

AFR



2026:AHC:139952

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – B No. – 8491 of 1981

Rama Kant and
Others

.....Petitioners(s)

Versus

D.D.C. and Others

.....Respondents(s)

Counsel for Petitioners(s)	: Mr. Ram Kishore Pandey
Counsel for Respondent(s)	: Mr. Rajesh Kumar Tripathi, Sri Kamlesh Kumar Tripathi, Mr. Tarun Gaur, Standing Counsel

Court No:- 37

Reserved On:-7.5.2026

Delivered On:-13.7.2026

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Sri Ram Kishore Pandey, learned counsel for the petitioners, Sri Rajesh Kumar Tripathi as well as Sri Kamlesh Kumar Tripathi, learned counsel for respondent no.3 and Sri Tarun Gaur, learned standing counsel for the state-respondents.

2. Brief facts of the case are that the dispute relates to khata no.259, area 171 *bigha* 9 *biswa*; khata no.279, area 8 *bigha* 15 *biswa*, situated in village Pach Pahra, Pargana+Tehsil Maudaha, District Hamirpur. In the basic year of the consolidation operation

pedigree is mentioned in paragraph no.2 of the writ petition. The admitted family pedigree as mentioned in paragraph no.2 demonstrate that one Bihari Lal had three sons, namely, Hira Lal, Ram Sahai and Mohan Lal. Respondent no.3 is the son of Hira Lal. Petitioner no.1/Rama Kant is the son of Ram Sahai and petitioner nos. 2 to 5 are the sons of Mohan Lal. According to the petitioners, the aforementioned family was a joint Hindu Family before 1959 and Hira Lal was the *karta* of the family and the aforementioned joint Hindu Family had agricultural holding in two villages, i.e., village Mataudh, District Banda and village Pach Pahra, District Hamirpur. In village Mataudh, the total area held by the joint family was 131 bigha 18 *biswa* and in village Pach Pahra, the total area held by the joint family was 180 *bigha* 4 *biswa*, total in both the villages, was 311 *bigha* 2 *biswa*. After the death of Hira Lal, the family could not remain joint, accordingly, to avoid the dispute, the land of both the villages was mutually partitioned and *Chhitha Batwara* was prepared on 21.6.1959, showing the land given to each of the co-sharers. The aforementioned *Chhitha Batwara* was alleged to be signed by Ram Sahai, Mohan Lal and Vijay Shanker. The *Chhitha Batwara* was alleged to be signed by Sri Lal Bahadur Singh, Sheth Hazari Lal and Vishal Singh. In paragraph no.5 of the writ petition, the particular of the area given to all the three branches of the family as well as temple of Thakur Ji are mentioned. Ram Sahai (father of petitioner no.1) filed a suit under Section 176 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "U.P. Z.A. & L.R. Act"), claiming 1/3rd share in the land of village Mataudh. In the aforementioned suit, Mohan Lal (father of petitioner nos. 2

Hamirpur came under consolidation operation and objection under Section 9-A(2) of the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as the "U.P. C.H. Act") was filed on behalf of respondent no.3/Vijay Shanker, claiming 1/3rd share in plot no.259 and exclusive right in khata no.279 as well as denied family partition between the parties. Ram Sahai (father of petitioner no.1) filed his objection before the Consolidation Officer to the objection filed by respondent no.3/Vijay Shanker, stating that there was a family partition in which 83 *bigha* 4 *biswa* of village Pach Pahra and 14 *bigha* 18 *biswa* of village Mataudh was given to him in mutual family partition and the parties are in separate possession of their share of the khata in dispute. Issues were framed and parties had adduced oral and documentary evidence in support of their cases. The Consolidation Officer vide order dated 16.1.1975 decided the matter, accepting the matter on mutual family partition between the parties and directed the partition of the share according to earlier partition taken place between the parties. Against the order of the Consolidation Officer dated 16.1.1975, the appeal was filed by respondent no.3 before the Settlement Officer of Consolidation as well as petitioner nos. 2 to 5 have also filed appeal in respect to plot no.2000/4. The Settlement Officer of Consolidation vide order dated 14.7.1975 allowed the appeal of respondent no.3/Vijay Shanker and dismissed the appeal filed by petitioner nos. 2 to 5. Against the order of the Settlement Officer of Consolidation dated 14.7.1975, a revision under Section 48 of the U.P. C.H. Act was filed on behalf of the petitioner which was heard and dismissed vide order dated 28.5.1981. Hence, this writ petition on behalf of the

3. This Court admitted the writ petition on 10.7.1981 and directed that petitioners shall not be dispossessed from the land in dispute.

