



2026:AHC:205221

Reserved on 14.09.2026

Delivered on 30.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 39798 of 2007

Lavakesh Major and others

.....Petitioner(s)

Versus

Board of Revenue U.P. at Allahabad and others

.....Respondent(s)

Counsel for Petitioner(s)	: Arvind Kumar, Ashok Kumar Singh, Dr. Vinod Kuamr Rai, Pushpendra Kumar, Sankatha Rai, Vijay Kumar Rai
Counsel for Respondent(s)	: A.p.paul, Ajay Shanker, B.b. Paul, C.S.C., Suneel Kumar, Triveni Shankar, V.k. Singh, Vishal Khandelwal

Court No. - 51

HON'BLE ARUN KUMAR, J.

1. 1. Heard Sri Rahul Sahai, learned counsel for the petitioners, Sri A.P. Paul, learned counsel for respondent no. 10, Sri Vishal Khandelwal, learned counsel for respondent nos. 10, 11, 14 and 16, and learned Standing Counsel for the State respondents.

2. The present petition challenges the orders passed by respondent nos. 1, 2 and 3, dated 23.07.2007, 08.05.2006 and 03.12.1987, respectively, arising out of Suit No. 11 of 1985-86 under Section 229-

B/210 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the 'Act of 1950').

3. The present writ petition arises out of a long-standing dispute concerning the rights and possession over agricultural plots situated at Kasba Koil, Pargana and Tehsil Koil, District Aligarh. The disputed property comprises, inter alia, Plot Nos. 3672/1, 3673, 3674, 3689, 3662, 3677/1, 3685, 3692/1, 3695, 3737, 3740, 3644, 3659/1, 3745, 3652/1, 3653/1, 3704, 3655, 3654, 3667, 3645/1, 3646 and 3664. The precise areas and revenue particulars are available on the record.

4. The principal controversy has its genesis in the status of Smt. Muliya and, in particular, whether she was the widow and legal heir of late Kundan Singh or was the widow of late Bhajan Lal. The material placed before the Court shows that Smt. Muliya was initially married to Bhajan Lal, who died in 1945, and thereafter she married Kundan Singh, who died on 18.12.1955. The rival claims over the disputed property have throughout been founded, to a substantial extent, upon this question.

5. The dispute had its origin in litigation instituted by Smt. Muliya under the provisions of the U.P. Tenancy Act, 1939 (hereinafter referred to as the 'Act of 1939'). She instituted Suit No. 12 under Section 59 of the Act of 1939 seeking a declaration that she was the co-tenant of the land in dispute as the widow of late Kundan Singh. Another Suit No. 13 for ejectment of certain persons alleged to be trespassers was filed under Sections 59/180 of the Act of 1939. By order dated 08.08.1958, the Judicial Officer, Koil, Aligarh decreed both the suits in favour of Smt. Muliya, holding her to be the widow of late Kundan Singh and declaring her to be the co-tenant in Suit No. 12 and the sole tenant in Suit No. 13. The defendants preferred appeals, in which the question as to whether Smt. Muliya was the widow of Kundan Singh was specifically raised and decided in her favour. The subsequent second appeals before the

Board of Revenue and the writ proceedings before this Court were also dismissed.

6. Thereafter, Smt. Muliya instituted two further suits under Section 176 of the Act of 1950 for division of holdings. Both the suits were decreed by the Sub-Divisional Officer, Koil, Aligarh on 02.03.1968, whereby her share in the property comprised in Suit No. 11 was declared to be $\frac{1}{2}$ and in Suit No. 12 to be $\frac{1}{4}$. Two appeals preferred by Moti Ram and others, the predecessors in interest of the contesting respondents, were dismissed by the Additional Commissioner on 05.06.1969, and the second appeals before the Board of Revenue were dismissed on 26.05.1972. Possession of the suit property was thereafter delivered to Smt. Muliya on 22.06.1973. The writ petition challenging the order of the Board of Revenue was subsequently dismissed by this Court on 08.02.1985.

