returned by the Deputy Director of Consolidation with regard to grounds taken by petitioner in this writ petition are mentioned hereinafter:-

Village Thari- Khata No. 35, 54, 105

"मौजा थरी के खाता सं० 105 के गाटा सं० 3081/1, 308/2, 459/1, 459/2 को राम सुन्दर राम देव चनिका माताबादल रामअधार ने पट्टा दिनांक 12.07.36 के आधार के आधार पर हासिल किया है। निगरानी कर्तागण उन्हें 3/5 अंश मिलना चाहिये। ग्राम सुरही का निर्णय देते हुये ऊपर कहा जा चुका है कि धारा 171 के मुकदमें में रामचन्द्र ने 1/2 अंश पट्टा वाली भूमि में गया के शाख का भाग था मेरी राय में यह स्वीकारोक्त विवन्धन का असर रखेगी इसलिये रामचन्द्र की निगरानी इस खाते के दौर में निरस्त होने योग्य है इसलिये रामचन्द्र की निगरानी इस खाते के बारे में निरस्त होने योग्य है।

X X X X X

खाता सं० 35 मौजा थरी के गाटा सं० 432/52, 439/48 और खाता 54 ग्राम थरी के गाटा सं० 309/50, 439/54, दोनो खातो की भूमि 1291 फ० में निद्धि तथा शिव बन्धन के नाम अंकित थी। 1308 व 1309 फ० में निद्धि शिवकुमार का हिस्सा बराबर बराबर अंकित है इस भूमि के बारे में एक मुकदमा अन्तर्गत धारा 229 बी, रामचन्द्र और राम आधार के बीच में चला था। वास्तव में यह भूमि गया के द्वारा अर्जित नहीं की गई जो उस समय अलग थे बल्कि शिव बन्धन व निद्धि द्वारा अर्जित की गई थी। (आधार वर्ग में सभी पक्षों के नाम इन दोनो खातो की भूमि में अंकित है, इसलिये अधीनस्थ न्यायालय ने रामचन्द्र आदि का 3/4 और राम आधार को 1/8 और

माता बदल को 1/8 दिया मेरी राय मे निद्धी की भूमि का जब पारिवारिक समझौता हुआ तो इससे वह संयुक्त परिवार की भूमि मानी गई गया का नाम कागजात मे गलती के कारण छूट गया था। परिवार संयुक्त था जैसा कि 1908 के सालसी फौसा से सिद्धा है। इस कारण इस भूमि का बंटवारा भी कुर्सीनामा के अनुसार होना चाहिये। अधीनस्थ न्यायालय के निर्णय से मैं सहमत नहीं कि गया का इसमे कोई अंश नहीं था। ऐसी स्थिति मे राम उजागिर वा रामअधार की निगरानी स्वीकार करने योग्य है।"

Village Surahi- Khata No. 61kha, 61ga, 170 (gata no. 64, 71, 154, 222, 69, 70, 105, 155)

