

**HIGH COURT OF TRIPURA
AGARTALA
RFA No.19 of 2024**

1. Sri Tapan Chandra Shib, Age- 50

2. Sri Jatan Shib, Age- 48

Both are sons of Late Harendra Nath Shib and residents of West Bank of Jagannath Dighi, Udaipur Town, PS & PO: Radhakishorepur-799120 District-Gomati, Tripura

----- Plaintiffs-appellants

Versus

1. Sri Dinesh Chandra Shib,

2. Sri Paresh Chandra Shib,

Both are sons of Late Harendra Nath shib and residents of West Bank of Jagannath Dighi, Udaipur Town, PS & PO: Radhakishorepur-799120, District-Gomati, Tripura.

----- Defendants-respondents

3. Smt. Ashalata Shib

Wife of Late Harendra Nath Shib, resident of West Bank of Jagannath Dighi, Udaipur Town, PS & PO: Radhakishorepur-799120, District-Gomati, Tripura

----- Proforma Defendant-Respondent

For Appellant(s) : Mr. Dilip Kumar Das Chowdhury, Adv.

For Respondent(s) : Mr. Sankar Kumar Deb, Sr. Adv,
Mr. Saugat Datta, Adv.

Date of hearing : 14.07.2025

Date of delivery of Judgment & Order : 25.07.2025

Whether fit for reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred under Section 96 of CPC read with Order XLI of CPC challenging the judgment dated 29.07.2024 and decree dated 02.08.2024 delivered by Learned Civil Judge (Senior Division), Court No.2, Gomati District, Udaipur in connection with case

No.T.S. No.5 of 2015. By the said judgment and decree, Learned Trial Court has been pleased to dismiss the suit preferred by the present appellant-plaintiffs.

2. Heard Learned Counsel Mr. Dilip Kumar Das Chowdhury appearing on behalf of appellant-plaintiffs and also heard Learned Senior Counsel Mr. Sankar Kumar Deb assisted by Learned Counsel Mr. Saugat Datta appearing on behalf of the contesting respondent-defendants.

3. The brief facts of the case are as follows:

The appellant-plaintiffs filed one suit for declaration of right, title and interest and for recovery of vacant possession of the suit path along with perpetual injunction restraining the defendants from raising any illegal construction or encroaching upon the suit land or creating any obstruction in free movement. Their case was that one Harendra Nath Shib(since dead) was the original owner in possession of the suit land which is a pathway fully described under schedule-A of the plaint(suit path). Said Harendra Nath Shib expired on 13.07.1996 leaving behind his wife i.e. respondent-defendant No.3, his sons i.e. the appellant-plaintiffs and respondent-defendants No.1 and 2 of the main suit and deceased son Swapan Chandra Shib and two daughters. According to the appellant-plaintiffs prior to the death of Harendra Nath Shib he had trusted his elder son i.e. defendant No.1 with respect to his family affairs and after his death all other family members also trusted upon him. The said respondent-defendant No.1 in connivance with respondent-defendant No.2 taking advantage of the trust of the rest other family members managed to execute a

WILL by Harendra Nath Shib when he was in death bed condition beyond the knowledge of the appellant-plaintiffs and other family members on 08.07.1996 and in this manner the respondent-defendants managed to divide the family properties amongst the brothers keeping to themselves better and larger chunks of the land while the less valuable and useless lands were given to the appellant-plaintiffs and the land was accordingly recorded in the name of the appellant-plaintiffs and the respondent-defendants.

The contents of the Will revealed in the year 2006 when the defendants No.1 and 2 i.e. the respondents No.1 and 2 herein raised their pucca construction on their homestead land encroaching upon the land under the suit path. The appellant-plaintiffs became aware of the contents of the Will by taking a certified copy of the same in the month of July, 2014 and as per the contents of the WILL, registered vide No.III-57 dated 10.07.1996 whereby the original owner bequeathed his land to his five sons specifying the area of land for each beneficiary and kept the joint land for suit path and another plot of land for extended second path for ingress and egress for all the respondent-defendants and appellant-plaintiffs. According to the appellant-plaintiffs the suit path as per Will was 6 feet in breadth situated on the northern side of the plots allotted to the respondent-defendants No.1 and 2 starting from the main road in the east and met with the extended second path in the west. That the extended path was 6 feet in breadth on the eastern side of the plots allotted to the appellant-plaintiffs and proforma respondent-defendant No.3 connecting the western end of the suit path running towards north to

the northern end of the land of the appellant-plaintiffs and pro-respondent-defendant No.3 and the extended path is now described in schedule-B of the suit land.

The appellant-plaintiffs were not satisfied with the manner of execution of the WILL but owing to huge lapse of time they had no other option but to accept the terms and conditions of the WILL and as per recitals of the Will all the legatees could move along with the suit path but no one could raise any objection/obstruction. The respondent-defendants No.1 and 2 were the executors of the Will and at the time of mutation both the suit path as mentioned in schedule-A and schedule-B was mutated in the name of the appellant-plaintiffs and the respondent-defendants in equal shares in separate khatians and since then all the parties had been occupying the suit path continuously and the suit path was the only path of the appellant-plaintiffs and the pro-respondent-defendant No.3 for ingress and egress from their respective dwelling houses to the main road i.e. west bank of Jagannath Dighi.

The respondent-defendants No.1 and 2 procured the signature of the appellant-plaintiffs under influence upon the unregistered notarized agreement dated 26.09.2011 regarding the shift of the location of the suit path from the northern side to the southern side of the homestead land of the respondent-defendants No.1 and 2 increasing the breadth from 6 feet to 10 feet. The appellant-plaintiffs herein and the proforma respondent-defendant No.3 having bonafide faith upon the respondent-defendants No.1 and 2 and without going through the contents of the agreement and also

without understanding the legal implications had blindly put their signature on the said agreement which was not tenable in the eyes of law on the ground that as per the recitals of the WILL no obstruction could be placed on the said suit path and secondly there is a huge difference in the valuation of land sought to be exchanged for the suit path by the dint of the unregistered deed and for that reason the said agreement dated 26.09.2011 is invalid and *void ab initio* and hence is liable to be declared as void against the appellant-plaintiffs and the pro-respondent-defendant No.3.