7. In another set of proceedings, Smt. Muliya instituted two suits under Section 209 of the Act of 1950 for possession and damages. The suits were decreed on 31.08.1962. The appeals preferred by Moti Ram and others were dismissed and the second appeals before the Board of Revenue were also dismissed on 28.07.1970. The review filed thereafter and the proceedings arising therefrom ultimately culminated in dismissal of Writ Petition No. 10345 of 1984. Thus, the decree in favour of Smt. Muliya in the aforesaid proceedings attained finality.

8. Smt. Muliya was also a party to the partition proceedings before the Munsif, Koil. By judgment and order dated 23.03.1961, the said proceedings were decided in favour of Smt. Muliya and she was held to be the widow and legal heir of late Kundan Singh. The appeal preferred by Moti Ram and others was dismissed by the District Judge, Aligarh on 30.12.1961 and the second appeal was summarily dismissed by this Court.

9. Smt. Muliya thereafter executed a registered sale deed dated 16.03.1966 in favour of Devkinandan and Durga Devi in respect of part of the disputed property. Moti Ram, Mukaddam and Sita Ram instituted Suit No. 526 of 1966 seeking cancellation of the aforesaid sale deed. The suit was dismissed by the First Additional Munsif on 30.08.1968. One of the issues in that suit was whether Smt. Muliya was the widow of late Kundan Singh, and the issue was decided against the plaintiff.

10. Subsequently, during the consolidation proceedings, Smt. Muliya was recorded in the basic year Khatauni as the tenure-holder of the land in dispute. Smt. Laxmi Devi filed an objection under Section 9 of the U.P. Consolidation of Holdings Act, 1953, asserting that she was the daughter of late Kundan Singh and that Smt. Muliya was not his wife. The Consolidation Officer framed questions as to whether Smt. Muliya was the widow and legal heir of Kundan Singh and what was the effect of the previous judgments in the case and whether the same were binding upon the parties. The objection was rejected on 28.05.1974. The appeal and revision filed by Smt. Laxmi Devi were also dismissed.

11. Smt. Muliya subsequently executed another registered sale deed dated 17.07.1974 in favour of Smt. Durga Devi in respect of three plots. Proceedings under Section 145 Cr.P.C. were initiated in relation to the property. The Munsif, Koil, by judgment dated 22.03.1978, passed in Original Suit No. 114 of 1975 decreed the suit in favour of Smt. Muliya and held the sale deed executed by her in favour of Smt. Durga Devi to be genuine and valid. Pursuant thereto, the City Magistrate directed release of the attached property in favour of Smt. Durga Devi and possession was delivered to her on 04.03.1979. The challenge to the release order was subsequently rejected.

12. On 19.08.1987, Smt. Muliya executed a registered Will in respect of the remaining property in favour of Mahendra Singh, Prem Shankar, Ravindra Kumar and Gajendra Kumar, all sons of Pyare Lal, who are the predecessors in interest of the petitioners. On the basis of the said Will,

mutation proceedings were initiated and the Tehsildar, Koil, allowed the mutation application on 15.01.1988, directing mutation of the names of Mahendra Singh and others in place of Smt. Muliya.

13. The immediate dispute which gives rise to the present proceedings commenced with the institution of Suit No. 11 of 1985-86 by Ram Singh, Purshottam, Laturi, Ratan Lal and Hori Lal before the Sub-Divisional Officer, Koil under Section 229-B/210 of the Act of 1950, seeking declaration of bhumidhari rights over the disputed land on the basis of adverse possession. They sought expunction of the names of Smt. Muliya, Smt. Rambeti, Smt. Durga Devi and Om Prakash and recording of their own names along with the names of the defendant-second set.

14. The case of the plaintiffs in the aforesaid suit was that the disputed land originally belonged to tenant Kundan Singh, who died on 18.12.1955. The names of Moti Ram, Sita Ram and Mukkaddam were recorded in the revenue records through P.A. Form-11 and they continued in possession. Subsequently, Har Prasad entered into possession, and the plaintiffs and the defendants-second set continued in adverse possession over the property held by Kundan Singh. According to the plaintiffs, Smt. Muliya, claiming herself to be the widow of Kundan Singh, got her name recorded over the land in dispute and executed different sale deeds without any authority.

