

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SECOND APPEAL NO. 34 of 2002
With
CIVIL APPLICATION (FOR ADDITIONAL EVIDENCE) NO. 1 of 2025
In
R/SECOND APPEAL NO. 34 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Approved for Reporting	Yes	No
	Yes	

BHIMJIBHAI KADVABHAI RUPARELIADECD.THROUGH HIS HEIRS &
 ORS.

Versus

PATEL VALLABHBHAI KADVABHAI RUPARELIA

Appearance:

VMP LEGAL(7210) for the Appellant(s) No. 1,1.1,1.2,2,3,4

MR JK PARMAR(587) for the Respondent(s) No. 1

CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Date : 14/10/2025
ORAL JUDGMENT

TABLE OF CONTENTS

I. <u>INTRODUCTION.....</u>	<u>1</u>
II. <u>BRIEF FACTUAL MATRIX AND PROCEDURAL HISTORY.</u>	<u>1</u>
<u>FACTUAL MATRIX.....</u>	<u>1</u>
<u>PROCEDURAL HISTORY.....</u>	<u>3</u>
III. <u>SUBSTANTIAL QUESTION OF LAW FRAMED.....</u>	<u>5</u>
IV. <u>SUBMISSION OF THE DEFENDANT – APPELLANT.....</u>	<u>5</u>
V. <u>SUBMISSIONS OF THE PLAINTIFF – RESPONDENT.....</u>	<u>12</u>
VI. <u>ANALYSIS.....</u>	<u>16</u>
<u>FAMILY ARRANGEMENT AND REGISTRATION THEREOF.....</u>	<u>18</u>

Concept of Family Arrangement.....18
Requirements of a Family Arrangement.....19
Essentials of a Family Arrangement.....22
ESTOPPEL.....25
Summary of the principles.....26
PROOF OF THE DOCUMENT AT EXHIBIT 63 AND NATURE THEREOF...29

VII.
CONCLUSION.....36

I. INTRODUCTION

1. The present Second Appeal has been filed challenging the judgment and decree dated 15.02.2002, passed in Regular Civil Appeal (“RCA”) No. 78 of 2000, passed by the Joint District Judge, Junagadh.
2. By way of the aforesaid Judgment, the judgment and decree dated 10.04.2000 in Regular Civil Suit No.303 of 1986, passed by 4th Joint Civil Judge, Junagadh, decreeing the Suit of the Plaintiff, was confirmed.
3. Therefore, the present Second Appeal has been preferred against concurrent findings of the Ld. Trial as well the Ld. First Appellate Court.
4. For the sake of brevity and convenience the parties are referred to as per their original status as that in the Suit.

II. BRIEF FACTUAL MATRIX AND PROCEDURAL HISTORY

Factual Matrix

5. The parties to the Suit are relatives. Plaintiff and Defendant No. 1 are brothers. Defendant No. 2 is the wife of Defendant No. 1 and Defendant No. 3 and 4 are the children of Defendant Nos. 1 and 2.
6. Dispute in question has arisen with respect to the property bearing Survey No. 337 paiki. The said suit property measures 3 acres and 8 gunthas of land adjoining to 4 acres of land in Village Bhesan. It is

the case of the Plaintiff that the suit property originally belonged to the father of the Plaintiff and Defendant No. 1, Kadvabhai.

7. On 20.06.1981, Kadvabhai distributed and partitioned property situated at Survey No. 337 between his children, i.e., between Plaintiff and Defendant No. 1. By way of the said distribution/partition, 4 acres came to the share of the Plaintiff and 6.16 acres was given to the Defendant No.1.
8. During his lifetime, Kadvabhai decided to give some more land to the Plaintiff. A further settlement took place between the parties with respect to the Suit property and other properties.
9. According to the said new settlement, a parcel of 4 and 3.08 acres (a total of 7.08 acres) of land in Survey No. 337 of village Bhesan (which had earlier gone to the share of Defendant No.1) was now given to the Plaintiff.
10. It is the case of the Plaintiff that pursuant to the aforesaid Settlement, parties had drawn boundaries in their respective parcels of land with cement pipes. This was done in presence of the parties. Recording the aforesaid transaction, a Deed of Settlement was executed between the parties on 19.01.1983.
11. By way of its right under the said Settlement, the Plaintiff became owner of the land admeasuring 7.8 acres. Thereafter, since the Defendant No.1 did not cooperate or give consent for mutation of the Plaintiff's name in the revenue records, the Plaintiff filed an Application for the mutation of his name before the Ld. Mamlatdar on 14.02.1986. Thereafter, the Circle Inspector measured the land

and it is the case of the Plaintiff that though Defendant No. 1 was present at the time of measurement he did not sign the document.

Procedural History

12. The Plaintiff, therefore filed the present Suit seeking declaration and permanent injunction. Subsequently, by an Amendment dated 23.11.1996, the Plaintiff also claimed a relief of possession of the Suit property and mesne profits.
13. Upon service of summons, the Defendants appeared in the said Suit and filed their Written Statement (Exhibit 13) and admitted the family arrangement that took place in the year 1981. By way of the said arrangement, the Defendant No.1 became the owner of the 6 acre 16 guntha land at survey no. 337 and Plaintiff became the owner of acre 4 of survey No. 337.
14. Though accepting the former arrangement, the Defendant denied the existence of the settlement/ family arrangement on which the Plaintiff relies to state that a further 3.8 acres has come in the share of the Plaintiff. The Plaintiff examined himself vide Exhibit 62 and the witnesses of the Plaintiff were examined vide exhibits 74, 77, 78 and 81. The Defendant did not enter the witness box and Defendant's son examined himself vide Exhibit 88.
15. The Ld. Trial Court framed issues at Exhibit 27, which read as under:

(1) Whether the Plaintiff is entitled to the relief as sought for?

