2026 INSC 900

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (C) NO.39 OF 2026)

JAMNABAI AND OTHERS ... APPELLANT(S)

VERSUS

VASUDEV AND OTHERS ... RESPONDENT(S)

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. Leave granted.

2. This appeal impugns the judgment and order dated 09.05.2025 passed by the High Court of Madhya Pradesh at Indore (hereinafter referred as the "High Court") in Second Appeal No. 1394 of 2019, whereby the High Court, in exercise of

its jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred as the "Code"), reversed the concurrent judgment and decree dated 04.05.2016 passed by the Civil Judge, Class-2, Indore in Civil Suit No. 126-A/2015 (hereinafter referred as the "trial court"), and the judgment and decree dated 02.05.2019 passed by the Additional District Judge, Indore in Regular Civil Appeal No. 18/2016 (hereinafter referred as the "first appellate court"), and dismissed the suit instituted by the appellants.

3. At the outset, we may notice that during the pendency of the present proceedings, vide order dated 15.12.2025, parties were directed to maintain status quo regarding the nature, possession and title of the suit property as it existed at that time. Further, this Court also made an endeavour to facilitate an amicable resolution of the dispute. The parties were encouraged to resolve the matter amicably. The endeavour, however, did not fructify. On 04.08.2026, this Court recorded that the parties were unable to settle the matter.

Therefore, this Court proceeded to adjudicate the appeal on its merits.

4. The present dispute concerns an agricultural land bearing Survey No. 307, admeasuring approximately 12.41 acres, situated at Village Kanadia, Tehsil and District Indore (hereinafter referred as "the suit property"), together with a house standing thereon, which was held by one Bhagwansingh. He had two sons, namely, Ramprasad and respondent no. 1/Vasudev. On Bhagwansingh's death, the suit property devolved on Ramprasad and respondent no. 1/Vasudev, and revenue mutation was admittedly, accordingly effected in their joint names.

5. The case of the appellants is that Ramprasad continued to have an equal proprietary interest in the disputed property. Ramprasad suffered from alcoholism and that respondent No.1 frequently subjected him to humiliation and physical assault. According to the appellants, appellant no. 1/Jamnabai, wife of Ramprasad, thereafter took him to her parental village, while the family continued to receive

agricultural produce from the disputed land. The appellants asserted that their repeated requests for partition were deferred by respondent No.1 on one pretext or another.

6. The immediate occasion for institution of the suit arose when a public notice dated 26.01.2008 was published in the Dainik Bhaskar newspaper at Indore, indicating that Respondent No.1 had entered into an agreement to sell the portion of the suit property recorded as Survey No. 307/02. Upon obtaining certified copies of the revenue records shortly thereafter, on 30.01.2008, the appellants discovered for the first time that Survey No. 307/01 stood mutated in the name of Respondent No. 2/Jaswant son of Respondent No.1 and Survey No. 307/02 in the name of Respondent No.1, and that the name of Ramprasad no longer appeared in the revenue records at all. The appellants thereupon instituted the suit on 13.02.2008, seeking a declaration of the co-ownership of Ramprasad and Vasudev in the suit property, partition and separate possession of their

share, and a permanent injunction restraining the respondents from alienating the property pending partition.

7. The principal defense of Respondent Nos.1 and 2 was that Ramprasad had in fact been adopted in his childhood by his maternal grandmother, who had given him agricultural land at Village Achlukhedi in Tehsil Dewas, and that upon selling that land in 1980 he used the proceeds, together with a further contribution from Vasudev, to jointly purchase land at Village Upadinatha. In 1981 the two brothers effected a family partition of the suit property itself, pursuant to which 1.927 hectares came to be mutated in the name of Respondent No.2 Jaswant with the consent of Ramprasad. It was further pleaded that in 1990, when Ramprasad wished to sell the jointly held Upadinatha land, Vasudev consented to the sale on the understanding that Ramprasad would in turn give up whatever remained of his interest in the suit property at Kanadia. Towards this end, an affidavit dated 11.04.1990 (Ex.D19) and a