The respondent-defendants No.1 and 2 started construction crossing the northern boundary of their homestead land encroaching upon the major portion of the land under the suit path and the respondent-defendant No.1 started construction without any sanction upon plot No.877 to which was objected to by the appellant-plaintiffs but the respondent-defendants did not pay any heed. That the appellant-plaintiff had informed the matter about the illegal construction to the Chairperson, Udaipur Municipal Council, DM & Collector, O/C R.K. Pur, and Chief Executive Officer, Udaipur Municipal Council and on the basis of the complaint one Misc case bearing No.377/14 was also initiated and in the said proceeding the respondent-defendants No.1 and 2 produced the agreement dated 26.09.2011 and only then the appellant-plaintiffs could know that the said document is adverse to their interest. However, due to intervention of Udaipur Municipal Council, the respondent-defendants had suspended their construction work for the time being but are

constantly making attempts for resuming the work violating the terms of the WILL.

The appellant-plaintiffs have also filed a criminal case against the respondent-defendants bearing No.PRC(SP)/98/2015 wherein the respondent-defendants along with two other persons were convicted under section 323 IPC and were released on probation. The appellant-plaintiffs have valid cause of action to file the suit seeking the reliefs of declaration of joint possession of the appellant-plaintiffs and the respondent-defendants over the suit plot in equal shares and for recovery of possession of the suit land by removing any obstruction therefrom for free movement and for permanent injunction against the respondent-defendants restraining them from raising any future construction on the suit path.

The respondent-defendants No.1 and 2 contested the suit by filing their written statement whereby they challenged the maintainability of the suit on the ground of law of limitation as well as estoppel, waiver and acquiescence. It was contended that Harendra Nath Shib during his life time had executed one Registered WILL on 08.07.1996 whereby he bequeathed his properties in favour of the appellant-plaintiffs and the respondent-defendants and proforma respondent-defendant No.3 being his sons and said Harendra Nath died on 13.07.1996 and after his death the appellant-plaintiffs and respondent-defendants and proforma respondent-defendant No.3 became the owner of their respective shares in possession thereof. That the parties amicably entered into a settlement for distribution of the properties and the said oral agreement was reduced into writing

wherein it was mutually decided by all the parties that instead of 6 feet wide road running from east-west from the west bank of Jagannath Dighi to south-north and the allotted lands of the appellant-plaintiffs and proforma respondent-defendant No.3 will be re-allocated and instead of the 6 feet wide road, a 10 feet wide road shall run from the west bank of Jagannath Dighi till south west corner of the respondent-defendant No.2 and then the said 10 feet pathway shall run south-north for common use of all the parties. That all the share-holder agreed to the same and acting thereon the parties made their respective construction. The said agreement was notarized on 26.09.2011 in presence of all the stake holders. That the said re-allocation was made considering the convenience and in-convenience of all the parties thereto and the same was also made soon after the demise of their father Harendra Nath Shib on 13.07.1996. On the basis of said settlement the 10 feet wide road was also constructed by the southern side of the properties left by Harendra Nath Shib running east-west and that the appellant-plaintiffs also accepted the realignment of the road and started using the said 10 feet wide road. The said re-allocation of the 6 feet wide pathway under the registered WILL of Lt. Harendranath Shib was as per the amicable settlement of the appellant-plaintiffs and hence they are barred under the principles of estoppel, acquiescence and waiver. That the notarized deed of agreement was executed on 26.09.2011 under free and full consent of all the beneficiaries under the registered WILL and hence the suit is barred by law of limitation. Accordingly it is submitted by the respondent-defendants that the suit was filed in suppression of

material facts beyond the period of limitation and hence the same was not maintainable in its present form and nature.

4. Upon the pleadings of the parties, Learned Court below framed the following issues:

Issues

- I) Whether the suit is maintainable in its present form and nature?
- II) Whether there is any cause of action for filing of the suit?
- III) Whether the parties of this suit have joint right of ingress and egress through the suit path mention in the schedule A of the plaint?
- IV) Whether the agreement dated 26.09.2011 took place between the plaintiffs and the defendants is operative in law or not?
- V) Whether the principal defendants are liable to remove the construction made by them over the suit path?
- VI) Whether the plaintiffs are entitled to get a decree as prayed for?
- VII) Whether any other relief or reliefs can be granted?

In order to prove the issues both the parties have adduced oral/documentary evidence on record which are also mentioned herein below:

(A) Plaintiff's Witnesses :-

- i) PW-1: Sri Jatan Shib.
- ii) PW-2: Smt. Ashalata Shib.
- iii) PW-3: Md. Mir Hossain.
- iv) PW-4: Md. Nasir Uddin.
- v) PW-5: Sri Binoy Debbarma.
- vi) PW-6: Sri Binoy Debbarma.

(B) Plaintiffs' Exhibits :-

- i) Ext.1 series:- Certified copy of registered WILL vide NO.III-57 in the year 1996.
- ii) Ext.2 & 3:- Certified copy Khatian NO.1065 and 2023 of Mouja Udaipur Town.
- iii) Ext.4 series:- True copy of the impugned agreement dated 26.09.2011 in 3 sheets.
- iv) Ext.5 series:- Receipted copy of written joint objections dated 27.06.2014 in 4 sheets.
- v) Ext.6 series:- Receipted copy of written joint objection dated 04.02.2015 in 3 sheets.
- vi) Ext.7 series: Letter dated 02.07.2014 along with the notices of DM & Collector dated 02.07.2014 in 3 sheets.

- vii) Ext.8 series:- Certified copy of order sheet dated 06.11.2014 passed in Case NO.377 of 2014 under Section 133 Cr.P.C along with the inquiry report by the Executive Magistrate Udaipur in 3 sheets.
- viii) Ext.9 series:- Copy of the petition addressed to OC of R. K. Pur PS on 30.01.2015 in 2 sheets.
- ix) Ext. 10, 11, 12, 13, 14 & 15:- Certified true copies of RS Khatian NO.2806, 2805, 2804, 2811, 2812 & 103 under Mouja Udaipur.
- x) Ext. 16:- Certified copy of RS Map of related suit plots including adjacent Plots under Mouja Udaipur Town.
- xi) Ext.17:- Letter dated 13.10.2015 issued by the Junior Scientific Assistant Udaipur Municipal Council in favour of the Plaintiff NO.1.
- xii) Ext.18 series:- Certified copy of FIR ejahar, injury report, charge sheet in connection with R.K. Pur PS case NO.119 of 2016 in 16 sheets.
- xiii) Ext.19:- Original receipt copy of written complaint of Sri Jatan Shib against Sri Krishna Nanda Bhowmik addressed to the OC R.K. Pur PS.
- xiv) Ext.20 series:- Certified copy of the registered sale deed NO.1-852 dated 16.05.98 in 7 sheets.
- xv) Ext.21 series:-Authenticated true copy of registered Deed NO.1-789 dated 28.03.2001 executed in favour of Dinesh Chandra Shib in 2 sheets.