(2) Whether the Plaintiff proves that the Defendants or their agents/persons having no

rights or entitlement to the possession in the land admeasuring Acre-7, Gunthas-08 of Survey No.337 paiki of Village: Bhesan under the ownership and possession of the Plaintiff?

(3) Whether the Plaintiff proves that the Defendants are not entitled to enter into or to cultivate the land admeasuring Acre-7, Gunthas-08 of Survey No.337 paiki under the ownership and possession of the Plaintiff?

(3-a) Whether the Suit of the Plaintiff is barred by the delay laches?

(3-b) Whether the Defendants prove that they became the owners of the land in question admeasuring Acre-3, Gunthas-08 by adverse possession?

(3-c) Whether the Plaintiff is entitled to get the possession of the land admeasuring Acre-3, Gunthas-08 of Survey No.337 paiki?

(3-d) Whether the Plaintiff is entitled to the mesne profit of the land in question from 06/07/1986?, If yes, what shall be the Order?

What Order and Decree?

16. After considering the evidence on record, the Ld. Trial Court allowed the said Suit and declared that the Plaintiff is entitled for possession (of 4 acres which is next to the 3.08) acres property in survey no.337 from the Defendants. The Trial Court directed the Defendants to hand over acre 3.08 acres to the Plaintiff.
17. The Trial Court also permanently restrained the Defendants from obstructing the Plaintiff from using 7.08 acres of land. Even the claim of mesne profits with respect to 3.08 guntha from 02.04.1996

was allowed and a Commissioner was appointed to calculate the amount of mesne profits.

18. The Order passed by the Ld. Trial Court was challenged by the Defendant by way of RCA No. 78 of 2000. After re-appreciating the evidence, the Ld. First Appellate Court dismissed the said Appeal.
19. Aggrieved by the said judgment and decree the appellant has filed the present Second Appeal.

III. SUBSTANTIAL QUESTION OF LAW FRAMED

20. The present Second Appeal has been admitted by an Order of this Court dated 26.06.2002 and following substantial questions of law are framed:
 1. Whether the document exhibit 63 requires compulsory registration under Section 17 of the Registration Act, 1908?
 2. If yes, what is the effect of non-registration of the document and whether the Trial Court is right in holding that the family settlement requires no registration?

IV. SUBMISSION OF THE DEFENDANT - APPELLANT

21. Ld. Advocate for the Defendant has mainly argued that at the time when the Suit is filed, Kadvabhai (father of the Plaintiff and Defendant No.1) was alive. The Suit property originally belonged to Kadvabhai. At Exhibits 56 and 90, Statement made by Kadvabhai has been produced.

22. By way of a family arrangement and pursuant to the Statement made before the Revenue Department, names of Plaintiff and Defendant no.1 were already entered in the revenue record vide Revenue Entry No. 3181 dated 20.06.1981. This entry was certified on 27.07.1981.
23. Therefore, according to the Defendants, the rights of the parties over the suit property had been crystallized by Kadvabhai himself. Once the said rights defined and entries mutated in accordance thereto, there cannot be any further change. Moreover, it has also been argued that Notices under Section 135D of the Bombay Land Revenue Code were also issued. Mutation entries have been entered into the revenue record only after taking statements of the concerned persons. Even according to these Statements, only the Defendant was entitled to the suit property.
24. It has also been argued that a Statement has been made by Kadvabhai before the Revenue Authorities (**Exhibit-56 & 90**) to the effect that in view of the Family Arrangement, Defendant No. 1 was exclusive owner of the suit property. The said Statement also specifies that possession of the suit property was handed over to the Defendant. Moreover, the suit property shall be a coparcenary property as regards the heirs of the Defendant No. 1 and not otherwise.
25. Ld. Advocate for the Defendant has further argued that after the mutation Entry No.3181 dated 20.06.1981 Plaintiff cannot be considered as a Class – I legal heir of Kadvabhai under the Hindu Succession Act, as once the suit property had come to the exclusive ownership of the Defendant, the same cannot be parted with or

alienated in absence of a registered deed. In the present case however, there is only an unregistered Settlement Deed dated 10.01.1983. Hence, the Suit ought to be rejected.

26. Further, Ld. Advocate for the Defendant has relied on the judgment reported in **(2018) 7 SCC 646** in the case of *Shyam Narayan Prasad Vs. Krishna Prasad and Others* and has argued that after the partition, though the property retained the character of coparcenary property it will continue to be an ancestral property insofar as his sons and grandsons are concerned and the same cannot be considered as a coparcenary property for Plaintiff.
27. With respect to the Settlement of 19.01.1983, the learned advocate for Defendant No. 1 has taken a defense that the same is not signed by him and therefore, onus was on the Plaintiff to prove the said fact that the settlement deed produced vide Exhibit-63 has been executed by the parties.
28. Moreover, it has also been argued that the said Settlement Deed is not a registered document and therefore, as the said document, transfers the right of the Defendant with respect to 3.08 acre, the same could only be transferred by way of registered document. Since the document was compulsorily required to be registered under Section 17 of the Registration Act, the Trial Court and the Appellate Court could not have relied upon the said document. Moreover, in view of the Section 49 of the Registration Act, the said settlement cannot be considered even for collateral purpose.
29. It has also been argued that the Settlement Deed could not be considered as a Family Arrangement. This is because, the

Defendant No. 1 had not signed the said Deed and therefore, unless it was a registered instrument, the same could not have been considered.