4. In pursuance of the order dated 10.7.1981, parties have exchanged their pleadings.

5. Learned counsel for the petitioners submitted that in a suit under Section 176 of the U.P. Z.A. & L.R. Act, the finding was recorded that there was a family partition in the family, as such, the suit for partition cannot be entertained. He submitted that the decree passed in the proceeding under Section 176 of the U.P. Z.A. & L.R. Act, was maintained in appeal, as such, the finding recorded in the suit under Section 176 of the U.P. Z.A & L.R. Act, filed by father of petitioner no.1, will operate as *res judicata* between the parties. He submitted that the consolidation court cannot hold otherwise in view of the finality of the issue between the parties. He further submitted that respondent no.3/Vijay Shanker was party in the partition suit under Section 176 of the U.P. Z.A. & L.R. Act, as such, the finding recorded in the suit under Section 176 of the U.P. Z.A. & L.R. Act will be binding upon respondent no.3. He also submitted that *Chhitha Batwara* was prepared by way of memorandum of the family partition, which has already been arrived at and given effect at the spot, as such, registration was not required under the law. He submitted that *Chhitha Batwara* in respect of the share of Mohan Lal and temple of Thakur Ji were signed by respondent no.3 and others as well as the witnesses, as such, the consolidation court cannot hold that there was partition in the family. He further submitted that

respondent no.3/Vijay Shanker. He also submitted that oral and documentary evidence on the question of possession of the respective shares, on the basis of mutual partition, have also been ignored by the consolidation authorities, as such, the impugned order cannot be sustained in the eye of law. He further submitted that the evidence adduced in respect to plot no.2000/4 was also proved which fully demonstrate that claim set up by the petitioners should be allowed but the consolidation authorities have held otherwise in arbitrary manner. He placed paragraph no.11 of the writ petition in which particulars of the documentary evidence adduced before the Consolidation Officer has been mentioned. He also placed the averments made in paragraph nos. 20, 21 and 22 of the writ petition. He further placed the averments of the supplementary affidavit filed in the writ petition in order to demonstrate that the case of the petitioners has not been properly examined by the consolidation authorities. He further placed the averments made in the counter affidavit/supplementary counter affidavit filed on behalf of the respondents in order to demonstrate that there is no proper denial of the averments made in the writ petition as well as in the supplementary affidavit, as such, the averments made in the writ petition as well as well as supplementary affidavit are accepted. He submitted that the impugned orders passed by the Deputy Director of Consolidation and the Settlement Officer of Consolidation should be set aside.

6. On the other hand, learned counsel for private respondent no.3 submitted that respondent no.3 was minor during the period the partition *Chhitha* was alleged to be prepared as well as the suit under Section 176 of the H.P. Z.A. & L.R. Act was alleged to

that the alleged *Chhitha Batwara* is not a registered document, as such, no reliance can be placed upon the same. He submitted that there is no illegality in the exercise of appellate jurisdiction as well as revisional jurisdiction, as such, the instant writ petition should be dismissed.

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that khata no.259 was recorded in the name of petitioners and respondent no.3 jointly and khata no.279 was recorded in the name of respondent no.3 in exclusive manner. There is also no dispute about the fact that the Consolidation Officer has decided the objection under Section 9-A(2) of the U.P. C.H. Act, holding that partition had already taken place between the parties. There is also no dispute about the fact that appeal under Section 11(1) of the U.P. C.H. Act filed by respondent no.3 was allowed and the appeal filed by petitioner nos. 2 to 5 in respect to plot no.2000/4 was dismissed. There is also no dispute about the fact that revision filed by the petitioners under Section 48 of the U.P. C.H. Act has been dismissed.

9. In order to appreciate the controversy involved in the matter, the perusal of the issues framed before the Consolidation Officer in the proceeding under Section 9-A(2) of the U.P. C.H. Act will be relevant which are as under:-

“वादबिंदु।

1. क्या फरीकैन के मध्य मौजा पचपहरा तहसील मोदहा व मौजा मटौथ जिला

बाँदा में स्थित भूमि का पारिवारिक सम्बन्धता द्वारा बटवारा हो चुका था?

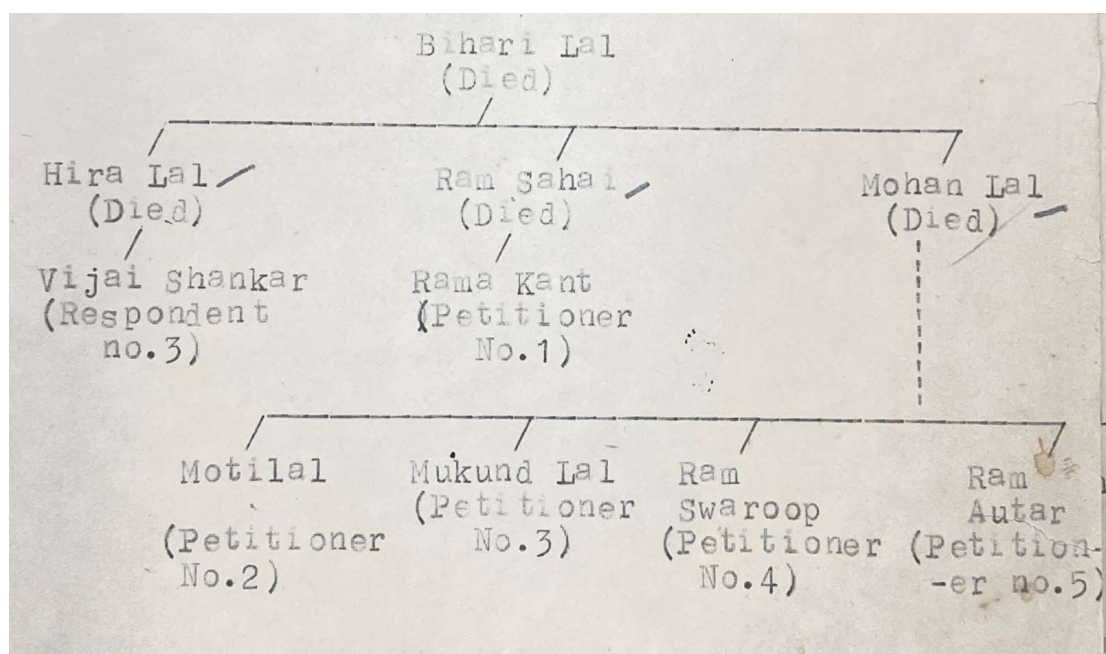
3. क्या फरीकैन अपने पारिवारिक समझौते द्वारा सम्पन्न और बटवारा चिट्ठियाँ उल्लिखित कुरों के अनुसार और अपने कुरों को भूमि पर गवर्नमेंट से तकाबी लेकर तथा अपने पास रुपया लगा कर किये गये सुधार के कारण चक प्राप्त करने के अधिकारी है?

4. क्या प्रतिवादी सम्बन्धित फरीकैन मुताविक मुकदमा कमिश्नरी झांसी जो अंतिम है स्टापिल के सिद्धान्त से पाबंदी है?

5- क्या आराजी निजाई में विजयशंकर का 1/3 भाग है?

6 क्या आराजी निजाई तनहा विजयशंकर के पिता को तनहा पैदा करता है और सहखातेदारान के नाम फरजी दर्ज है ?"

10. The admitted family pedigree of the parties as mentioned in paragraph no. 2 of the writ petition will be also relevant for perusal which is as under:-



11. The Consolidation Officer while considering all the 6 issues, framed before him, has recorded finding of fact that khata in

12. The Settlement Officer of Consolidation while deciding the title appeal, filed by respondent no.3, has held that the alleged *Chhitha Batwara* is not require to be registered but it is not proved that *Chhitha Batwara* has been given effect in the record and on spot as such it can be relied upon. The Deputy Director of Consolidation has also maintained the finding of the Settlement Officer of Consolidation while deciding the revision under Section 48 of the U.P. C.H. Act filed by the petitioners.