15. Smt. Muliya contested the suit, contending that the suit was barred by the principles of res judicata and estoppel in view of the findings recorded in the earlier litigation between the parties. She relied upon the earlier decrees and orders, the possession delivered in her favour and the dismissal of earlier proceedings challenging the sale deeds executed by her. The transferees of Smt. Muliya also contested the suit and relied upon the transactions executed by her and the decisions in the earlier proceedings relating to the disputed property.

16. On the pleadings of the parties, the trial court initially framed ten issues, including the issue as to whether Smt. Muliya was the widow of Kundan Singh. Four additional issues were also framed, including the question as to whether the plaintiffs and the defendants-second set had acquired rights on the basis of adverse possession and whether the suit was barred under the applicable provisions of the U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956.

17. The Trial Court, namely, the Additional Sub-Divisional Officer/Assistant Collector, First Class, Aligarh, by its judgment and order dated 03.12.1987, decreed Suit No. 11 of 1985-86, accepting the plea of the defendants-second set that they had established their possession over the disputed land and had perfected their title through adverse possession, and directed consequential changes in the revenue records. A further direction was issued to expunge the names of Smt. Muliya and her transferees from the revenue records.

18. Aggrieved by the judgment and decree of the Assistant Collector, First Class, Aligarh, dated 03.12.1987, Smt. Muliya, Durga Devi and Om Prakash preferred Appeal No. 11 of 1987-88 before the Commissioner of the Division. During the pendency of the appeal, Smt. Muliya died on 22.06.1991. A substitution application was filed by the predecessors in interest of the persons in whose favour Smt. Muliya had executed a registered Will dated 19.08.1987, claiming themselves to be her legatees. The substitution application was allowed by the appellate authority on 16.09.1992. Thereafter, the appeal was also allowed on 22.09.1992.

19. The predecessors in interest of the petitioners challenged the order dated 16.09.1992 passed on the substitution application in Revision No. 110 of 1991-92 before the Board of Revenue and the order dated 22.09.1992 in Second Appeal No. 63 of 1991-92 before the Board of Revenue. By the common order dated 29.12.1997, the Board of Revenue allowed the revision and second appeal, setting aside the orders dated 16.09.1992 and 22.09.1992 and remanding the matter to the appellate

authority for fresh consideration of the substitution application. Pursuant to the aforesaid order of remand, the appeal filed by Smt. Muliya and others was renumbered as Appeal No. 41-A of 1999-2000.

20. Upon remand, the Additional Commissioner, Agra Division, Agra, by the order dated 08.06.2005, rejected the appeal. Aggrieved by the order dated 08.06.2005, the petitioners instituted Second Appeal No. 24 of 2004-05 before the Board of Revenue. The questions raised in the second appeal included whether Smt. Muliya was the widow of Kundan Singh, whether the Will executed by her in favour of the petitioners or their predecessor was legally valid, and whether the findings of the courts below were sustainable on the basis of the earlier judgments.

21. The Board of Revenue, by its judgment and order dated 23.07.2007, after examination of the material, held that Smt. Muliya was not the widow of Kundan Singh but the widow of Bhajan Lal. Proceeding on that basis, the Board held that she had no authority to execute the Will relied upon by the petitioners and declined to interfere with the orders of the courts below. Thus aggrieved, the present petition has been filed.

22. Learned counsel for the petitioners submits that the impugned orders cannot be sustained because the authorities below failed to give legal effect to the earlier final adjudications in which the status of Smt. Muliya as widow and legal heir of Kundan Singh had been repeatedly and specifically determined. According to learned counsel, the issue was not open to be reopened in the subsequent proceedings without first deciding whether the earlier judgments were binding upon the parties or persons claiming through them.

23. It is submitted that the judgment dated 08.08.1958, the partition judgment dated 23.03.1961, the proceedings concerning the sale deed, the consolidation proceedings and the other decrees relied upon by the petitioners demonstrate that the status of Smt. Muliya was not a mere

revenue entry or an incidental finding. It had repeatedly formed the subject of adjudication and had attained finality in proceedings in which substantive rights were claimed.