30. Another argument posed before this Court is that in any case, the parties have never acted upon the Settlement Deed. Defendant has been shown in the revenue records to be in possession of the suit property all through. Even after execution of the document in 1983, this position as reflected from the record has not changed.
31. Learned Counsel for the Defendant further contended that although the settlement deed refers to Survey No. 220/1 as being jointly owned by the Plaintiff and Defendant No. 1, the Plaintiff, after the demise of their parents, has independently sold the said property. Even upon a perusal of the sale deed, it does not disclose any material to indicate that the Plaintiff derived ownership under or pursuant to the alleged settlement dated 19.01.1983.
32. It was further submitted that subsequent to the execution of the said settlement deed, the Plaintiff preferred an application at Exhibit 64 before the competent authority, pursuant to which the *ex parte* panchnama was drawn. As Defendant No. 1 was neither present nor afforded participation in the said proceedings, the panchnama so prepared cannot be accorded any evidentiary value.
33. It was also contended that Exhibit 63 could not have been relied upon by either of the Courts. The Defendant had not signed the document and had specifically raised this objection by filing an application at Exhibit 69. By order dated 16.04.1999, the Trial Court directed that the evidentiary value of Exhibit 63 would be

examined at the stage of final hearing. Despite this, both the Ld. Trial Court and the Ld. First Appellate Court treated the document as proved and relied upon it, which, it was urged, was impermissible.

34. The witness to the settlement deed at Exhibit 63 was examined. However, even from his oral testimony, the Plaintiff failed to establish that the said deed bore the signature of Defendant No. 1.
35. It was submitted that the affidavit of Gobarbhai Ranchhodbhai contains material contradictions regarding the settlement deed at Exhibit 63 dated 08.01.1983. In his affidavit dated 24.04.1986, the said witness stated that possession of the property was handed over on the date of execution, i.e., 08.01.1983. However, Exhibit 63 itself records that possession had been delivered two or three months prior to that date. This inconsistency, as argued by the Ld. Advocate, undermines the credibility of the witness who claimed to be present at the time of execution.
36. The Defendant No. 1 further contends that, at the time of filing of the Suit, the father of the Plaintiff and Defendant No. 1 was alive. He neither entered the witness box nor admitted execution of the document in question. The (Plaintiff, being not a signatory) to the settlement deed, was required to prove its execution in accordance with law. In absence of such proof, it was urged that the Ld. Trial Court could not have relied upon the said unregistered document, nor could the decree based thereon have been sustained by the Ld. First Appellate Court.

37. It was further contended that by virtue of the first partition, the Suit property came into the hands of Defendant No. 1 as his self-acquired and separate property. Reliance was placed on the decision of the Hon'ble Supreme Court in *Korukonda Chalapathi Rao & Anr. v. Korukonda Annapurna Sampath Kumar*, (2022) 15 SCC 475, to submit that once the property became the exclusive and separate property of Defendant No. 1, any subsequent transfer thereof in favour of the Plaintiff could only have been effected through a registered document.
38. To reinforce the said contention, reference was made to *Gohl Amarsingh Govindbhai v. Shah Mansukhlal Chhaganlal*, 2002 (0) GLHEL-HC 203717, submitting that, in absence of registration, the alleged settlement could not convey title. It was further argued that as the executant of the settlement deed had not been examined, the said document could not be treated as proved. Reliance was also placed on *Bharatbhai Manubhai Patel v. Dashrathbhai Gandabhai Prajapati*, 2022 (0) AIJEL-HC 244687, and *Prakash Cotton Mills Pvt. Ltd. v. Municipal Commissioner for Greater Bombay & Anr.*, AIR 1982 Bom 387, to contend that a document not duly proved and executed cannot be relied upon for conferring rights in immovable property.
39. In addition, reliance was placed on several authorities *Gurnam Singh (Dead) by LRs. & Ors. v. Lehna Singh (Dead) by LRs.*, (2019) 7 SCC 641; *Sk. Bhikan v. Mehamoodabee*, AIR 2017 SC 1243; *Uma Pandey v. Munna Pandey*, AIR 2018 SC 1930; and *Boodireddy Chandraiah & Ors. v. Arigela Laxmi & Anr.*, AIR 2008 SC 380 to urge that a misconstruction of a document or a

wrong application of legal principles while interpreting such document gives rise to a substantial question of law.

40. The contentions advanced on behalf of the Defendant may be **summarised as thus:**

- i. The first partition effected in 1981 conclusively determined the rights of the parties, and the property thereby allotted to Defendant No. 1 became his exclusive and self-acquired property.
- ii. Consequently, any subsequent transfer or modification of rights in favour of the Plaintiff could only have been effected through a registered instrument, which was admittedly absent in the present case.
- iii. The settlement deed dated 19.01.1983, produced at Exhibit 63, was argued to be not signed by Defendant No. 1 and, therefore, not binding upon him.
- iv. The Defendant further contended that the executant of the deed was not examined, and the Plaintiff, being not a signatory, failed to prove its execution in accordance with law.
- v. It was also submitted that the Ld. Trial Court, by order dated 16.04.1999, had directed that the evidentiary value of Exhibit 63 be considered at the stage of final hearing, and hence reliance upon it by both Courts below was impermissible.

- vi. It was argued that the alleged settlement had never been acted upon, as the revenue records continued to show the Defendant in possession.
 - vii. Further, the evidence on record shows material inconsistencies regarding the date and delivery of possession, thereby weakening the Plaintiff's case.
41. In essence, the Defendant maintained that Exhibit 63 was unregistered, unproved, and legally ineffective, and that both the Ld. Trial Court and the Ld. First Appellate Court erred in treating it as a valid family arrangement modifying the partition of 1981.
42. It was, therefore, argued that the Ld. Trial Court and the Ld. First Appellate Court erred in treating Exhibit-63 as a modification of the earlier family arrangement, and consequently, the present Second Appeal deserves to be allowed.