"खाता सं० 61 ग के गाटा सं० 65, 581, 479, 1291 फ० में कालिका के नाम अंकित है। निगरानी कर्ता रामअधार का कहना है कि निद्धी का अंश 1904 के समझौते से उनकी शाख मे गया। इसलिये 2/3 अंश उनका है। उनका यह कथन सही नहीं क्योंकि 1908 की सालसी फैसले का क्रियान्वयन हुआ जैसा कि 1334 फ०, की खतौनी से स्पष्ट है। रामअधार का यह कथन कि जगवन्ती बलवन्ती के हिस्से को समझौता से रामसुमेर को गया गलती है क्योंकि एक्ट 2 , 1901 के धारा 22 के अन्तर्गत उपर्युक्त दोनो लड़कियां निद्धी की वारिस नहीं हो सकती। इसलिये दोनो पक्षों को कुर्सीनामा के हिसाब से अधीनस्थ न्यायालय से सही तौर से अंश दिया है। खाता 61 ख के गाटा सं० 270/2 रकबा 0-25, 270/4 रकबा 0-75 के बारे मे रामचन्द्र आदि का यह कहना कि 1356 फ० की खतौनी मे उनका नाम रामदेव, माता बदल, रामअधार के साथ मुद्रत 5 वर्ष से अंकित है। इसलिये यह गाटा मौरुसी नहीं है। इसी कारण से बंटवारा कुर्सीनामा के आधार पर नहीं होना चाहिए बल्कि परिकेप्ट के आधार पर होना चाहिए। अर्थात् राम चन्द्र का 2/3 अंश होना चाहिये। यदि 1356 फ० मे 6 व्यक्तियों का नाम अंकित था तार 2/3 अंश किसी भी दशा मे रामचन्द्र आदि को नहीं मिल सकता। पत्रावली पर कोई भी पट्टा उपलब्ध नहीं है। जिससे यह सिद्ध हो सके कि 1356 फ० मे

अभिलिखित लोगो ने यह भूमि अर्जित की थी और यह सिद्ध हो सके कि इसमें कोई अंश खोला नहीं गया था, परिवार संयुक्त रूप से अर्जित करता रहे तो यह परिकल्पना की जायेगी की कुर्सीनामा के अनुसार ही बंटवारा किया जाय। जैसा कि विद्वान बन्दोबस्त अधिकारी च० ने किया है।

X X X X X

खाता सं० 170 मौजा सुरही के गाटा सं० 64/0-41, 71/0-44, 154/0-33, 222/0-22, 226/-22, 249/-25, 273/0-19, 293/-50, 296/-19, 317/-21, 417/2-21, 617/1-3, 617/1-33, ज्ञ 12 गाटे 4-85 में निरानीकर्ता रामचन्द्र आदि को 1/3 हिस्सा अधीनस्थ न्यायालय ने दिया है और माता बदल के वंशज को 1/3 हिस्सा और 1/3 रामअधार को दिया है परन्तु निगरानीकर्ता रामचन्द्र आदि ने इस खाते को अपना तनहा बताया है। खतौनी पर उपलब्ध साक्ष्य से यह सिद्ध है कि यह भूमि मौरुसी नहीं है यह बात राम अधार और माता बदल के वारिसान मानते हैं 1925 की नकल डिग्री दाखिल है वो काशी नरेश ने शिव कुमार। रामसुन्दर के ऊपर बकाया माल गुजारी का दावा दाखिल किया था। इस आधार पर रामचन्द्र आदि का कहना है कि यह भूमि उनकी तनहा है। 1307 फ० में यह भूमि शिव कुमार। रामसुन्दर पुत्रगण शिव बन्धन के नाम से अंकित है श्र 1334 प, म० यही अंकन है। 1348 फ० में रामदेव पुत्र शिव कुमार , रामचन्द्र , रामधारी व श्रीकान्त के नाम अंकित है। स 1366 फ० में रामअधार व माता बदल आदि का नाम सहखातेदारी में अंकित हुआ तब से दोनों शाख का नाम बराबर अंकित चला आ रहा है सहखातेदारी शिव बन्धन का भी कायम हुई, इसलिये यह स्पष्ट हो जाता है कि 1357 फ० में यह भूमि संयुक्त परिवार की मानी गई। इस प्रकार तीनों शाख के लोगो के नाम इस खाते के उपरोक्त गाटे पर 1356 फ० में आधा मेरी राय में इसी कारण विद्वान च.अ.च. ने रामचन्द्र आदि को 1/3 अंश दिया जो सही है। खाता सं० 170 मौजा सुरही के गाटा सं० 69/-29, 80/-49, 150/-20, 155/-33,