(C) Defendant's Witnesses :-

- i) DW.1: Sri Dinesh Chandra Shib.
- ii) DW.2: Sri Paresh Chandra Shib.
- iii) DW.3: Sri Krishnananda Bhowmik.
- iv) DW.4: Sri Biswajit Das
- v) DW.5: Sri Jhulan Chandra Das

(D) Defendant's Exhibits :-

- i) Ext.D/1:- original agreement dated 26.09.2011.
- ii) Ext.D/2:- proposed construction Plan of the residential building of Sri Paresh Chandra Shib dated 15.06.2006.
- iii) Ext.D/3:- Cash receipt dated 29.01.2015 of Udaipur Municipal Council against Building permission fee.
- iv) Ext.D/4:- Original sanction of erection of building and issue of building permit dated 19.10.2006.
- v) Ext.D/5:- Original receipt copy of the complaint dated 21.08.2016 filed before the OC R. K. Pur PS.
- vi) Ext.D/6:- Certified copy of the PR NO.1134 of 2016 under section 107 Cr.P.C dated 27.08.2016.

- vii) **Ext.D/7 series:- Certified copy of the printed copy of FIR NO.2015 RKP 063 dated 25.04.2015 comprising 2 pages.**
- viii) **Ext.D/8 series:- Certified copy of the complaint filed on 25.04.2015 comprising 3 pages.**
- ix) **Ext.D/9 series:- Certified copy of the hand sketch map and index in connection with R.K. Pur PS case NO.2015 RKP 063 comprising 2 pages.**
- x) **Ext.D/10 series:- Certified copy of deposition of made by SI Biswajit Das in connction with PRC(SP) 98 of 2015.**
- xi) **Ext.D/11 series:- Certified copy of Judgment passed in PRC(SP) 48 of 2017.**
- xii) **Ext.D/12 series: Certified copy of Judgment passed in PRC(SP) 19 of 2017.**
- xiii) **Ext.D/13:- Certified copy of inquiry report dated 26.09.2024 of Executive Officer.**
- xiv) **Ext.D/14:- Hand sketch map prepared by DW-4.**
- xv) **Ext.D/15:- Signature of DW 4 on the said deposition.**
- xvi) **Ext.D/16:- Seal and signature of DW 5 on the document.**

Finally, after conclusion of trial Learned Trial Court below by the judgment dated 09.07.2024 dismissed the suit filed by the appellant-plaintiffs without any cost.

Challenging that judgment, the appellant-plaintiffs have preferred this appeal before this Court.

5. Learned Counsel Mr. D. K. Das Chowdhury appearing on behalf of the appellant-plaintiffs first of all drawn the attention of the Court that at the time of framing of issues, Learned Trial Court did not frame any issue regarding limitation. According to Learned Counsel while the appellant-plaintiffs were initially dissatisfied with the recitals of the WILL, they finally agreed upon and on the basis of the WILL, the respective lands of the legatees i.e. legal heirs of deceased Harendra Nath Shib was recorded in their respective khatians but the respondent-defendant No.1 being the elder brother of the family,

arranged to prepare one notarized agreement on 26.09.2011 which was unregistered, keeping the appellant-plaintiffs in dark and deviated from the recitals of the WILL which was not permissible as per law. Learned Counsel further submitted that since the WILL attained finality and all the legal heirs of Harendra Nath Shib agreed upon that, later on there was no scope to change the nature of the WILL on the basis of an unregistered agreement dated 26.09.2011. Learned Counsel further submitted that the contesting respondent-defendants playing fraud upon them obtained the signature of the appellant-plaintiffs on the said agreement dated 26.09.2011 and the Learned Trial Court relying upon the said agreement dismissed the suit of the appellant-plaintiffs which was also legally not permissible. Even the said agreement was also not a deed of exchange and on the basis of that, no rights have been created upon the parties to the suit. Furthermore, after preparation of separate khatian as per WILL, the joint rights of the property seized and no family arrangement could be made in respect of those properties without any registration and by the impugned agreement, the contesting respondents desired to change their land which is not permissible as per law in absence of registration and the recital of the agreement was in violation of the intention of the testator. Learned Counsel further submitted that the judgment and decree delivered by Learned Trial Court suffers from infirmities and the proposed 10 feet road has been made only for interest of respondent-defendant No.1 and in that unregistered agreement, all the legal heirs of Harendra Nath Shib were not made parties. So, finally Learned Counsel submitted that as the contesting

respondent-defendants started constructing pucca building on the original 6 feet suit path way as per WILL, so, by the subsequent unregistered agreement dated 26.09.2011, the contesting respondent-defendants tried to cause loss and suffer to the appellant-plaintiffs and obstructed the access of the appellant-plaintiffs to enter into their land from the main road. Even the respondent-defendant No.1 also did not take any permission for construction and more interestingly pro-respondent-defendant No.3 Swapan Shib during his lifetime did not challenge the plaint filed by the appellant-plaintiffs and his mother also did not challenge the claim of the appellant-plaintiffs but the Learned Trial Court ignored the registered WILL and relied upon said unregistered agreement dated 26.09.2011 and ultimately dismissed the suit which cannot be legally sustained and urged for allowing this appeal by setting aside the judgment and decree.