24. Learned counsel for the petitioners further submits that the plaintiffs' independent claim in the Suit under Sections 229-B/210 was based upon adverse possession and, therefore, the burden lay upon them to plead and establish the necessary ingredients of adverse possession. Reliance is placed upon **M. Venkatesh and others v. Commissioner, Bangalore Development Authority and others, (2015) 17 SCC 1** and **Brijesh Kumar and another v. Shardabai (Dead) by LRs. and others, (2019) 9 SCC 369**.

25. Learned counsel has also relied upon the principles stated in the aforesaid decisions that a person claiming title by adverse possession must plead and prove the date and manner of commencement of possession, the nature of possession, its continuity and exclusivity, its hostile character and the fact that such hostile possession was open and to the knowledge of the true owner. It is submitted that the judgments under challenge do not record findings on each of these necessary ingredients.

26. Learned counsel has further submitted that the first appellate authority and the Board of Revenue did not properly deal with the evidentiary deficiencies in the trial judgment. The submission is that the absence of findings on the essential ingredients of adverse possession is not a mere erroneous appreciation of evidence but a failure to determine the legal issue in accordance with the governing principles.

27. Per contra, learned counsel appearing on behalf of the contesting respondents have on the other hand, opposed the writ petition and submitted that the trial court had considered the pleadings and evidence and had recorded findings in favour of the plaintiffs. It is submitted that

the first appellate authority also examined the matter and that the petitioners are seeking re-appreciation of evidence in writ jurisdiction.

28. Learned counsel for respondent no. 10 has specifically relied upon the plea that the respondents have been in possession since 1939 and have perfected their rights by adverse possession. Reliance has been placed upon **Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729**, for the proposition concerning acquisition of title by adverse possession, and upon **Krishnamurthy S. Setlur (Dead) by LRs. v. O.V. Narasimha Setty, (2007) 3 SCC 569**, concerning the requirement of pleading and proof of adverse possession.

29. It is further submitted that the plea of res judicata raised by the petitioners is misconceived because the earlier proceedings were different proceedings and, according to the respondents, did not directly and substantially determine the question of acquisition of title by adverse possession against the present contesting parties. It is submitted that the present suit was founded upon an independent claim of adverse possession and therefore the earlier proceedings did not bar adjudication of that claim.

30. Learned counsel for respondent no. 10 has relied upon **Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477**, in support of the proposition that the High Court, while exercising jurisdiction under Article 226, does not sit as a court of appeal over findings of fact and does not re-appreciate evidence merely because another view may be possible. The proposition regarding the limited scope of certiorari under Article 226 is well recognised.

31. Learned counsel appearing for respondent nos. 11, 14 and 16 has principally relied upon the plea of adverse possession. It is submitted that the predecessors of the plaintiffs and the defendants-second set had been in possession from a period much prior to the institution of the present proceedings and that the possession was open, continuous and

hostile. It is contended that the subsequent proceedings instituted by Smt. Muliya did not, by themselves, interrupt the running of adverse possession unless there was an effective resumption of possession.

32. Learned counsel has placed reliance upon **Wuntakal Yalpi Chenabasavana Gowd v. Rao Bahadur Y. Mahabaleshwarappa**, AIR 1954 SC 337, to submit that once adverse possession by a co-sharer has commenced by ouster, a mere assertion of title by the dispossessed co-sharer does not by itself interrupt the running of adverse possession. It is submitted that there must be an effective breaking of the exclusive possession, such as re-entry or resumption of possession.

33. Reliance has also been placed upon **P. Lakshmi Reddy v. L. Lakshmi Reddy**, AIR 1957 SC 314, to submit that adverse possession must satisfy the classical requirements of continuity, publicity and hostility and that, in a case involving co-sharers or co-heirs, mere exclusive possession is not sufficient unless ouster is established. The Supreme Court has described adverse possession as requiring possession adequate in continuity, publicity and extent to demonstrate that it is adverse to the competing title.

34. Learned counsel has also relied upon ***Ravindra Kaur Grewal (supra)***, particularly the principles concerning acquisition of title by adverse possession. It is submitted that adverse possession is capable of maturing into title once its essential ingredients are established and that a person claiming such title is entitled to seek appropriate declaratory relief. The Supreme Court in that decision considered adverse possession as a basis for acquisition of title, while emphasising the need to establish the essential requirements of adverse possession.