172/0-4, 202/-38, 224/26 221/22? 232/-22?, 448/-36, 272/-18, 294/-68, 213/-67, 417/1/-11, 444/-2, 618/1-35 16 गाटे 5-30 डि० मे रामचन्द्र आदि को अधीनस्थ न्यायालय ने ½ अंश दिया और रामअधार को ¼ अंश तथा माताबादल के वारिसान को ¼ अंश दिया। रामचन्द्र आदि का कहना है कि दिनांक 12.06.36 को काशी नरेश ने रामदेव, रामचन्द्र, चानिका, रामअधार माताबादल के हक मे बन्दोबस्त किया था। रामदेव, रामचन्द्र, चनिका, रामअधार, माता बादल के हक मे बन्दोबस्त किया था, रामदेव चनिका मर चुके है। इसलिये रामचन्द्र आदि का कहना है कि रामचन्द्र उनके पिता के भाई थे। इस आधार पर उनका यह कहना है कि उनका 3/5 अंश तथा 1/5 अंश रामअधार तथा 1 राम उझागर व अवधनरायन का है। 1936 का पट्टा पत्रावली पर है जिसके अवलोकन से विदित है कि परिवार के प्रतिनिधि के रूप मे रामचन्द्र आदि ने विवादित भूमि सहखातेदारी मे हासिल की थी परगनाधिकारी के समक्ष भी 176 ज.अ. के अन्तर्गत एक मुकमदा चला था। जिसमे रामचन्द्र आदि ने रामअधार माताबादल का ½ अंश स्वीकार किया था। इसकी नकल मौजा सुरही की वाद सं० 890 मे दाखिल है, यह स्वीकार उपरोक्त रामचन्द्र आदि पर विवन्धन का प्रभाव रखेगा इस प्रकार यह सिद्ध है कि रामचन्द्र आदि की मांग उपरोक्त गाटे से 3/5 की गलत है।"

(Emphasis supplied)

25. The above referred findings are based on material available on record, i.e., revenue entries as well as accompanied with reasons. These findings could be interfere only if it were perverse, however, no material was placed on record that above findings are perverse.

26. So far as challenge to allotment of share qua to Village Thari is concerned, the Deputy Director of Consolidation on the basis of revenue records has returned a finding that land was self acquired by Shiv Bandhan and Nidhi and not by Gaya. The

argument that such finding is erroneous cannot be accepted since it is based on revenue records. Similar is with regard to other argument of Village Thari.

27. The arguments with regard to land situated at Village Surahi is concerned, since family agreement was considered to be true and as I have discussed earlier that it could be considered in evidence also, therefore, the finding returned that shares were allotted in terms of family settlement could not be disturbed.

28. In aforesaid circumstances, I do not find that arguments of petitioner in Second Writ Petition are sufficient to interfere with impugned orders which are accompanied by reasons based on records.

29. At this juncture it would be relevant to refer the judgment passed by Supreme Court in **Krishnanand (dead) through Lrs and others vs. Deputy Director of Consolidation and others, (2015) 1 SCC 553** that concurrent findings may not be disturbed unless they are perverse, contrary to record or without jurisdiction and as referred above no such circumstance exist. Relevant paragraphs of judgment are mentioned hereinafter:

“12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in

excess of its jurisdiction or the finding is patently perverse. In the present case, though the High Court reversed the concurrent findings of the authorities below and came to the opposite conclusion on matter of facts, the High Court did not do so on the ground that the authorities below acted in excess of their jurisdiction or without jurisdiction or that the finding is vitiated by perversity.

13. We are of the view that the High Court ought not to have entered into re-appreciation of evidence and reversed the findings of fact arrived at by the three authorities below, especially since, the authorities had neither exceeded their jurisdiction nor acted perversely. The High Court has nowhere stated that it was of the view that there is any perversity, much less the High Court failed to demonstrate any such circumstances.”

30. In view of above discussion, **Second Writ Petition also fails and is dismissed accordingly.**

31. Interim orders, if any, stand vacated.

Order Date :-06.11.2023

AK