statement recorded before the Naib Tehsildar (Ex.D20) were said to have been furnished by Ramprasad expressing no objection to the mutation of the suit property in favour of Vasudev, and on the strength of these and the connected revenue proceedings the Naib Tehsildar passed an order dated 24.04.1990 in Revenue Case No. 3A/6A/1989/90 (Ex.D22) directing that the names of Respondent Nos.1 and 2 be recorded in place of Ramprasad. Some weeks later, on 17.06.1990, a further written consent letter (Ex.D5) was said to have been executed by Ramprasad reiterating his relinquishment of interest in the suit property in favour of Vasudev and Jaswant. The respondents relied upon Ex.D5 together with the revenue record comprising Ex.D17 to Ex.D24 in support of their case that Ramprasad had voluntarily and knowingly divested himself of his share well before his death in 1992.

8. The parties led evidence before the trial court. On behalf of the appellants (plaintiffs), Mangilal (PW-1)/appellant No.2, son of

Ramprasad, Takhat Singh (PW-2) and Vikram Singh (PW-3) were examined. On behalf of the respondents (defendants), Vasudev (DW-1), Shankarlal (DW-2), Rajaram Patidar (DW-3) and Ramchandra (DW-4) were examined, and Exs.D-1 to D-16 were exhibited.

9. The trial court decreed the suit. It found the plea of adoption unsupported by any documentary proof or evidence of a legally performed adoption, and considered the defense evidence relating to the acquisition and sale of the Upadinatha land to be uncertain and inconsistent. As regards the mutation in favour of Respondent No.2, it held that the manner in which Ramprasad's name came to be removed in 1990 had not been shown to be in accordance with law, and that his proprietary interest in the suit property therefore stood unextinguished. It further found Ex.D5 to be vague, since it did not clearly identify the property to which it related, and declined to infer that the appellants had knowledge of the 1990 mutation merely from the existence of that document, accepting

instead their case that such knowledge was acquired only in 2008. While holding that actual partition of the agricultural land by metes and bounds would have to be undertaken by the competent Revenue Court, the trial court recognised the coownership of the appellants and decreed that they were entitled to a one tenth share each and to separate possession following lawful partition.

10. Aggrieved respondents filed first appeal. The first appellate court, being the final court of fact, did not merely affirm the decree of the trial court mechanically. Upon an application under Order XLI Rule 27 of the Code being allowed, the revenue record comprising Ex.D17 to Ex.D24 was brought on the record and two additional witnesses were examined, the evidence being transmitted to it for consideration. On a comprehensive reappreciation of this material it found that the respondents had failed to explain why no independent witness had been produced to prove the execution of Ex.D5, that the stamp papers on which the document was written

had been purchased in January 1990 although the document itself was executed in June 1990, and that the evidence led on this aspect was inconsistent. It also found that the signatures attributed to Ramprasad on Ex.D17 to Ex.D21 had been specifically denied and that no independent witnesses had been produced to prove their execution either. On this basis the first appellate court dismissed the appeal and affirmed the decree of the trial court in its entirety.

11. The High Court admitted the second appeal filed by the respondents on two substantial questions of law, namely whether the courts below had erred in decreeing the suit without considering the bar under Section 34 of the Specific Relief Act 1963 arising from the failure of the appellants to challenge the order at Ex.D22, and whether their findings on limitation were vitiated for want of consideration of Articles 58 and 100 of the Schedule to the Limitation Act 1963. Answering both questions against the appellants, the High Court held that the

consent reflected in Ex.D5 stood established since DW3 had not been questioned about the genuineness of the signature appearing on it, that the mutation recorded pursuant to Ex.D22 had gone unchallenged for about eighteen years, and that the suit was accordingly barred both by limitation and by the proviso to Section 34 of the Specific Relief Act. In reaching this conclusion the High Court treated the proof of Ramprasad's consent under Ex.D5 as going hand in hand with the validity of the mutation recorded under Ex.D22, without separately examining whether the document said to have originated the mutation proceedings themselves stood independently proved. On this reasoning the High Court set aside the judgments of both courts below and dismissed the suit in its entirety.