35. Reliance has also been placed upon the decision referred to in the written submissions as ***Krishnamurthy S. Setlur (Dead) by Lrs. (supra)***, for the proposition concerning possessory rights and perfection of title through continuous hostile possession. Learned counsel submits that the

earlier proceedings relied upon by the petitioners cannot by themselves establish that the contesting respondents were not in adverse possession for the statutory period.

36. Learned counsel has also referred to the decision in **Ram Das v. Sitabai, (2009) 7 SCC 444**, in the context of rights of co-sharers and the proposition that a transferee cannot acquire a better title than that possessed by the transferor.

37. It is thus submitted on behalf of respondent nos. 11, 14 and 16 that the earlier judgments may determine the status of Smt. Muliya for the purposes for which they were rendered, but they do not, according to the respondents, answer the independent question whether the plaintiffs and the defendants-second set acquired rights by adverse possession. It is therefore urged that the findings recorded by the authorities below should not be interfered with in writ jurisdiction.

38. Learned Standing Counsel has supported the orders passed by the revenue authorities and has submitted that the petitioners have failed to demonstrate any jurisdictional error warranting interference under Article 226 of the Constitution.

39. I have considered the submissions made by the learned counsels for the parties and perused the record.

40. At the outset, one aspect requires to be clarified. The present writ petition is not an appeal for re-appreciation of the entire evidence. The jurisdiction of this Court under Article 226 is supervisory. The principle stated in *Syed Yakoob (supra)*, is well settled: a finding of fact based upon proper appreciation of evidence is ordinarily not reopened in certiorari jurisdiction. But that principle does not protect an order which proceeds without applying the governing legal test, ignores a material legal issue, or records a conclusion without findings on the facts which constitute the statutory ingredients of the right claimed.

41. The distinction is particularly important in the present case. The first appellate authority is, in law, the final court on facts and may re-appreciate the evidence. Therefore, the mere assertion that the first appellate authority re-appreciated evidence cannot by itself constitute an error. The Board of Revenue, while exercising second appellate jurisdiction, stands on a different footing and cannot convert the second appeal into a fresh factual appeal merely by re-assessing evidence. The Supreme Court has repeatedly recognised the special position of the first appellate court as the last court of fact.

42. The more fundamental defect here, however, is anterior to the question of re-appreciation. The suit was founded substantially upon a claim of adverse possession. Such a claim does not succeed merely because a party establishes long possession. The claimant has to establish the character of that possession. In *M. Venkatesh (supra)*, the Supreme Court explained the requirement of peaceful, open, continuous and hostile possession. The same principle has been reiterated in *Brijesh Kumar (supra)*, where the Court emphasised that the person pleading adverse possession must establish when and how possession commenced, its nature, its hostile character, the knowledge of the true owner and continuous possession for the statutory period.

43. In *Krishnamurthy S. Setlur (Dead) by LRs. (supra)*, the Supreme Court further emphasised that the plaintiff claiming title by adverse possession has to plead and prove the date from which he claims exclusive, continuous and undisturbed possession, that the possession was actual and to the knowledge of the true owner, and that a hostile title was asserted and communicated. The Court also recognised that the ultimate conclusion as to ouster or adverse possession is a conclusion of law or mixed question arising from the facts proved.

44. The importance of these principles in the present case is considerable. The trial court's judgment, as reflected in the record placed before this Court, decreed the suit on the basis of possession and the

claim set up by the plaintiffs. But the judgment does not satisfactorily record separate findings as to when the adverse possession commenced, against whose title it commenced, how the possession became hostile, whether and when such hostility was brought to the knowledge of the person whose title was denied, whether the possession remained continuous and undisturbed for the requisite statutory period, and whether the subsequent litigation and delivery of possession in favour of Smt. Muliya interrupted or otherwise affected the alleged adverse possession.

45. This omission is not a matter of choosing between two possible views of the evidence. The absence of findings on the constituent ingredients of the right claimed prevents a legally sustainable adjudication of the claim itself. A court cannot infer acquisition of title by adverse possession merely from a conclusion that the claimant was in possession. The necessary factual findings must precede the legal conclusion.