V. SUBMISSIONS OF THE PLAINTIFF - RESPONDENT

43. *Per contra*, it was contended by Ld. Advocate on behalf of the Plaintiff that the dispute arises out of a family arrangement duly considered by the Ld. Trial Court while framing the issues. The record establishes that possession of the property had been delivered to the Plaintiff even prior to the execution of the settlement deed dated 19.01.1983, produced at Exhibit 63. Both the Ld. Trial Court and the Ld. First Appellate Court have recorded concurrent findings after due appreciation of the evidence. The reasoning adopted by the Ld. Trial Court was legal, proper, and within jurisdiction, and therefore does not warrant interference.

44. It was submitted that the settlement deed at Exhibit 63 bears the signature of Kadvabhai, the father of both the Plaintiff and Defendant No. 1. Defendant No. 1 did not enter the witness box to deny execution or to prove that the document did not bear his signature. Instead, his son deposed as a witness at Exhibit 88. In cross-examination, the said witness admitted that Defendant No. 1 was cultivating the land in question.
45. It was submitted that both the Ld. Trial Court and the Ld. First Appellate Court rightly held that the earlier partition, reflected in the mutation entry dated 20.06.1981, stood subsequently modified by the settlement recorded at Exhibit 63. The said document was merely a Deed of Settlement reduced into writing after the family arrangement had already taken place. It was a Memorandum prepared only for record, evidencing what had been orally agreed upon. Exhibit 63 specifically refers to the earlier mutation and records that Defendant No. 1 had agreed to give his consent for the necessary revenue entry.
46. It was further urged that the oral evidence of the Plaintiff, recorded at Exhibit 62, establishes that the father of the Plaintiff and Defendant No. 1, namely Kadvabhai, had no property left in his hands at the relevant time. Accordingly, the settlement deed executed in 1983, produced at Exhibit 63, also dealt with Survey No. 220/1, which originally stood in the name of the Plaintiff. The Plaintiff had nevertheless agreed to treat the said property as part of

the joint family estate, thereby reaffirming the bona fide nature of the family arrangement.

47. It was further contended that the documentary evidence, particularly the deposition of Ravji Premji at Exhibit 81 and the agreement at Exhibit 83, supports the Plaintiff's case. The said agreement, executed by the father of the Plaintiff and Defendant No. 1 in respect of Survey No. 220/1, shows that even after execution of the Settlement Deed, dealings relating to that property continued jointly through them. Although Survey No. 220/1 stood in the Plaintiff's name, it was treated as part of the family estate in accordance with the arrangement. The Plaintiff, though not a signatory to the settlement deed, had acted upon it, and the consideration received under Exhibit 83 was taken by the father and Defendant No. 1.
48. It was further pointed out that, in his oral testimony, the son of Defendant No. 1 expressly stated that Survey No. 421 had come to the share of his father. It was argued that, if the property had always been exclusively owned by Defendant No. 1, there would have been no occasion for his son to describe it as having fallen to his father's share. This admission, clearly indicates that the family settlement had been acted upon. Hence, the Defendant cannot now contend that the unregistered settlement deed is inadmissible or without effect.
49. It was further submitted that, at the time of filing of the Suit, the father of the Plaintiff and Defendant No. 1 had filed an affidavit at Exhibit 7, wherein he categorically affirmed execution of the settlement deed and stated that possession, in terms of the

agreement dated 08.01.1983, had already been delivered in his presence. Each party had taken possession of their respective shares, and the Plaintiff was cultivating his portion of 7 acres and 8 gunthas from Survey No.337. The affidavit further records that the Plaintiff had repeatedly requested Defendant No. 1 to give his consent for the revenue mutation, which the latter had refused.

50. The affidavit also states that, since an amount of Rs. 80,000/- had been spent from the family income towards the marriage expenses of Defendant No. 1's children. The settlement deed had been executed by the father and Defendant No. 1 in the presence of witnesses. Although the father, Kadvabhai, was not examined as he had passed away on 21.09.1992, before commencement of oral evidence, the affidavit at Exhibit 7, it was argued, clearly establishes that a valid family settlement had been arrived at and acted upon by the parties.
51. Learned advocate for the Plaintiff relies on the following judgments:
 - a. (1999) 1 SCC 235
 - b. AIR 1980 SC 1173
 - c. AIR 1966 SC 292
 - d. AIR 1966 SC 1836
 - e. (2019) 7 SCC 641
 - f. (2013) 6 SCC 270

- g. AIR 1976 SC 807
- h. (2021) 2 SCC 718
- i. 2018 Supreme (P&H) 2125
- j. 2024 (0) AIJEL-HC-249096

52. In view of the same, it has been argued that the present Second Appeal is required to be dismissed.

VI. ANALYSIS

53. In view of the aforesaid arguments, this Court is required to decide the present Appeal on basis of the following substantial questions of law which were framed by this Court earlier:

- i. Whether the document Ex.63 requires compulsory registration under Section 17 of the Registration Act, 1908?
- ii. If yes, what is the effect of non-registration of the document and whether the trial Court is right in holding that the family settlement requires no registration?

54. The evidence on record establishes that prior to the settlement of 1983, an earlier distribution of property had already been effected by the father, Kadvabhai, who was the admitted owner of the lands in question. In 1981, Kadvabhai made a statement before the competent revenue authority, pursuant to which the names of the Plaintiff and Defendant No. 1 were duly mutated in the revenue records. Under this arrangement, 4 acres were allotted to the Plaintiff and 6 acres and 16 gunthas to Defendant No. 1.