12. Learned counsel for the appellants submitted that the mutation recorded under Ex.D22 traced its origin to Ex.D20, an undated statement attributed to Ramprasad, on the strength of which the Naib Tehsildar proceeded

to pass the order dated 24.04.1990 without verifying either Ramprasad's presence before him or the genuineness of that statement, and that a mere revenue entry of this kind could neither extinguish nor confer title. It was further submitted that the High Court had erroneously treated DW3, who was in fact the purchaser of the Upadinatha land in an entirely separate 1988 transaction, as an attesting witness to Ex.D5, when PW1 had in his deposition clearly denied that the signature on Ex.D5 was that of Ramprasad, and that neither Ramprasad during his lifetime nor the appellants after his death had any knowledge of the mutation proceedings of 1990. On this basis it was submitted that the High Court, while exercising jurisdiction under Section 100 of the Code, had exceeded the limits of that jurisdiction by disturbing concurrent findings of fact recorded by the trial court and the first appellate court.

13. Reliance was placed upon ***Daya Singh and Another v. Gurdev Singh (Dead) by LRs. and***

Others[1], ***Mansoor Saheb (Dead) and Others v. Salima (D) by LRs. and Others***[2], ***P. Kishore Kumar v. Vittal K. Patkar***[3], ***Jitendra Singh v. State of Madhya Pradesh and Others***[4], ***Kale and Others v. Deputy Director of Consolidation and Others***[5] and ***Yellapu Uma Maheswari and Another v. Buddha Jagadheeswararao and Others***[6].

14. Learned counsel for the respondents submitted that the revenue proceedings of 1990 were quasi judicial in character and resulted in entries that formed part of the public record, and that the order at Ex.D22 could not be assailed indirectly in a civil suit in view of the bar contained in Section 257 of the Madhya Pradesh Land Revenue Code 1959, which required any challenge to that order to be made in the manner provided under the Code itself. It was further submitted that the plea of ignorance taken by the appellants was

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[1] (2010) 2 SCC 194
[2] 2024 SCC OnLine SC 3809
[3] (2024) 13 SCC 553
[4] 2021 SCC OnLine SC 802
[5] (1976) 3 SCC 119
[6] (2015) 16 SCC 787

untenable, particularly since Appellant No.1, who was Ramprasad's widow and a material witness to the events surrounding the revenue proceedings, had not entered the witness box, and that in the absence of any rebuttal an adverse inference was liable to be drawn against the appellants. Reliance in this behalf was placed on the presumption of regularity attaching to official acts under Section 114(e) of the Evidence Act 1872, and it was accordingly submitted that the findings recorded by the High Court called for no interference.

15. Having heard the learned Counsel for the appellants and respondents, and considering the written submissions filed by both the parties as also the impugned judgment, we find it apposite that prior to undertaking and answering the aforementioned submissions as raised, it is imperative to delve into the statutory provisions as well as the existing jurisprudence as developed by this Court while dealing with such provisions relatable to:

(i) Whether the High Court, in the exercise of its jurisdiction under Section 100 of the Code, was justified in disturbing the concurrent findings of fact recorded by the trial court and the first appellate court.

(ii) Whether Ex.D5, read together with the revenue proceedings culminating in Ex.D22, established that Ramprasad had voluntarily relinquished his proprietary interest in the suit property, and whether the mutation recorded thereunder had the effect of extinguishing that interest.

(iii) Whether the suit instituted in 2008 was barred by limitation under Article 58 or Article 100 of the Limitation Act 1963, and whether it was further barred by the proviso to Section 34 of the Specific Relief Act 1963 for want of a specific prayer for cancellation of Ex.D22.

(iv) Whether the appellants were entitled to the relief granted by the trial court and affirmed by the first appellate court.

16. The first question concerns the permissible scope of the High Court's jurisdiction in a

second appeal.

17. As settled by this Court in catena of judgments including, ***Bholaram v. Ameerchand***[7], ***Kulwant Kaur and Others v. Gurdial Singh Mann (Dead) by LRs. and Others***[8] and ***P. Kishore Kumar (supra),*** Section 100 of the CPC confers a restricted jurisdiction upon the High Court, and that a second appeal can be entertained only where it involves a substantial question of law. Concurrent findings of fact ordinarily cannot be disturbed in such an appeal unless they are shown to be perverse or vitiated by an error of law, and the existence of a power to interfere where findings are demonstrably perverse cannot become a license to reappreciate the evidence merely because another view of it is possible. A finding is not rendered perverse simply because the High Court, upon a fresh look at the evidence, considers a different inference preferable. Interference is warranted only where there is a demonstrable error in the approach to the

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[7] (1981) 2 SCC 414
[8] (2001) 4 SCC 262

evidence, reliance upon material that is inadmissible, omission of evidence that is vital, or a conclusion that no reasonable judicial mind could have reached on the material available. We propose to test the departure of High Court from the concurrent findings of the courts below against this standard while examining each of the remaining points that arise in the appeal.

18. The next question pertains to validity of relinquishment deed purported to be executed by Ramprasad and the revenue proceedings that culminated into mutating the names of respondents in revenue records.

19. The defense of respondents rests substantially on the case that Ramprasad voluntarily gave up his interest in the suit property, first through the statement and affidavit furnished before the Naib Tehsildar in April 1990 that culminated in the mutation order at Ex.D22, and subsequently through the written consent recorded in Ex.D5 dated 17.06.1990. The burden of establishing such a relinquishment lay squarely on the respondents who asserted

it, and it was not for the appellants to disprove it by having the document sent for expert examination or otherwise. A right in immovable property cannot be treated as having been voluntarily abandoned merely because a revenue entry subsequently appears in favour of another person, and the underlying transaction by which title is said to have been surrendered must independently be established by the party relying upon it.

20. On this aspect the trial court found Ex.D5 to be vague, since it did not clearly identify the property to which it related, did not specify any consideration, and was not a registered instrument, while the first appellate court, upon examining the additional revenue record brought on file under Order XLI Rule 27, found that no independent witness had been produced to prove its execution, that the stamp papers on which it was written had been purchased months before the date it bore, and that the evidence led on the point was inconsistent. The High Court, in reversing these concurrent findings, proceeded on the

footing that Ex.D5 was an undisputed and admitted document because no suggestion had been put to DW3 denying the signature upon it, but this does not withstand scrutiny, since the testimony of DW3 concerned only the separate 1988 transaction relating to the Upadinatha land in which he was the alleged purchaser, and made no reference at all to Ex.D5, nor was he at any stage put forward on the record as an attesting witness to that document. The respondents, through the evidence of DW1, did not otherwise establish the existence of any registered deed of relinquishment, and the material relied upon did not, to the standard required in a civil proceeding, establish that Ramprasad had legally divested himself of his interest in the suit property.

21. With regards to Ex D-22, the first appellate court has categorically recorded that although respondents No. 1 and 2 have tried to prove through documents from Exhibit D-17 to Ex D-22 that Ramprasad himself had relinquished his title and had given his consent for removing

his own name from the disputed land and for entering respondent no. 1/Vasudev's name, the signature of Ramprasad on these documents has been denied by appellant No. 2, and it has been stated that it is not his father's signature. Respondents No. 1 and 2 have not produced any other document based on which the court could presume that the signature on Exhibits D-17 to D-21 is indeed Ramprasad's. No other document has been produced by respondents No. 1 and 2 bearing Ramprasad's signature. Even if it is assumed that the said signatures are Ramprasad's, respondents No. 1 and 2 have not produced any independent witness who was present at the time of execution of the said exhibit and Ex. D-5. Respondents No. 1 and 2 have failed to clarify under what circumstances the entries in the name of respondent no. 2 were made on a part of the disputed land in 1980-1981.

22. Equally, the mutation recorded pursuant to Ex.D22 could not by itself extinguish Ramprasad's title. It is settled law that an entry

in the revenue record neither creates nor extinguishes title and exists essentially for fiscal purposes, as held by this Court in ***Sawarni v. Inder Kaur and Others***[9]. The order of the Naib Tehsildar may regulate the revenue record, but it cannot, merely by recording one person's name in place of another, operate as a conveyance or a relinquishment of proprietary rights, and the civil court remains fully competent to determine the underlying title, which the revenue entry follows rather than creates. The statutory presumption of correctness attaching to a revenue entry under Section 117 of the Madhya Pradesh Land Revenue Code 1959 is a rebuttable evidentiary presumption and not a presumption of title, and it must be weighed along with the rest of the evidence, which the first appellate court did, finding it displaced for the specific reasons recorded above. For these reasons the High Court fell into error in holding that Ex.D5, whether taken alone or together with the revenue proceedings

[9] (1996) 6 SCC 223

under Ex.D22, established that Ramprasad had relinquished his proprietary interest in the suit property.

23. The next question is whether the suit instituted in 2008 was barred by limitation or under Section 34 of the Specific Relief Act.

24. The High Court held the suit to be barred by limitation principally because it treated the date of the mutation in 1990 as the point from which the right of appellants to sue accrued, and invoked Article 58 and Article 100 of the Limitation Act 1963 on that basis, and it further held the suit to be barred under the proviso to Section 34 of the Specific Relief Act 1963 because the appellants had not specifically prayed for cancellation of Ex.D22. Both conclusions proceed from the same premise, namely that the mutation itself was the operative event displacing the appellants' title, a premise we have already found to be on unsound basis, and both accordingly call for reconsideration together.

25. The starting point of limitation cannot be fixed

merely by identifying the date on which a revenue entry happens to have been made. What matters is when the right to sue actually accrued, a question that has to be examined on the facts of each case. Ramprasad and Vasudev were co-owners of the suit property, and in law the possession of one co-owner is ordinarily treated as possession on behalf of all, so that a co-owner in possession does not acquire an adverse title merely by continuing in possession. As held by this Court in ***P. Lakshmi Reddy v. L. Lakshmi Reddy***[10], an ouster between coheirs requires an open assertion of hostile title coupled with exclusive possession and enjoyment to the knowledge of the other coheir, and mere exclusive possession is not sufficient. There is no finding in the present case that Ramprasad was, during his lifetime, openly and unequivocally ousted from the property in a manner sufficient to set limitation running against him, nor is there any finding that the

[10] (1956) 2 SCC 759

appellants had actual knowledge either of the alleged relinquishment or of the revenue proceedings of 1990.

26. The High Court drew an inference of such knowledge principally from the statement of PW1 that Ramprasad's name had been removed from the records in 1990 and that no appeal had been preferred against that removal, but an isolated line of this kind cannot be read in isolation from the rest of the evidence, particularly when both courts below, after considering the entire material including the additional revenue documents brought on record before the first appellate court, accepted the case of appellants that knowledge was acquired only upon the public notice of 26.01.2008 and the certified copies obtained on 30.01.2008. Article 58 of the Limitation Act applies to a suit for a declaration and begins to run when the right to sue first accrues, while Article 100 applies to a suit to set aside a specified act or order of a civil court or of a government officer. The present suit, however, was essentially one for declaration of co-

ownership by succession and for consequential relief, and was not founded upon a challenge to the revenue order as the source of the appellants' title. The mutation was relied upon by the respondents only as a defense to that title, and the fact that the appellants did not separately seek its cancellation cannot alter the true nature of the relief that was in substance being sought. The trial court was accordingly justified in holding the suit to be within limitation, and the first appellate court committed no error in affirming that conclusion.