46. The arguments on behalf of the petitioners are therefore correct to the limited but material extent that the authorities were required to examine the adverse-possession claim by reference to its legal ingredients. The authorities could not treat the mere assertion of possession, or even long possession, as sufficient without recording findings on the nature, commencement, continuity, hostility and knowledge required in law. The respondent's reliance upon Ravinder Kaur Grewal, (supra), does not alter this requirement; that judgment also recognises that the necessary ingredients must coexist before adverse possession can mature into title.

47. There is an additional and independent defect in the impugned adjudication. The status of Smt. Muliya as widow and legal heir of Kundan Singh had been considered in a series of earlier proceedings. The judgment dated 08.08.1958 was not an isolated revenue entry. The issue was thereafter considered in the partition proceedings, in

proceedings concerning the sale deed and in consolidation proceedings, besides the other litigation referred to above. The question whether she was the widow of Kundan Singh had thus repeatedly arisen and had been adjudicated in proceedings concerning substantive rights.

48. It is not necessary for this Court, at this stage, to pronounce a blanket proposition that every finding in every earlier proceeding would operate as res judicata. The precise requirements of Section 11 CPC and the principles of finality have to be examined with reference to the identity of parties or privies, the identity of title, the competence of the earlier court, the matters directly and substantially in issue and the finality of the earlier decision. But once such earlier adjudications were specifically brought on record, the subsequent authorities were required to examine their legal effect before recording a contrary finding on the very same foundational status.

49. The Board of Revenue, however, proceeded to determine afresh whether Smt. Muliya was the widow of Kundan Singh and concluded that she was the widow of Bhajan Lal. The impugned judgment does not satisfactorily explain how the earlier final adjudications ceased to bind the parties or persons claiming through them. Nor does it first determine the precise scope and applicability of those adjudications before recording the contrary finding.

50. The consequence is important. The Will dated 19.08.1987 was treated as ineffective because the Board of Revenue first concluded that Smt. Muliya was not the widow of Kundan Singh. If the foundational finding itself could not lawfully be reopened without first determining the binding effect of the earlier judgments, the conclusion regarding the Will necessarily becomes unsustainable in its present form. The Will may have to be examined afresh, but only after the status and rights of its executant are determined in accordance with law.

51. The other important circumstance is that the plaintiffs' adverse-possession claim and the status of Smt. Muliya are distinct questions. A finding that the plaintiffs may have been in possession does not, by itself, establish adverse possession. Equally, the fact that Smt. Muliya had earlier been held to be the widow and legal heir of Kundan Singh does not by itself dispose of every question relating to subsequent possession. The adjudication must keep the two questions separate and decide each according to the evidence and the governing law.

52. The record is particularly significant because the earlier proceedings culminated, as noticed above, in delivery of possession to Smt. Muliya on 22.06.1973. The plaintiffs are stated to have claimed adverse possession commencing from a much earlier period. Whether the delivery of possession covered the plots now in dispute, whether it effectively interrupted the alleged adverse possession, what possession thereafter existed, and against whose title such possession was asserted are factual questions which require specific findings. These questions could not be answered merely by referring generally to revenue entries or long possession.

53. Similarly, the execution of the registered sale deeds by Smt. Muliya, the subsequent litigation concerning those deeds, the consolidation proceedings and the other proceedings are relevant circumstances in determining whether the plaintiffs' possession, if any, was truly hostile and continuous. Their legal effect cannot be assumed in favour of either party; it has to be examined on the basis of the pleadings, issues, evidence and findings.

54. The first appellate authority, being the final court of fact, was required to examine the entire matter in accordance with law. However, an appellate judgment cannot cure a foundational defect in the trial adjudication merely by affirming the decree if the essential ingredients of the right claimed have not themselves been determined. The appellate

court may re-appreciate evidence, but it must ultimately record findings upon the material issues which arise for determination.