55. It appears that certain disputes subsequently arose between the parties regarding the extent of their respective holdings. In order to resolve the same, a further family settlement was arrived at on 08.10.1983, whereby an additional portion of 3 acres and 8 gunthas from Survey No. 337 was allotted to the Plaintiff. The said arrangement was thereafter recorded in writing under Exhibit 63. The effect of this subsequent settlement was that the Plaintiff became the owner and possessor of land admeasuring 7 acres and 8 gunthas from Survey No. 337, while Defendant No. 1 retained the remaining portion in accordance with the terms agreed upon in the document.
56. In the present case, the earlier settlement of 1981 is undisputed and stands accepted by both parties. The controversy is confined solely to the subsequent arrangement said to have been entered into on 08.10.1983, recorded in the document produced at Exhibit 63. The Defendant contends that the said document does not bear his genuine signature and that the signature appearing thereon is not his. It is further contended that, by virtue of the earlier partition of 1981, Defendant No. 1 had become the absolute owner of land admeasuring 6 acres and 16 gunthas, and that any further partition or transfer of rights could only have been effected through a registered instrument. Since the document at Exhibit 63 is unregistered, it is urged that it cannot confer any legal effect or recognition upon the settlement.
57. In examining whether the document produced at Exhibit 63 required compulsory registration, it is necessary to note that the earlier distribution of property between the parties was effected

pursuant to a mutation entry dated 20.06.1981. That arrangement, too, was not recorded through any registered instrument. It is well settled that a family arrangement may validly be effected orally and does not require registration unless it is itself reduced into writing with the intention of constituting the source of title. Registration becomes mandatory only when the document itself purports to create, extinguish, or declare rights in immovable property, and not when it merely records an arrangement already concluded.

Family Arrangement and Registration thereof

58. At this juncture, it shall be apposite for me to deal with the (though well settled), but oft misconstrued law regarding the family settlement and requirement of registration thereof.

Concept of Family Arrangement

59. The importance of a family arrangement is to ensure orderly division of the properties or assets between members of a family and to avoid possible conflict.
60. In ***Khushi Ram v. Nawal Singh, (2021) 16 SCC 279 32***, the Hon'ble Apex Court held as follows as regards the essential constituent of a family arrangement:

*Before we answer the above issue, it is necessary to find out what is the concept of family with regard to which a family settlement could be entered. A three-Judge Bench of this Court in Ram Charan Das v. Girja Nandini Devi [Ram Charan Das v. Girja Nandini Devi, 1965 SCC OnLine SC 17 : (1965) 3 SCR 841 : AIR 1966 SC 323] had occasion to consider a family settlement regarding the immovable property, this Court laid down that **every party taking benefit under a family settlement must be related***

to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim. The following was laid down at SCR p. 851 : (AIR p. 329, para 11)

“11. ... In the first place once it is held that the transaction being a family settlement is not an alienation, it cannot amount to the creation of an interest. For, as the Privy Council pointed out in Hiran Bibi case [Hiran Bibi v. Sohan Bibi, 1914 SCC OnLine PC 28 : AIR 1914 PC 44] in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. It is not necessary, as would appear from the decision in Rangasami Gounden v. Nachiappa Gounden [Rangasami Gounde v. Nachiappa Gounden, 1918 SCC OnLine PC 95 : (1918-19) 46 IA 72] that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection.”

Requirements of a Family Arrangement

61. Such an arrangement, entered into by the family, then is a memorandum of record of the rights of the parties and their other liabilities, etc. In relation to the requirement of their registration, the following has been laid down by the Hon'ble Apex Court.
62. In ***Tek Bahadur Bhujil v. Debt Singh Bhujil***, 1963 SCC OnLine SC 197, the Hon'ble Apex Court held as under:

“13. Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a

memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess. The document Exhibit 3 does not appear to be of such a nature. It merely records the statements which the three brothers made, each referring to others as brothers and referring to the properties as joint property. In fact the appellant, in his statement, referred to respondents 1 and 2 as two brother co-partners; and the last paragraph said:

...

*14. Learned counsel for the appellant laid great stress on what this Court said in **Sahu Madho Das v. Mukhand Ram, (1955) 2 SCR 22** at pp. 42-43 : ((S) AIR 1955 SC 481 at pp. 490-491). Reliance is placed on the following in support of the contention that the brothers, having no right in the property purchased by the mother's money, could not have legally entered into a family arrangement. The observations are:*

*“It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement **acknowledges and defines what that title is, each party** relinquishing all claims to property other than that falling to his share and recognizing the right of the*

others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.” these observations do not mean that some Title must exist as a fact in the persons entering into a family arrangement. They simply mean that it is to be assumed that the parties to the arrangement had an antecedent title of some sort and that the agreement clinches and defines what that title is Similar assumption can be made in the present ease even on the basis that the property was purchased with the moneys of the mother. How they got some antecedent title in the property is not for us to determine. The plaintiff alleged that the property belonged to the family. The appellant did not allege that it could not have belonged to the family as it was purchased with the moneys of the mother but claimed that it was his self - acquired property. In the circumstances, it can be assumed that the parties recognized the existence of such antecedent title to the parties to the property as was recognized by them under the family arrangement. It is not so much an actually existing right as a claim to such a right that matters”

63. Therefore, two principles can be culled out from the aforesaid judgment: (i) Family arrangement if unregistered must be an instrument of such a kind that records an agreement of the parties and (ii) there must be some antecedent title to the property of the parties. It is not important that the title must be direct and exact.

Essentials of a Family Arrangement

64. Further, in *Kale v. Director of Consolidation*, (1976) 3 SCC 119 the Hon'ble Apex Court has crystallized the principles as follows:

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.”

65. Hence, as regards antecedent title, the Hon’ble Apex Court has held that there is no requirement of a direct antecedent title if there is an assumption on part of the person relinquishing his rights and acknowledges such person to be the sole owner, then such title must be assumed.
66. One other important aspect to be decided at this juncture is the issue of estoppel in a family arrangement. Simply put, can the Appellant today be permitted to blow hot and cold at once? The answer to which is in obvious negative. Having taken benefit under a Family Arrangement, to challenge a similar transaction on the ground of it being an exercise in alienation of rights is impermissible.