6. On the other hand Learned Senior Counsel Mr. S. K. Deb assisted by Learned Counsel Mr. Saugat Datta appearing on behalf of the contesting respondent-defendants first of all drawn the attention of the Court that the suit was filed on 09.02.2015 which was beyond the prescribed period of limitation but in this regard nothing was mentioned in the plaint. It was further submitted that the appellant-plaintiffs in their plaint stated that they were not happy with the recitals of the WILL but surprisingly they did not take any effort for challenging that WILL to any other forum. Even the daughters of Harendra Nath Shib were not made parties and as submitted by the appellant-plaintiffs, the family settlement suffers from necessary

parties and in this regard no evidence was led by the appellant-plaintiffs before the Learned Trial Court. Furthermore, before the Learned Trial Court also, no issue was framed for non-joinder of parties. The WILL was executed on 08.07.1996 and thereafter Harendra Nath Shib was expired on 13.07.1996. Learned Senior Counsel further submitted that in the recital on the body of the WILL it was clearly mentioned by the testator that he has assigned the duties to complete the task as per WILL to his elder son and second son who are respondents No.1 and 2 of this appeal. It was further submitted that Harendra Nath Shib having died on 13.07.1996 and the properties under the said WILL fell to the respective share of his sons i.e. the appellants, the respondents and the pro-respondent-defendants and all his sons became the owners in possession of the respective shares and soon after the sons became the owners in possession of the shares of the property, they amicably made a settlement in the year 1998 and thereafter on 26.09.2011 the said oral agreement was reduced into a deed of agreement wherein it was agreed that instead of 6 feet wide road running east from the west bank of Jagannath Dighi and then south-north and the allocated lands of the appellant-plaintiffs and the proforma respondent-defendant No.3 would be re-allocated and accordingly it was settled that instead of 6 feet road as recited in the WILL, the common pathway would be 10 feet side running from west bank of Jagannath Dighi till the south-west corner of the respondent-defendant No.2 and then the said 10 feet wide road would run south-north for common use of all the legatees and accordingly all the legatees acted according to the oral

agreement and all of them made their respective construction. Learned Senior Counsel referring the above submitted that Learned Trial Court after considering the oral/documentary evidence on record relied upon the unregistered deed of agreement and dismissed the suit rightly.

It was further submitted that as per Section 9 of the Limitation Act, cause of action once started does not stop, it continues. Learned Senior Counsel further submitted that in para No.13 of the examination-in-chief in affidavit the appellant-plaintiff No.1, Jatan Shib stated that the cause of action of the suit arose on October, 2006 then why the suit was not filed within time. Learned Senior Counsel also drawn the attention of the Court referring last part of para No.15 and submitted that although the said appellant-plaintiffs disputed the averments in para Nos.3, 4, 5, 6 and 7 but to discard the said contentions no contrary evidence was produced by the appellant-plaintiffs before the Learned Trial Court. Learned Senior Counsel further submitted that the respondent-defendant No.1 in his examination-in-chief in affidavit specifically in para Nos.19, 20, 21, 22 and 29 have discussed in detail about the defence case but surprisingly the appellant-plaintiffs by the style of cross-examination could not discard the evidence on record of the said witness. Again, Learned Senior Counsel has drawn the attention of the Court referring cross-examination of PW-1, Jatan Shib wherein in para No.3 he stated that he is a business man having a hotel and is also a contractor and if this contention is correct then how the appellant-plaintiffs can took the plea that beyond their back the respondent-defendants obtained

their signature on the unregistered deed of agreement dated 26.09.2011. So, the plea of the appellant-plaintiffs that without knowing the consequences they have put their signature is totally false and concocted and furthermore the contents of the document were also not challenged by the appellant-plaintiffs. Learned Senior Counsel also drawn the cross-examination part of DW-1 and by the style of cross-examination the appellant-plaintiffs also could not shaken his evidence. Learned Senior counsel further submitted that the suit was filed on 09.02.2015 and according to the appellant-plaintiffs, the cause of action commenced in October, 2006 and as per Article 58 of the Limitation Act in such a situation, the period of limitation was 3(three) years but the suit was filed after a long period although no issue in this regard was framed by the Learned Trial Court.

7. Finally, in support of his contention Learned Senior Counsel relied upon one citation of the Hon'ble Supreme Court of India in **Kale and Others Vs. Deputy Director of Consolidation and others** reported in **(1976) 3 SCC 119** wherein in para No.2, 9, 10, 18, 19, 20, 24 and 42, Hon'ble the Supreme Court observed as under:

"2. The case had a rather chequered career and the disputes between the parties were sometimes settled and sometimes reopened. In order, however to understand the point involved in the present appeal, it may be necessary to enter into the domain of the contending claims of the respective parties put forward before the revenue courts from time to time. To begin with the admitted position is that one Lachman the last propositior was the tenant and the tenure holder of the property in dispute which consists of 19.73 acres of land contained in khatas Nos. 5 and 90 and 19.24 acres of land comprising khatas Nos. 53 and 204. Lachman died in the year 1948 leaving behind three daughters, namely, Musamat Tikia, Musamat Har Pyari and Musamat Ram Pyari. Musamat Tikia was married during the lifetime of Lachman and the appellant No. 1 Kale is the son of Musamat Tikia. Thus it would appear that

after the death of Lachman the family consisted of his two unmarried daughters Har Pyari and Ram Pyari and his married daughter's son Kale. Under the U. P. Tenancy Act, 1939 which applied to the parties only unmarried daughters inherit the property. The first round of dispute appears to have arisen soon after the death of Lachman in the year 1949 when panchayat adalat of the village was asked to decide the dispute between Prem Pal nephew of Lachman and the appellant Kale regarding inheritance to the property left by Lachman. Har Pyari and Ram Pyari appear to have been parties to that dispute and the panchayat adalat after making local enquiries held that Har Pyari having been married had lost her right in the estate and Ram Pyari was also an heir so long as she was not married and after her marriage the legal heir to the property of Lachman would be the appellant Kale. In the year 1952 the U. P. Zamindari Abolition and Land Reforms Act, 1950 was made applicable to the tenure holders also. This Act was further amended on October 10, 1954 by Act 20 of 1954 by which, amongst the list of heirs enumerated under the statute, "unmarried daughter" was substituted by "daughter" only. According to the appellant in this Court as also in the High Court Ram Pyari respondent No. 5 was married on February 25, 1955 and thereafter the appellant filed a petition before the Naib Tahsildar, Hasanpur, for expunging the names of respondents Nos. 4 and 5 from the disputed khatahs because both of the daughters having been married ceased to have any interest in the property. It was therefore prayed that as the appellant was the sole heir to the estate of Lachman under Section 36 of the U. P. Tenancy Act, 1939, he alone should be mutated in respect of the property of Lachman. By order dated December 5, 1955 the Naib Tahsildar, Hasanpur, accepted the contention of the appellant and expunged the names of respondents Nos. 4 and 5 from the khatahs in dispute and substituted the name of the appellant Kale. Soon thereafter on January 11, 1956, respondents Nos. 4 and 5, i.e. Musamat Har Pyari and Ram Pyari daughters of Lachman, filed an application before the Naib Tahsildar for setting aside his order dated December 5, 1955 which had been passed behind their back and without their knowledge. While this application of respondents Nos. 4 and 5 was pending adjudication, the revenue court was informed that talk of compromise was going on between the parties which ultimately culminated in a compromise or a family arrangement under which the appellant Kale was allotted khatahs Nos. 5 and 90 whereas respondents Nos. 4 and 5 were allotted Khatahs Nos. 53 and 204 as between them. A petition was filed on August 7, 1956 before the revenue court informing it that a compromise had been arrived at and in pursuance thereof the names of the parties may be mutated in respect of the khatahs which had been allotted to them. This petition was signed by both the parties and ultimately the Assistant Commissioner, I Class, passed an order dated March 31, 1957 mutating the name of the appellant Kale in respect of khatahs Nos. 5 and 90 and the names of respondents Nos. 4 and 5 in respect of khatahs Nos. 53 and 204. Thereafter it is not disputed that the parties remained in possession of the properties allotted to them and paid land revenue to the Government. Thus it would appear that the dispute

between the parties was finally settled and both the parties accepted the same and took benefit thereunder. This state of affairs continued until the year 1964 when proceedings for revision of the records under Section 8 of the U. P. Consolidation of Holdings Act, 1953 were started in the village Hasanpur where the properties were situated in the course of which respondents Nos. 4 and 5 were entered in Form C.H. 5 as persons claiming co-tenure holders to the extent of two-third share with the appellant Kale who was entered in the said form as having one-third share in all the khatas. In view of this sudden change of the entries which were obviously contrary to the mutation made in pursuance of the family arrangement entered into between the parties in 1956, the appellant Kale filed his objections before the Assistant Consolidation Officer for changing the entries in respect of those khatas. As the Assistant Consolidation Officer found that the dispute was a complicated one he by his order dated May 7, 1964 referred the matter to the Consolidation Officer. It might be mentioned here that when the proceedings for revision of the records were started, while the appellant filed his objections, respondents Nos. 4 and 5 seem to have kept quiet and filed no objections at all. In fact under Section 9(2) of the U. P. Consolidation of Holdings Act, 1953, the respondents could have filed their objections, if they were aggrieved by the entries made on the basis of the compromise. Sub-section (2) of Section 9 of the U. P. Consolidation of Holdings Act runs thus:

Any person to whom a notice under sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication under sub-section (1), as the case may be, file, before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom, or in the Statement of Principles, or the need for partition.

This is a very important circumstance which speaks volumes against the conduct of the respondents which will be referred to in detail in a later part of our judgment and seems to have been completely brushed aside by all the courts.

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.

18. In the recent decision of this Court in *S. Shanmugam Pillai v. K. Shanmugam Pillai*:(1973) 2 SCC 312 the entire case law was discussed and this Court observed as follows: [pp. 319. 321-322. paras 12, 24-25]

If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.

* * * *

Now turning to the plea of family arrangement, as observed by this Court in *Sahu Madho Das v. Pandit Mukand Ram* (supra) the courts lean strongly in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all. As observed in that case the family arrangement can as a matter of law be inferred from a long course of dealings between the parties.

In *Maturi Pullaiah v. Maturi Narasimham* (supra) this Court held that although conflict of legal claims in praesenti or in future is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the courts would more readily give assent to such an agreement than to avoid it.

19. Thus it would appear from a review of the decisions analysed above that the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds.

20. A Full Bench of the Allahabad High Court in *Ramgopal v. Tulshi Ram*:AIR 1928 All 649 has also taken the view that a family arrangement could be oral and if it is followed by a petition in court containing a reference regarding the arrangement, no registration was necessary. In this connection the Full Bench adumbrated the the following propositions in answering the reference:

We would, therefore, return the reference with a statement of the following general propositions:

With reference to the first question:

(1) A family arrangement can be made orally.

(2) If made orally, there being no document, no question of registration arises.

With reference to the second question:

(3) If though it could have been made orally, it was in fact reduced to the form of a "document", registration (when the value is Rs.100 and upwards) is necessary.

(4) Whether the terms have been "reduced to the form of a document" is a question of fact in each case to be determined upon a consideration of the nature and phraseology of the writing and the circumstances in which and the purpose with which it was written.

(5) If the terms were not "reduced to the form of a document", registration was not necessary (even though the value is Rs.100 or upwards); and while the writing cannot be used as a piece of evidence for what it may be worth, e.g. as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct.

(6) If the terms were "reduced to the form of a document" and, though the value was Rs.100 or upwards, it was not registered, the absence of registration makes the document inadmissible in evidence and is fatal to proof of the arrangement embodied in the document.

24. This Court has also clearly laid down that a family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. We shall deal with this point a little later when we consider the arguments of the respondents on the question of the estoppel. In the light of the decisions indicated above, we shall now try to apply the principles laid down by this Court and the other courts to the facts of the present case.

42. Finally in a recent decision of this Court in S. Shanmugam Pillai's case (supra) after an exhaustive consideration of the authorities on the subject it was observed as follows:

Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope."

*** * * ***

As observed by this Court in **T. V. R. Subbu Chetty's Family Charities'** case(supra), that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open.

In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against respondents Nos.4 and 5. Respondent No.1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases. The learned Counsel for the respondents placed reliance upon a number of authorities in **Rachbha v. Mt. Mendha**:AIR 1947 All 177; **Chief Controlling Revenue Authority v. Smt. Satyawati Sood**:AIR 1972 Delhi 171 and some other authorities, which, in our opinion have no bearing on the issues to be decided in this case and it is therefore not necessary for us to refer to the same."

Referring the same, Learned Senior Counsel submitted that in view of the principles laid down in the aforesaid citation, there is no scope to disbelieve the unregistered written agreement dated 27.09.2011 and as such Learned Trial Court rightly delivered the judgment.

8. Learned Senior Counsel also referred another citation in **S. Saktivel(Dead) by LRS. Vs. M. Venugopal Pillai and others** reported in **(2000) 7 SCC 104** wherein in para Nos.5 and 6, Hon'ble the Apex Court observed as under:

"5. Learned counsel appearing for the appellant urged that the view taken by the High Court in decreeing the suit of the plaintiff was erroneous inasmuch as the settlees under Ext. A-1 got the suit property and by the subsequent oral arrangement, they agreed to work out their rights without varying or substituting the terms of Ext. A-1 and, therefore, the High Court was not right in not considering the oral arrangement as pleaded by the defendant-appellant. It is not disputed that disposition under Ext. A-1 in the present case is by way of grant and under the said disposition all the sons of Muthuswamy Pillai acquired rights. It is also not disputed that the settlement deed is a registered document and by virtue of alleged subsequent oral arrangement, the other sons of Muthuswamy Pillai were divested of the rights which they acquired under the settlement deed. Under such circumstances the question that arises for consideration is as to whether any parol evidence

can be let in to substantiate subsequent oral arrangement rescinding or modifying the terms of the document which, under law, is required to be in writing or is a registered document, namely, Ext. A-1. Section 92 of the Evidence Act reads as thus:

"92. Exclusion of evidence of oral agreement.- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

* * * *

Proviso (4). The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents."

A perusal of the aforesaid provision shows that what Section 92 provides is that when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced in the form of a document, have been proved, no evidence of any oral agreement or statement is permissible for the purpose of contradicting, varying, adding or subtracting from the said written document. However this provision is subject to provisos (1) to (6) but we are not concerned with other provisos except proviso (4), which is relevant in the present case. The question then is whether the defendant-appellant can derive any benefit out of proviso (4) to Section 92 for setting up oral arrangement arrived at in the year 1941 which has the effect of modifying the written and registered disposition. Proviso (4) to Section 92 contemplates three situations, whereby:

(i) The existence of any distinct subsequent oral agreement to rescind or modify any earlier contract, grant or disposition of property can be proved.

(ii) However, this is not permissible where the contract, grant or disposition of property is by law required to be in writing.

(iii) No oral evidence can be let in to substantiate any subsequent oral arrangement which has the effect of rescinding a contract or disposition of property which is registered according to the law in force for the time being as to the registration of documents."

Relying upon the same, Learned Senior Counsel further submitted that since from the evidence of the appellant, it appears that he is an educated person and is a contractor and business man

by profession, so, the plea taken by the appellant that without knowing the contents of the document he had put his signature on the said unregistered notarized document cannot be accepted and furthermore, the appellants have not challenged the WILL as stated earlier and there is also no evidence on record from the side of the appellants to disbelieve the said unregistered document. So, the judgment delivered by Learned Trial Court was good in law and there is no materials on record to interfere with the judgment and urged for dismissal of this appeal.

9. Learned Senior Counsel at the time of hearing of argument also referred the provision of Order VI Rule 4 of CPC and submitted that in the case at hand the appellant could not prove any fraud played by the respondent-defendants and in this regard, Learned Senior Counsel also relied upon another citation of the Hon'ble Apex Court in **Placido Francisco Pinto (D) by Lrs and Another Vs. Jose Francisco Pinto and Another** reported in **2021 SCC OnLine SC 842** wherein in para No.15, 19, 23 and 29, Hon'ble the Apex Court observed as under:

"15. It is an admitted fact that consequent to the amendment in the plaint and in the written statement, no evidence was led. Mr. Dhruv Mehta, learned senior counsel for the respondents stated that the evidence was already on record in respect of misrepresentation leading to fraud, therefore, the pleadings were amended so as to support the evidence.

19. We have heard the learned counsels for the parties and find that the findings of the First Appellate Court as affirmed by the High Court are clearly erroneous. Respondent No. 1 in the written statement has admitted payment of Rs. 12,000/- to his creditors by the appellant No. 1. It is also admitted by him that his and his wife's signatures were obtained outside the Municipal Office and also before the Officers in the Municipal Building when there were about 10-12 people in the office.

23. Order VI Rule 2 of the Code of Civil Procedure, 1908 is to the effect that every pleading shall

contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies upon for his claim or defence as the case may be, but not the evidence by which they are supposed to be proved. Appellant No. 1 has relied upon the sale deed which contains the recital of payment of Rs. 3,000/- as the sale consideration. The evidence in support of such sale deed was not required to be pleaded in the plaint filed by the appellant. Still further, in terms of Order VI Rule 4 of the Code, in all cases in which the party pleading relies on any misrepresentation, fraud, or undue influence shall state in the pleadings the particulars with dates and items in the pleadings. The extract from the written statement or the plaint does not show that there is any pleading of misrepresentation or fraud. The evidence led by the respondents is not indicative of any instance of fraud or misrepresentation as well. Respondent No. 1 was candid enough to admit that there were debts of Rs. 12,000/- which were paid off by appellant No. 1. He also admits that he was taken to the Municipal Office and signed once outside the Municipal Office and once inside the Municipal Office. His wife had accompanied him. With such facts on record, we find that the findings recorded by the Courts below that the sale deed was result of fraud or misrepresentation are clearly not sustainable.

29. The respondents were free to prove fraud in execution of the sale deed. However, factually, the respondents have not alleged any fraud in their suit or in the written statement in the suit filed by appellant No. 1. The feigned ignorance about the nature of document cannot be said to be an instance of fraud. In the absence of any plea or proof of fraud, respondent No. 1 is bound by the written document on which he admitted his signatures and of his wife. There is no oral evidence which could prove fraud, intimidation, illegality or failure of consideration to permit the respondents to lead oral evidence to dispute the sale deed dated 14.9.1970. Therefore, the judgments referred to by Mr. Mehta are of no help to support his arguments. Thus, the findings recorded by the First Appellate Court as affirmed by the High Court are clearly erroneous in law and are, thus, set aside."

Referring the same, Learned Senior Counsel again submitted that in the plaint there were no specific assertions in this regard. So, the plea taken by the appellant cannot be accepted.

10. Regarding limitation, Learned Senior also referred another citation of Hon'ble Supreme Court of India in **Thankamma George vs. Lilly Thomas and Another** reported in **(2024) 8 SCC 351** wherein in para No.19, the Hon'ble Apex Court further observed as under:

19. We examine the plea of limitation raised by the respondents. The respondents' case is that the suit was filed on 11-5-2011, and in effect, the suit seeks to set aside the sale deed dated 16-4-2008 (Ext.A-5). The suit was filed beyond the limitation period and should have been dismissed. Limitation is a question of law and fact. The period of limitation and the time from which the period begins to run, depend on the article in the schedule appended to the Limitation Act of 1963. The case falls under "Part III- Suits Relating to Declarations". Article 58 reads thus:

Description of suit	Period of limitation	Time from which period begins to run
To obtain any other declaration	Three years	When the right to sue first accrues.

