



2026:AHC:197233

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 2427 of 2026

Pappu Agrawal @ Prabhakar And 2 Others

.....Appellant(s)

Versus

Amit Kumar Modi And 8 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Ashish Agrawal, Nimish Garg
Counsel for Respondent(s)	:	Sudhanshu Pandey

Alongwith

FIRST APPEAL FROM ORDER No. - 2428 of 2026

Pappu Agrawal @ Prabhakar And 2 Others

.....Appellant(s)

Versus

Praveen Modi And 8 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Ashish Agrawal, Nimish Garg
Counsel for Respondent(s)	:	Sudhanshu Pandey

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard Shri Ashish Agrawal, learned counsel for the appellants and Shri Atul Dayal, learned Senior Advocate assisted by Shri Sudhanshu Pandey, learned counsel for the respondent no.1

2. **FAFO No.2427 of 2026 (Pappu Agrawal @ Prabhakar And 2 Others vs. Amit Kumar Modi And 8 Others)** has been preferred with a prayer to set aside the judgment and decree dated 23.4.2026 passed by District Judge, Gorakhpur in Civil Appeal No. 102 of 2024 (Amit Kumar Modi V/s Shiv Kumar Modi and others) arising out of the judgment and order dated 17.9.2024 passed by Civil Judge (S.D.) Gorakhpur in Original Suit No.15 of 2024 (Amit Kumar Modi V/s Shiv Kumar and others). By means of the impugned order dated 23.4.2026, the order dated 17.9.2024 passed in Original Suit No.15 of 2024 has been set aside by the learned appellate court.

3. **FAFO No.2428 of 2026 (Pappu Agrawal @ Prabhakar And 2 Others vs. Praveen Modi And 8 Others)** has been preferred with a prayer to set aside the judgment and decree dated 23.4.2026, signed on 18.5.2026, passed by District Judge, Gorakhpur in Civil Appeal No. 101 of 2024 (Praveen Modi V/s Shiv Kumar Modi and others) arising out of the judgment and order dated 17.9.2024 passed by Civil Judge (S.D.) Gorakhpur in Original Suit No. 494 of 2022 (Praveen Modi V/s Shiv Kumar Modi and others). By means of the impugned order dated 23.4.2026, the order dated 17.9.2024 passed in Original Suit No. 494 of 2022 has been set aside by the learned appellate court.

4. Since both the aforesaid appeals arise out of two judgments passed by a common learned appellate court involving common questions of law and facts between the same parties in respect of same properties, they are being decided together.

5. For the sake of convenience, the parties hereinafter shall be referred to by their nomenclature as assigned in the plaints. The appellants are the defendants and the respondent no.1 in both appeals are the plaintiff in the aforesaid two suits.

Brief Facts

6. Briefly stated, two civil suits, being Original Suit No. 494 of 2022 (Praveen Modi Vs. Shiv Kumar Modi and others) and Original Suit No. 15 of 2024 (Amit Kumar Modi Vs. Shiv Kumar Modi and others) were instituted before the civil court with a prayer seeking partition of ancestral land. Parties in both suits are common. Both suits seeking same relief were instituted by respondent-plaintiffs. In both suits, it was pleaded that respondent-plaintiffs have their 1/6th share in the disputed property and their share requires assessment and partition.

7. The appellant-defendants in both suits filed applications under Order 7 Rule 11 CPC and the same were allowed by the trial court by its separate orders each dated 17.09.2024 passed in Original Suit No. 494 of 2022 and Original Suit No.15 of 2024, respectively. In both orders, the trial court came to a conclusion that disputed property is Bhumidhari land and ancestral property of the parties for which a relief for partition has been sought, adjudication of which falls exclusively within the domain of

Revenue Court. Accordingly, the trial court held that both suits were barred by Section 116 of U.P. Revenue Code, 2006 as the relief of partition in respect of agricultural land can only be granted by a Revenue Court by virtue of Section 206 of U.P. Revenue Code and, accordingly, rejected the complaints of the respondent-plaintiffs by orders dated 17.9.2024.

8. The order dated 17.09.2024 passed by learned trial court in Original Suit No.494 of 2022 was challenged in Civil Appeal No.101 of 2024 (Praveen Modi V/s Shiv Kumar Modi and others). Said civil appeal was allowed by the appellate court by its order dated 23.04.2026 holding that trial court has erred in recording a finding that disputed property is an agricultural property because the complaint does not mention it as an agricultural property. Same finding was also recorded by the appellate court in its another order dated 23.04.2026 passed in Civil Appeal No.102 of 2024 (Amit Kumar Modi V/s Shiv Kumar Modi and others), wherein the order dated 17.09.2024 passed in Original Suit No. 15 of 2024 was challenged.

9. The appellant-defendants aggrieved by both orders dated 23.4.2026 passed by the appellate court in Civil Appeal No.101 of 2024 (Praveen Modi V/s Shiv Kumar Modi and others) and Civil Appeal No.102 of 2024 (Amit Kumar Modi V/s Shiv Kumar Modi and others) have preferred these two appeals.

Arguments on behalf of appellants/defendants

10. Learned counsel for the appellant-defendants submitted that the appellate court has committed gross illegality in reversing the findings recorded by the trial court and coming to an erroneous conclusion that the complaints do not disclose that the disputed property is an agricultural property. It was contended that it is very much evident from a bare reading of the complaints that the disputed property is an agricultural property because the description of the property in the complaints itself reveals that the properties for which relief of partition has been sought are Arazis Nos. 257, 283, 284 situated at Mauja Turkmanpur, Tehsil Sadar, District Gorakhpur. It was further contended that the document i.e. record of rights annexed along with the complaints was itself sufficient to show that the disputed property is an agricultural property.

11. Learned counsel also contended that Section 116(1) of U.P. Revenue Code specifically mentions that a suit for division of holding by a Bhumidhar, of which he is a co-sharer, is cognizable by a Revenue Court and no other court shall have any jurisdiction to entertain the same. It was further submitted that Section 143 of U.P. Z.A. & L.R. Act (corresponding to Section 80 of U.P. Revenue Code) clearly mandates that an agricultural holding unless converted to be used for non-agricultural purposes shall remain an agricultural property. It is very much evident from the said provision that unless a declaration in respect of agricultural land is not made under Section 80 of U.P. Revenue Code, the nature of the property remains the same even though the land thereof has been used as Abadi land.

12. It was, therefore, contended by learned counsel for the appellants that the appellate court has wrongly concluded that the said land has become an Abadi land as it was included into town area. It was submitted that mere inclusion of a land either into a town area or municipal area will not change its nature from agricultural land to non-agricultural land unless there is a specific declaration in this respect. Therefore, the finding recorded by the appellate court for setting aside the orders passed by the trial court rejecting the plaints filed by the respondent-plaintiffs is unsustainable and the impugned orders dated 23.4.2026 are liable to be set aside.

Arguments on behalf of respondent/plaintiff

13. Per contra, learned counsel for the respondent-plaintiffs submitted that plaintiffs have nowhere disclosed in their plaint that disputed property is an agricultural land. Until and unless there is a specific averment in a plaint, the same cannot be inferred at the stage of application under Order 7 Rule 11 CPC. Therefore, the reason recorded by the trial court holding the disputed land as agricultural land is *per se* illegal and the same was rightly set aside by the appellate court.

14. It was further submitted that disputed land was included into town area way back earlier before institution of the suits and now the entire land has been converted into Abadi land which is manifest from the Khasra of the disputed land. The appellate court has also recorded a

finding to this effect that paper No. 23-C (Khasra of the disputed land) clearly reveals that disputed land has been recorded as Abadi land consisting of 'sahan' as well as 'house'. The revenue record also records the disputed land as Abadi land and there is no restriction upon the civil court to entertain the suits of partition in respect of Abadi land. In support of his contention, he has placed reliance upon judgment of **Nimmi Infratech Private Limited (Previously Satya Homes Pvt. Ltd.) vs. Fundan and 9 Ors.; Neutral Citation 2025:AHC:11437.**

Conclusion

15. I have heard the rival submissions advanced by learned counsel for the parties and perused the records.

16. It is very much evident that in both suits, i.e. Original Suit No. 494 of 2022 (Praveen Modi V/s Shiv Kumar Modi and others) and Original Suit No.15 of 2024 (Amit Kumar Modi V/s Shiv Kumar and others), the parties and properties are same. Amit Kumar Modi is the son of Shiv Kumar Modi, who is defendant in Original Suit No.494 of 2022. Said Amit Kumar Modi has instituted a fresh suit being Original Suit No.15 of 2024 (Amit Kumar Modi Vs. Shiv Kumar Modi and others). The pleadings in both suits are same and the disputed properties, i.e., Arazi Nos. 257, 283, 284 are also same.

17. There is no denial of the fact that plaintiffs in both suits have nowhere stated in their plaint that the disputed property is an agricultural land. It is also very much clear that an application under Order 7 Rule 11 CPC has to be decided only on the basis of averments made by a plaintiff in his plaint and a court cannot travel beyond the plaint unless it is necessary to ascertain the true meaning of the plaint as well as the actual prayer sought by the plaintiff. But the said fact is entirely missing from the present suits.

18. It is true that the plaintiffs in both suits have not made any specific averment that the disputed property is an agricultural property, but he has clearly described the property as Arazi Nos. 257, 283 and 284. The said description is part of the plaint and the said description itself is sufficient to show that the disputed property is an agricultural property. Therefore, by no stretch of imagination, it can be said that the nature of the property

described in the plaint is vague and its nature cannot be ascertained unless there is some additional evidence in respect of the same. Hence, it is evident that disputed property is an agricultural property.

19. Now the question that arises for consideration before this Court is whether a suit for partition in respect of an agricultural land, particularly when such land has not been declared to be used as Abadi purposes, is maintainable before a civil court.

20. There is no need to make a detailed discussion on this issue. The provisions of Sections 80, 116 and 206 of U.P. Revenue Code, 2006 are very specific and they clearly lay down that a suit regarding division of an agricultural holding will fall within the domain of Revenue Court. The said agricultural land may fall within the domain of civil court for purposes of partition if same has been declared as Abadi land under Section 80 of U.P. Revenue Code. Unless there is a declaration under Section 80 of U.P. Revenue Code, the physical nature of the agricultural property will not determine the forum for filing a suit for partition of the said property.

21. This Court in the judgments of **Saroj vs. State of U.P. and others; 2019 (143) RD 577** and **Kanti Prakash Mittal vs. State of U.P., 2011 (9) ADJ 142**, has held that without any specific declaration under Section 143 of U.P. Z.A. & L.R. Act, the agricultural land cannot be treated to be an Abadi land merely because there exists Abadi. Therefore, the reason recorded by the trial court in rejecting the plaints of the respondent-plaintiffs in both suits was proper and legal. There was no justification for interfering in the findings recorded by the trial court. The appellate court has committed gross illegality in holding that the suits for partition regarding the disputed land can lie before the civil court because the nature of the property has changed and same has become an Abadi land. Said finding is not tenable. The judgment relied upon by the respondent-plaintiffs in **Nimmi Infratech Pvt. Ltd.** (supra) was perused by this Court. The facts in the said judgment which has considered the scope of Sections 80, 116 and 206 of U.P. Revenue Code, have no relevance in the present facts of the case.

22. In view of the above discussions, both the **appeals are allowed**. Both

the impugned orders each dated 23.04.2026 passed by the appellate court respectively in Civil Appeal No.102 of 2024 and Civil Appeal No.101 of 2024 are set aside and the orders dated 17.9.2024 passed by the trial court respectively in Original Suit No.15 of 2024 and Original Suit No.494 of 2022 are confirmed.

(Anil Kumar-X,J.)

September 21, 2026
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