67. In **Kale (supra)** the Hon'ble Apex Court also held as follows:

42. Finally in a recent decision of this Court in S. Shanmugam Pillai case 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, 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 4 and 5. Respondent 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 : 1946 ALJ 409] ; Chief Controlling Revenue Authority v. Smt Satyawati Sood [AIR 1972 Del 171 : ILR (1972) 2 Del 17 (FB)] 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.

68. Moreover, in **Roshan Singh v. Zile Singh, (2018) 14 SCC 814**, Hon'ble Apex Court held as follows:

9. It is well settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under Section 17(1)(b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, Section 49 of the Act will prevent its being admitted in evidence. Secondary evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: see Mulla's Registration Act, 8th Edn., pp. 54-57.

Estoppel

69. Apart from the fact that the Document 63 was a Family Arrangement and hence, no requirement of registration was there, one more important aspect to be seen in the present matter is the

issue of estoppel. The Defendant, when it suits him, admits the family arrangement of 1981 and the division of property therein. However, immediately thereafter in 1983, when there is a reconstitution and rejig thereof, it becomes a transfer of title. This is impermissible. Having accepted the benefits under an arrangement otherwise, the Defendant then cannot be permitted to renege from the same according to his convenience.

70. This principle of law has been well embedded in several judgments of the Hon'ble Apex Court. Apart from *S. Shanmugam Pillai (supra)*, quoting the ratio from *Kale (supra)*, the Hon'ble Apex Court in *Narendra Kante v. Anuradha Kante, (2010) 2 SCC 77* held as follows:

22. Their Lordships in Kale case [(1976) 3 SCC 119] went on further to conclude that a document, which was no more than a memorandum of what had been agreed to, did not require registration. While holding as above, Their Lordships also indicated that even if a family arrangement, which required registration was not registered, it would operate as a complete estoppel against the parties, which had taken advantage thereof.

71. Therefore having accepted the benefits under the previous family arrangement, it cannot be open to the Defendant to then contend that the latter document was not a family arrangement and was a document by which title of the parties was being affected and hence, required registration.

Summary of the principles

72. Hence, on a reading of the law on family arrangements as laid down by the Hon'ble Supreme Court in aforesaid Judgments, the

following principles emerge:

- i. Family arrangements may be oral and require registration only where the document itself creates, extinguishes, or declares rights in immovable property. A mere memorandum recording a past arrangement does not require registration (*Tek Bahadur Bhujil; Kale*).
 - ii. The parties to such an arrangement must be related and possess an antecedent, possible, or even a semblance of claim to the property; even if the title is not precise, its recognition or acknowledgment by others suffices (*Khushi Ram; Tek Bahadur Bhujil*).
 - iii. The object of a family arrangement is to preserve family harmony, ensure equitable distribution, and prevent disputes; hence, courts uphold such settlements liberally (*Kale*).
 - iv. Registration becomes necessary only if the writing itself operates as the source of title; when it merely records a completed arrangement, it is admissible even if unregistered (*Roshan Singh*).
 - v. A party deriving benefit under a family arrangement is estopped from challenging its validity or asserting inconsistent claims (*Kale*).
73. In the present case, the document produced at Exhibit 63 is in the nature of a mere memorandum prepared after the famil arrangement had already been effected in the year 1981. The said document, executed in 1983, was intended only to record the earlier

understanding between the parties and to facilitate the necessary revenue mutation. It does not create, extinguish, or declare any independent right in immovable property. The recitals therein make it clear that the distribution of the suit property had already taken place on 20.06.1981, and that, following such mutation, the parties continued to reside jointly. Subsequently, on account of certain differences, a further adjustment was made, under which the Plaintiff was allotted an additional area of 3 acres and 8 gunthas from Survey No. 337.

74. The document further records that, in the earlier arrangement, no specific provision had been made for the maintenance of the father and mother of the parties. Accordingly, it was agreed that Survey No. 220/1, which had earlier fallen to the Plaintiff's share, would henceforth stand allotted to the parents for their lifetime maintenance. It was also agreed that the well situated in Survey No. 227 would remain jointly owned, and that both parties would be entitled to draw water therefrom solely for the purpose of irrigating their respective portions of Survey No. 337.
75. The argument must also be viewed in light of the fact that, at the relevant time, the father, Kadvabhai, did not retain any property in his own hands. Consequently, Survey No. 220/1, which had originally been allotted to the Plaintiff under the 1981 arrangement, was reallocated for the maintenance of the father and mother during their lifetime. The Plaintiff examined witness Ravji Premji at Exhibit 81, who deposed that Kadvabhai had left 10 bighas of agricultural land from Survey No. 220/1 for cultivation and that he paid an annual consideration of Rs. 2,000 to Kadvabhai for such

use. This testimony corroborates that, after execution of the settlement deed at Exhibit 63, the arrangement was duly acted upon and implemented by the parties in accordance with the family settlement of 1983.

Proof of the document at exhibit 63 and nature thereof

76. The contention advanced by the Ld. Advocate for the Defendant that the suit property was coparcenary in nature, and that only the son or grandson could claim rights therein, cannot be accepted. The material on record establishes that the property originally belonged to the father, Kadvabhai, and was distributed between the Plaintiff and Defendant No. 1 during his lifetime through a family arrangement. Such an arrangement did not require to be in writing or compulsorily registered, as even an oral family arrangement is recognised in law. The subsequent modification of that arrangement was, therefore, permissible. At this stage, it would be apposite to reproduce Section 92(4) of the Indian Evidence Act, which reads as under:

“Section-92(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.