Referring the same, he submitted that the same was also barred by law of limitation and before the Learned Trial Court the suit was also not maintainable although no such specific issue was framed by the Learned Trial Court in this regard.

11. To counter the reply made by Learned Senior Counsel for the respondents, Learned Counsel for the appellant relied upon one citation of Orissa High Court in **Cheti Balakrishnamma alias Balakrishna Vs. Chetti Chandrasekhar Rao and others** reported in **AIR 1991 Ori 332** wherein Hon'ble Orissa High Court came to the observation that based upon unreasoned unregistered family arrangement no decree can be passed and in this regard, Learned Counsel referred para Nos.10, 11 and 12, wherein Hon'ble the Orissa High Court observed as under:

"10. So far as the third point is concerned, admittedly the property being the self-acquired property of Venkataswamy as held by us earlier, and said Venkataswamy having executed a will indicating the manner of disposition of the property, the successors of Venkataswamy cannot by way of a family arrangement change the devolution or mode of succession. In other words, the heirs of Venkataswamy had no right to meddle with the property in any manner contrary to the wishes of the testator who had acquired the property in question and who had indicated the manner of disposition of his property. The express desire of the testator as reflected in the will cannot be deviated and, therefore, the so-called family arrangement must be

held to be invalid and inoperative and cannot in any manner override the will (Ext. 43). In this view of the matter, even though the plaintiff's parents are signatories to the family arrangement of the year 1961 under Ext. 4, the plaintiff will not be bound in any manner and the disposition of the property under Ext. A is invalid and inoperative.

11. So far as the fourth point for consideration is concerned, we really fail to understand as to why instead of granting the relief of partition as claimed by the plaintiff, the Subordinate Judge directed that the said remedy should be worked out by filing a separate suit for partition. If the plaintiff succeeds in establishing that it was the property of Venkataswamy and Venkataswamy had indicated a particular way of disposition of that property under the will, and in view of our conclusion with regard to the validity of the will as well as with regard to the invalidity of Ext. A, there is absolutely no justification for driving the plaintiff to work out his remedy by filing a separate suit for partition. We would, therefore, held that the plaintiff's right under the will may be worked out by partitioning the property and the plaintiff's interest as per the will may be carved out. It may, however, be indicated that since the so-called family arrangement has been given effect to, in carving out the interest of the plaintiff under the will, care should be taken to see as far as practicable that the property that had been sold by plaintiff's parents on the basis of Ext. A should be allotted to the share of the plaintiff so that the bona fide transferees will not suffer in any manner.

12. So far as the cross-appeal is concerned, it is also necessary to examine whether the decision of the trial Court that the will executed by Venkataswamy would be valid to the extent of one-third of his interest is correct or not. In our considered opinion, the said decision is wholly contrary to law. If the property is the property of Venkataswamy and in view of our conclusion that it was his self-acquired property, Venkataswamy must be held to have full power of disposing of the same in any manner he liked and the property being in the nature of the property of a joint acquirer, the heirs of Venkataswamy cannot claim any interest in the same by birth. Therefore, the finding of the trial Court that the will was valid only to the extent of one-third interest of Venkataswamy is wholly unsustainable and the same is accordingly set aside. On the other hand, it must be held that the will is valid so far as the entire property of Venkataswamy is concerned and not to the extent of only his one-third interest as held by the Subordinate Judge. In this view of the matter the cross-appeal must succeed."

Relying upon the same, Learned Counsel submitted that the judgment delivered by Learned Trial Court cannot be sustained in the eye of law as the Learned Trial Court without appreciation of the evidence on record relied upon that said unregistered notarized

agreement treating the same to be as family arrangements and urged for allowing this appeal by setting aside the judgment.

12. After hearing both the sides at length, it appears to this Court that the entire arguments of both the sides rest upon the said unregistered notarized agreement i.e. Exbt.-D/1 which was relied upon by the respondent-defendants and the same document was also relied upon by the appellant-plaintiff as Exbt.-4 series(3 sheets). Admittedly, there is no dispute on record in this case regarding the registered WILL vide No.III-57 executed in the year 1996(Exbt.-1 series) although it was asserted by the appellant-plaintiffs that they were not happy with the execution of the WILL but at the time of hearing of argument, Learned Counsel relied upon said Exbt.-1 series and submitted that on the basis of Exbt.1 series, khatians were opened in the name of the respective legal heirs of the deceased.

Now, regarding execution of unregistered notarized agreement dated 26.09.2011, it was the case of the appellant-plaintiffs that as the respondent-defendant No.1 was the elder brother of the family so he obtained the signature of appellant-plaintiffs keeping them in dark which could not be acted upon and the Learned Trial Court relied upon the said document and dismissed the suit. According to learned Counsel for the appellants as the registered deed of WILL i.e. Exbt.-1 series contained everything including the suit path measuring 6 feet as such, by the mutual family settlement of the year 1998 there was no scope to execute any further document i.e. Exbt.-D/1.

13. Now, here in this appeal we are to see:-

"Whether the judgment and decree delivered by the Learned Trial Court suffers from any infirmity to be interfered with?"

To prove the said contention both the parties have placed their elaborate arguments.

Examined the evidence on record

14. On perusal of Exbt.-D/1 i.e. the notarized agreement it appears that all the parties to the suit have appended their signature on the body of the same and there is verification made by the interested parties that the contents of the same were read over to them and the said Exbt.-D/1 was duly proved by the respondent-defendants before the Learned Trial Court. The appellant-plaintiffs did not dispute their signatures on the said document. Learned Trial Court came to the observation that all the beneficiaries/legatees to the WILL after the death of their testator were allotted their respective share and they became the absolute owners in possession of the said property and thereafter all the co-sharers of the suit path had mutually made an agreement for re-allocation of the suit path by dint of a written document as a mutual family arrangement. Furthermore, the said document i.e. Exbt.-D/1 dated 26.09.2011 was executed by all the parties mutually giving their assent to such re-allocation and pursuant there to all the parties have been acting upon it for years together which is apparent from the face of record.

From the evidence on record further it appears that the family arrangement was made in the year 1998 amongst the interested parties. It is also on record that by this time the respondent-defendant No.2 completed his construction in the year 2006. The appellant-plaintiffs took the plea that their cause of action arose in the

year 2006 when the respondent-defendants started encroaching upon the suit path but surprisingly inspite of having opportunity no step was taken by the appellant-plaintiffs. Even if it is taken into consideration that the cause of action started on and from 26.09.2011 but this suit was filed before the Learned Trial Court on 19.02.2015 which was after the statutory period of limitation. So, although no specific issue was formulated by the Learned Trial Court in this regard but there is a clear finding by the Learned Trial Court in para No.51 that the suit was barred by law of limitation. As submitted by Learned Counsel for the appellant that in view of the recitals of the registered WILL, there was no scope to make any obstruction over the path way by dint of mutual family settlement. Since the parties have made alternative arrangements to use another path way situated to the southern side wherein the appellant-plaintiffs have also put their signatures, so, by their action the appellant-plaintiffs were themselves stopped from raising the plea that the said document i.e. Exbt.D/1 was executed beyond their knowledge and understanding and they have also approached to the Learned Trial Court after the statutory period of limitation.

Moreso, from the evidence on record further it appears that the appellant-plaintiffs could not adduce any convincing evidence on record before the Learned Trial Court that they were totally ignorant or in dark about execution of Exbt.-D/1 i.e. the notarized agreement dated 26.09.2011 since the appellant had the scope and knowledge being a literate person about the existence of said document.

15. Learned Trial Court at the time of deciding issue Nos.I, II and IV discussed the evidence on record elaborately and relying upon the judgment of Hon'ble Supreme Court in **Kale(supra)** came to the observation that the agreement dated 26.09.2011 was created voluntarily and the cause of action to file the suit arose on 26.09.2011 not during November, 2014 or 30.01.2015 as pleaded by the appellant-plaintiffs since the appellant-plaintiffs failed to satisfy the Court that they had no previous knowledge about the execution of document dated 26.09.2011 and finally decided those issue Nos.I, II and IV against the appellant-plaintiffs.

In deciding issue Nos.III and V Learned Trial Court came to the observation that as per Will i.e. Exbt.-1 series the legatees of the WILL were given the right of ingress and egress through the suit path as described in schedule-A of the plaint but the parties to the suit who are/were the beneficiaries of the WILL made a family arrangement vide document dated 26.09.2011 i.e. Exbt.-D/1 by which they have waived their right to ingress and egress through schedule-A suit path and all the parties using the 10 feet wide road on the southern side. Further, according to the Learned Trial Court the WILL was executed in the year 1996 and subsequent to the death of the testator, the beneficiaries were allotted to the respective shares as per the recitals and five brothers became the owner of their respective shares while the common pathway of 6 feet on the northern side as per the WILL was made common to all the brothers in equal shares and accordingly khatian was prepared(Exbt.-2 and Exbt.-3) but in the year 1998 following the convenience and inconvenience the parties made family

settlement and accordingly made some re-allocation for converting common pathway from being 6 feet to 10 feet in the southern side and all the parties accordingly agreed to such arrangements and started using the same and the said family settlement was accepted by all the parties which was later on notarized on 26.09.2011. More so, it was not the case of appellant-plaintiffs that they did not put their signatures on the said document. So, by execution of those documents the appellant-plaintiffs have waived off their rights. Further, it appears that the respondent-defendants have raised some constructions encroaching upon the land of schedule-A and it is also on record that as per Exbt.-D/13, Exbt.-D/2 and Exbt.-D/4, the respondent-defendants have undertaken their construction with permission from Udaipur Municipal Council. So, Learned Trial Court also after discussing the evidence on record rightly decided the issue Nos.III and V in negative.

In deciding issue Nos.VI and VII, Learned Trial Court came to the finding that the suit was not maintainable in its form and nature being barred by law of limitation and also being bad for estoppel, waiver and acquiescence and ultimately also decided the said issue No.VI and VII in negative against the appellants of this case.

16. I have also gone through the citations relied upon by Learned Senior Counsel appearing on behalf of the respondent-defendants. The principles of law laid down by the Hon'ble Supreme Court also in the aforementioned cases are very much relevant for decision of this case. It appears that without registration of written document of family settlement and arrangement a document can be acted upon. In this

regard, Hon'ble the Supreme Court in **Thulasidhara and another Vs. Narayanappa and others** reported in **(2019) 6 SCC 409** in para No.9.5 observed as under:

"9.5. As held by this Court in Subraya M.N.:(2016) 8 SCC 705 even without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23-4-1971 and he also admitted that 3 to 4 panchayat people were also present. However, according to him, the same was not reduced in writing. Therefore, even accepting the case of the plaintiff that there was an oral partition on 23-4-1971, the document, Ext. D-4 dated 23-4-1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/or not considering the document Ext. D-4 dated 23-4-1971."

From the said principle of law laid down by the Hon'ble Apex Court that in absence of registered document based upon family arrangement/settlement legal action can be taken and here in this case at hand since the appellant-plaintiff have failed to cast any doubt in respect of execution of Exbt.-D/1, so, in my considered view, the Learned Trial Court rightly relied upon the same and dismissed the suit and not only that all the issues were thoroughly discussed and duly ventilated by the Learned Trial Court for which I do not find any scope to interfere with the judgment delivered by Learned Trial Court.

17. The citation of the Hon'ble Orissa High Court referred by the learned Counsel for the appellants appears to be distinguishable in facts from the facts of the present case. So, the same cannot be relied upon in deciding this appeal.

18. So, after going through the records of the Learned Court below and also after going through the judgment delivered by the Learned Trial Court it appears that the appellant-plaintiffs have failed to project their case before the Learned Trial Court for warranting decree in their favour and as such the Learned Trial Court after discussing all the issues in detail rightly dismissed the suit and this Court does not find any scope to interfere with the judgment and decree of the Learned Trial Court and the same is liable to be dismissed accordingly.

19. In the result, the appeal filed by the appellant is hereby dismissed on contest with costs. The judgment dated 29.07.2024 and decree dated 02.08.2024 delivered by Learned Civil Judge (Senior Division), Court No.2, Gomati District, Udaipur in connection with case No.T.S. No.5 of 2015 is hereby upheld and the same is accordingly affirmed. The appellant-plaintiffs are not entitled to get any relief against Exbt.-D/1 i.e. unregistered notarized agreement dated 26.09.2011.

With this observation, this present appeal stands disposed of.

Prepare decree accordingly.

Send down the record(s) of the Learned Court(s) below along with a copy of this judgment and Order.

Pending applications(s), if any, also stands disposed of.

JUDGE