27. Section 34 of the Specific Relief Act requires a plaintiff seeking a declaration of legal character or right to also seek further relief where it is open to him to do so, and its object is to prevent a litigant from obtaining a bare declaration where consequential relief is both necessary and available. The present case does not fall within that mischief, since the appellants did not seek a bare declaration but sought, along with the declaration of coownership, partition, possession and a

permanent injunction, and the trial court granted the declaratory and protective relief warranted by the evidence while leaving actual partition of the agricultural land to the competent Revenue Court. The relief of cancellation of a revenue mutation entry is not the same as a declaration of title, and once a civil court has adjudicated that the mutation did not extinguish the appellants' inherited title, the entry itself cannot be allowed to stand in the way of the title so declared. The High Court accordingly erred in treating the absence of a specific prayer for cancellation of Ex.D22 as an indispensable condition for the maintainability of the suit.

28. We may also deal with the submission that the non-examination of appellant no.1 ought to have led to an adverse inference against the appellants. Such an inference does not follow automatically merely because an available witness is not examined, and it must be weighed against the evidence that was in fact led, including the documentary trail of the public notice dated 26.01.2008 and the

certified copies obtained on 30.01.2008, which independently fix the date of discovery regardless of what Appellant No.1 might separately have known. The presumption of regularity under Section 114(e) of the Evidence Act extends to the regularity of official procedure, but it does not extend to conclusively proving the *bona fides* of the underlying private transaction, which the first appellate court examined and found wanting for the specific reasons already noticed.

29. It follows from the foregoing that the reversal by the High Court of the concurrent findings of the courts below cannot be sustained. On the question of Ex.D5, its conclusion rested on treating DW3 as an attesting witness when he was nothing of the sort, and on treating the document as undisputed when its genuineness had been squarely contested and found wanting for specific and itemised reasons that the impugned judgment does not engage with. On the mutation, it proceeded on the premise that a revenue entry can itself extinguish title and that a separate prayer for

its cancellation was indispensable, a premise unsupported by settled law as discussed above. On limitation, it rested on an isolated line of cross-examination read out of context, treating a suit for declaration of title by succession as though it were a direct challenge to the revenue order itself. In each of these respects, the departure by the High Court from the concurrent findings reflects a reappreciation of the same evidence to reach a different conclusion, rather than the kind of demonstrable perversity or error of law that alone would justify interference under Section 100 of the Code, particularly when both courts below had examined the very same question, namely whether the respondents had established the alleged relinquishment, and the first appellate court had done so after the additional revenue documents were specifically brought on record and examined.

30. We are accordingly of the view that the High Court exceeded the permissible limits of its jurisdiction under Section 100 of the Code, and that the appellants were rightly held by the

courts below to be entitled to the co-ownership, partition and consequential relief that had been granted to them. The impugned judgment cannot be sustained, and the appeal is allowed.

31. The judgment and order dated 09.05.2025 passed by the High Court is set aside, and the judgment and decree dated 02.05.2019 passed by the first appellate court, affirming the judgment and decree dated 04.05.2016 passed by the trial court, stand restored.

32. The appellants and the other legal heirs of the late Ramprasad shall accordingly be entitled to the share declared in their favour, subject to lawful partition in accordance with the applicable provisions of the Madhya Pradesh Land Revenue Code. The respondents shall remain restrained from alienating the disputed property or from creating any third-party rights therein contrary to the decree of the trial court until such lawful partition takes place.

33. There shall be no order as to costs.

34. Pending interlocutory applications, if any, shall stand disposed of.

……………………………………….J.
[SANJAY KAROL]

……………………………………….J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
AUGUST 20, 2026.