77. Therefore, even under Section 92(4) of the Indian Evidence Act, the law does not prohibit parties from leading oral evidence to establish a subsequent oral agreement rescinding or modifying an earlier written arrangement. In the present case, the Plaintiff has

successfully demonstrated that, pursuant to an understanding between the parties, the earlier arrangement of 1981 stood modified in accordance with the family settlement arrived at thereafter.

78. In in the case of *S. Saktivel (Dead) By Lrs. v. M. Venugopal Pillai*, **2000(0) AIJEL-SC 24791** the Hon'ble Apex Court held as follows:

*“6. In sum and substance what proviso (4) to Section 92 provides is that where a contract or disposition, not required by law to be in writing, has been arrived at orally then subsequent oral agreement modifying or rescinding the said contract or disposition can be substantiated by parol evidence and such evidence is admissible. **Thus if a party has entered into a contract which is not required to be reduced in writing but such a contract has been reduced in writing, or it is oral in such situations it is always open to the parties to the contract to modify its terms and even substitute a new by oral contract and it can be substantiated by parol evidence. In such kind of cases the oral evidence can be let in to prove that the earlier contract or agreement has been modified or substituted by new oral agreement.**”*

79. Therefore, the contention that only the Defendant's son or grandson could claim a share in the property is legally untenable. The settlements of 1981 and 1983 were both family arrangements and, as such, did not require compulsory registration. In view thereof, the question of disregarding the settlement deed produced at Exhibit 63 does not arise.

80. With regard to the proof of execution of the settlement recorded at Exhibit 63, Defendant No. 1 has taken the plea that he was not a signatory to the said document. **However, he has not entered the witness box to substantiate this defence.** The settlement deed was produced by the Plaintiff, and the father, Kadvabhai, who was one

of its signatories had affirmed its execution through an affidavit at Exhibit 7. The Plaintiff also examined Govindram at Exhibit 77, who identified the signatures of Kadvabhai and Defendant No. 1, as well as his own and that of the attesting witness, Haribhai. In contrast, the Defendant has led no evidence to disprove the genuineness of the signatures on Exhibit 63 and, having abstained from entering the witness box, has failed to discharge the burden of proving his denial.

81. Mere denial of a document cannot be said to be enough proof in law to dislodge consideration of the same in the eye of law. Unless the Defendant enters the box to give any evidence contrary thereto, nothing could have been said on that part.
82. As regards the reliance placed by the Ld. Advocate for the Defendant on the decision in *Balbir Singh and Others v. Durgo Bai and Others*, 2018 Supreme (P&H) 2125, the said judgment has no application to the facts of the present case. The suit property originally belonged to the father, Kadvabhai, who had caused the names of the Plaintiff and Defendant No. 1 to be entered in the revenue record by way of mutation. During his lifetime, Kadvabhai, along with Defendant No. 1, entered into a further arrangement under which Survey No. 220/1, standing in the name of the Plaintiff, was earmarked for the maintenance of Kadvabhai and his wife.
83. The subsequent settlement of 1983, executed during Kadvabhai's lifetime and with his participation, merely allotted additional land to the Plaintiff without disturbing the existing family arrangement. In these circumstances, the suit property cannot be treated as the

exclusive property of Defendant No. 1, and it is therefore not correct to say that he held or owned the property as its absolute owner. The decision in *Balbir Singh (supra)*, therefore, has no bearing on the present case.

84. With regard to the judgment in *Bharatbhai Manubhai Patel v. Dashrathbhai Gandabhai Prajapati*, 2022 (0) AIJEL-HC 244687, the same is not applicable to the present case, as the dispute herein pertains to a family arrangement rather than a transaction requiring formal proof of title or conveyance. Similarly, reliance on the decision in *Ramrao Nilkanthrao Patil (Died through L.Rs.) and Others v. Dhondaji alias Ramesh and Others*, 2014 Supreme (Bom) 924, is misplaced. In that case, oral evidence had been led to establish that the suit property was in possession of Defendant No. 5 since 1960, and the suit was held to be within limitation on the basis of the pleadings and continuous possession. The facts of the present case are materially distinct and do not attract the ratio of either of the aforesaid decisions.
85. With regard to the judgment in *Rajendra Lalitkumar Agrawal v. Smt. Ratna Ashok Muranjan*, AIR 2019 SC 702, it is correct that the interpretation of the terms and conditions of a document can give rise to a substantial question of law within the meaning of Section 100 of the Code of Civil Procedure. However, in the present case, the Plaintiff has established that the settlement arrived at in 1983, produced at Exhibit 63, bears the signature of Defendant No. 1, and that the father, who was also a signatory, affirmed the same through his affidavit at Exhibit 7. There is no dispute as to the interpretation of any clause or condition of the said document.

Accordingly, the decision in *Rajendra Lalitkumar Agrawal*(supra) does not apply to the facts of the present case.

86. As regards the judgment relied upon by the Ld. Advocate for the Plaintiff in *Gohl Amarsingh Govindbhai v. Shah Mansukhlal Chhaganlal, 2002* (0) GLHEL-HC 203717, the same is not applicable to the facts of the present case. In that matter, the suit was one for possession of the property based on an agreement to sell, and under Section 49 of the Registration Act, an unregistered document may be considered only in a suit for specific performance or as evidence of a collateral transaction. In the present case, however, the document in question represents a family arrangement, which, by its very nature, did not require registration.
87. With respect to the judgment in the case of *Jagdishbhai Odhabhai v. Dhirubhai Savsibhai Vagad* reported in *2015 (0) AIJEL-HC 250176*, the said judgment deals with the issue of Order VII Rule 11 of the Code of Civil Procedure, therefore, the same will not be applicable to the facts of the present case.
88. In the present case, the issue pertains to the relinquishment of rights in the suit property by the father and Defendant No. 1, which was effected through a family arrangement. As the transaction was in the nature of a family settlement and not a conveyance or transfer under the Registration Act, the judgments relied upon concerning the requirements of registration are not applicable to the facts of the present case.
89. With regard to the judgment relied upon by the Ld. Advocate for the Plaintiff in *Lakshmi Ammal and Others v. Chakravarthi and*

Others, (1999) 1 SCC 235, the same is applicable to the facts of the present case. There is no material to suggest that any fraud was committed upon Defendant No. 1 in the execution of the settlement deed of 1983. The Hon'ble Supreme Court in the said decision has held that a deed of partition relied upon therein was, in substance, a deed of family arrangement.