13. In order to adjudicate the controversy involved in the matter, the perusal of the finding recorded on issues no.1 in the proceeding under Section 176 of the U.P. Z.A. & L.R. Act will be necessary which is as under:-

"In order to prove family partition held in between the plaintiff and defendants 1 and 2 the defendant no. 1 Mohan Lal has filed Batwara Chitthi of the plots which fell in his share.

Plaintiff Ram sahai P.W.1 in his cross examination has shown his ignorance of family partition and Batwara chitthi. The essence of his deposition clearly shows that neither he admitted the fact nor clearly denied it. Had he actually not agreed to the partition and not signed the Batwara Chitthi, he might have definitely asserted about non-occurrence of partition and Batwara Chitthi. The concealment of the fact and assertion to ignorance reveals that there had been family partition among plaintiff and defendant no. 1 and 2 and Batwara Chitthi was written with the consent of the plaintiff and that was signed by the plaintiff along with defendants and the witnesses.

From the statements of D.W.1 nam Sahai D.W. 3 Mohan Lal and D.W. 2 Lal Bahadur Singh (in whose presence the family partition

deposition of the plaintiff in his cross-examination. This circumstances also supports the plea of the defendants regarding partition of land holding and the parties accordingly have been acting upon the alleged family partition.

Moreover, the defendant in his written statement has also taken plea that some plots which are joint tenancy of the plaintiff and defendants have not been included in the plaint. Khatauni extract for 1372 to 1374F of village Mataundh shows that the plaintiff and defendants are recorded as tenants but these plots as shown in extract have not been mentioned rather they have been concealed in the plaint. This also leads me to infer that the land shown in the plaint does not contain the entire holding of the parties.

In view of the above discussion I hold that there had been family partition among the parties and according to the terms therein they stated to act upon.

Issue decided in affirmative. The suit suffers defendants and is therefore liable to be dismissed.

Since suit deserves dismissal, it is needless to discuss other issues and the plaintiff is not entitled to any relief."

14. The judgment/decree passed in the proceeding under Section 176 of the U.P. Z.A. & L.R. Act was maintained in appeal by the Additional Commissioner, as such, the Consolidation Officer has rightly held that the partition has already taken place but the Settlement Officer of Consolidation has illegally held that the fresh partition is to be made and the plea of the earlier partition is not proved.

15. So far as the registration of family settlement is concerned

"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

(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."

16. It is material to mention that the Settlement Officer of Consolidation has held that it is correct that there is no necessity for registration of the family settlement but the *Chhitha Batwara* was not taken into consideration on the ground that the same was not proved as well as the same has not been given effect without considering the finding recorded by the Consolidation Officer as well as the earlier decree passed in the suit under Section 176 of the U.P. Z.A. & L.R. Act.

17. It is material to mention that according to mutual family settlement the land given to the parties in both the villages were as under :-

<u>Village</u>	<u>Vijai Shankar</u> <u>Bigha Biswas</u>	<u>Ram Sahai</u> <u>Bigha Bis.</u>	<u>Mohan Lal</u> <u>Bigha Bis.</u>	<u>Temple or</u> <u>Thakur Ji</u> <u>Bigha Biswas</u>
Mataungh	56 10	14 18	43 13	16 17
Pachpahara	41 16	83 4	54 14	-
Total	98 6	98 2	98 7	16 17

18. The perusal of abovementioned family settlement demonstrate that all the three branches of the family have given almost equal share in the entire holding situated in the two villages which was just & proper family settlement to divide the family property. It is further material to mention that about 3 bighas of land was already recorded in the name of Thakur Ji and

as on spot as such there was no occasion to interfere with finding of fact recorded by Consolidation Officer.

19. Considering the entire facts and circumstances of the case, the impugned order dated 14.7.1975 passed by respondent no.2/Settlement Officer of Consolidation, Hamirpur and 28.5.1981, passed by respondent no.1/Assistant Director of Consolidation are liable to be set aside and the same are hereby set aside.

20. **The writ petition stands allowed.** The order of the Consolidation Officer dated 16.1.1975 is maintained.

21. No order as to costs.

July 13, 2026
C.Prakash

(Chandra Kumar Rai,J.)