55. The Board of Revenue, in second appeal, stood on still narrower jurisdictional footing. It could not undertake a fresh factual determination merely because it preferred a different view of the evidence. In the present case, instead of first identifying a legally sustainable basis for disturbing the earlier adjudications and examining the substantial questions of law arising from the appellate judgment, the Board entered upon a fresh determination of the status of Smt. Muliya. That approach cannot be sustained.

56. The respondents' reliance upon *Syed Yakoob (supra)* does not assist them on this aspect. The present Court is not substituting its own appreciation of oral or documentary evidence for that of the authorities below. The interference is necessitated because the impugned adjudication suffers from a failure to determine the necessary legal ingredients of the claim of adverse possession and because the Board reopened a foundational issue without first dealing with the binding effect of earlier adjudications. That constitutes an error of law and jurisdictional approach, not merely an erroneous appreciation of evidence.

57. In my considered view, therefore, the proper course is not to restore the decree of the trial court. Nor would it be appropriate for this Court to itself decide the factual controversy concerning adverse possession or the ultimate effect of the Will. The trial judgment dated 03.12.1987 itself does not contain the findings necessary to sustain a decree based upon adverse possession. The first appellate order dated 08.06.2005 proceeds upon that adjudication without curing the foundational deficiency, while the Board's judgment dated 23.07.2007 proceeds upon a fresh determination of the status of Smt. Muliya without satisfactorily dealing with the earlier adjudications.

58. Accordingly, all three impugned orders/judgments dated 03.12.1987, 08.06.2005 and 23.07.2007 are liable to be set aside. Suit No. 11 of 1985-86 is liable to be restored to its original number of the competent trial court for fresh adjudication in accordance with law.

59. The restoration is not intended to reopen questions which have already attained finality. The trial court shall first identify, from the pleadings and the certified record of the earlier proceedings, the issues which stand conclusively adjudicated between the parties or persons claiming through them. In doing so, the trial court shall examine whether the earlier judgments operate by way of res judicata, estoppel or other principles of finality, keeping in view the statutory requirements and the precise parties, titles and subject matter involved.

60. Thereafter, so far as the claim of adverse possession is concerned, the trial court shall examine the pleadings and evidence strictly in accordance with law. The plaintiffs shall have to establish the necessary ingredients of adverse possession, including the commencement and nature of possession, the assertion of hostile title, continuity and exclusivity, the knowledge of the true owner and the completion of the requisite statutory period. The Court shall also consider the effect, if any, of the earlier decrees, the delivery of possession dated 22.06.1973 and the subsequent transactions and proceedings referred to by the parties.

61. The trial court shall also consider the legal effect of the registered Will dated 19.08.1987 only after determining, in accordance with law, the status and rights of its executant and the extent of the property which was capable of being dealt with by her. The question of the Will shall not be decided merely on the basis of the conclusion reached by the Board of Revenue, which has been set aside by this judgment.

62. It is made clear that this Court has expressed no final opinion on the ultimate merits of the claim of adverse possession, the precise extent to which any earlier judgment operates as res judicata or otherwise, or

the validity and operative effect of the Will dated 19.08.1987. All such questions are left open for determination by the trial court in accordance with law, subject to such issues as may already have attained finality.

63. Since the dispute relates to proceedings instituted in 1985-86, the trial court shall make every endeavour to decide the restored suit expeditiously, preferably within a period of one year from the date of production of a certified copy of this order, subject to the cooperation of the parties and the prevailing docket.

64. The writ petition is, accordingly, allowed. The judgment and decree dated 03.12.1987 passed in Suit No. 11 of 1985-86, the appellate order dated 08.06.2005 and the judgment of the Board of Revenue dated 23.07.2007 are hereby quashed and set aside. Suit No. 11 of 1985-86 shall stand restored to the file of the competent trial court for fresh decision in accordance with law and in the light of the observations made herein.

65. It is clarified that the observations contained in this judgment are confined to the legal defects noticed above and shall not be treated as a final adjudication in favour of either side on the disputed question of adverse possession or on the ultimate rights flowing from the Will. The trial court shall decide the matter independently on the basis of the pleadings, evidence and binding earlier adjudications.

(Arun Kumar, J.)

September 30, 2026

Ashok Kr./Ranjeet Sahu