90. Similarly, in ***Kalyani (Dead) by L.Rs. v. Narayanan and Others, AIR 1980 SC 1173***, the Hon'ble Supreme Court observed in paragraph 12 as under:

“12. Mr. Krishnamoorthy Iyer urged that even though undoubtedly a Hindu father joint with his sons and governed by Mitakshara law has the power to partition the joint family property, this power enables him to partition the property by metes and bounds but he has no power merely to disrupt the joint family status unaccompanied by division of property by metes and bounds. The limited question that needs answer in this case is whether a Hindu father joint with his sons governed by Mitakshara law has the power to disrupt the joint family status being a first step in the stage of dividing the property by metes and bounds. The wider question whether a coparcener of a coparcenary governed by Mitakshara law brings about a disruption of joint family status by definite and unequivocal indication of his intention to separate himself from the family would constitute disruption of status qua the non-separating members need not be examined. A Hindu father joint with his sons and governed by Mitakshara law in contradistinction to other manager of a Hindu undivided family or an ordinary coparcener enjoys the larger power to impose a partition on his sons with himself as well as amongst his sons inter se without their consent and this larger power to divide the property by metes and bounds and to allocate the shares to each of his sons and to himself would certainly comprehend within its sweep the initial step, viz., to disrupt the joint family status which must either precede or be

simultaneously taken with partition of property by metes and bounds. This view taken in Kandaswami v. Doraiswami Ayyar [1880] I.L.R. 2 Mad. 317, does not appear to have been departed from. Further, the text from Mayne's book extracted in the preceding paragraph shows that the weight of authority is against the proposition canvassed for by Mr. Iyer. It does, therefore, appear that a Hindu father governed by Mitakshara law has power to partition the joint family property belonging to the joint family consisting of himself and his sons and that this power comprehends the power to disrupt joint family status.”

91. With regard to the judgment relied upon by the Ld. Advocate for the Plaintiff in *Maturi Pullaiah and Another v. Maturi Narasimham and Others*, AIR 1966 SC 1836, the same has been cited to support the proposition that a family arrangement does not create any new rights or interests in immovable property but merely recognizes and defines existing ones. The Hon'ble Supreme Court held that such a document, being declaratory in nature and intended only to acknowledge pre-existing rights among family members, does not attract the requirement of compulsory registration under the Registration Act.
92. As regards the contention relating to concurrent findings, reliance has been placed on the judgment in *Gurnam Singh (Dead) by Legal Representatives and Others v. Lehna Singh (Dead) by Legal Representatives*, (2019) 7 SCC 641, wherein it has been held that under Section 100 of the Code of Civil Procedure, the High Court cannot reappreciate evidence or substitute its view for that of the Courts below unless the findings suffer from perversity or are based on a substantial error of law or procedure. In the present case, the findings recorded by both the Trial Court and the First

Appellate Court are based on due consideration of the evidence and sound legal reasoning, and therefore, no interference is warranted.

93. In the present case, the properties were distributed among the family members pursuant to a family arrangement. Such an arrangement may validly be oral, in which event no registration is required. The document produced at Exhibit 63 merely contains a recital of the said arrangement and serves as a memorandum prepared after the family arrangement had already been effected, intended only for record and for facilitating the necessary mutation entries. It does not create, extinguish, or declare any new right in immovable property and therefore does not fall within the scope of Section 17(2) of the Registration Act. Consequently, it is not compulsorily registrable. This view finds support in the decision of the Hon'ble Gujarat High Court in *Shashikant Natvarlal Patel and Another v. Arvinbhai Bhupatbhai Gohil*, 2010 GLH 1302.

VII. CONCLUSION

94. Accordingly, the first substantial question of law raised in the present Second Appeal is accordingly answered in the negative. The Second question is insignificant in view of the answer to the first question. Upon careful examination of the record and the concurrent findings of the Ld. Trial Court and the Ld. First Appellate Court, it is evident that both Courts have properly appreciated the evidence and applied the settled principles of law governing family arrangements and registration. The findings are based on cogent reasoning and supported by the material on record. There is neither any perversity nor any legal or procedural infirmity warranting interference by this Court under Section 100 of the Code

of Civil Procedure.

95. In any case, there are concurrent findings of fact recorded by the Ld. Trial Court and the Ld. First Appellate Court, both of which have been rendered after due appreciation of oral and documentary evidence. The conclusions reached are consistent with the settled legal position and supported by material on record. It is a well-settled principle that in the absence of any perversity or substantial error of law, the High Court, while exercising jurisdiction under Section 100 of the Code of Civil Procedure, does not interfere with concurrent findings of fact. No such error or perversity is demonstrated in the present case so as to warrant interference.
96. Accordingly, the present Second Appeal is dismissed. In view of the order passed in the main matter, Civil Application does not survive and stands disposed of accordingly.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai

After pronouncement of the order, the learned advocate for the appellant has sought stay of the order, in view of the fact that the appellant intends to challenge the said order. In view of the fact that the appellants are protected by the order dated 08.07.2002 till the disposal of the second appeal, the operation and execution of the order is stayed for four weeks.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai