concerned, the issue in the said case arose on account of the plea raised that when the transfer application was filed before the Board of Revenue, it was not disclosed that earlier transfer application was filed before the Collector, Kashganj, which was dismissed, on which submission, the learned Single Judge came to the conclusion that power of transfer under Section 212 is a concurrent power to be exercised by any of the authorities mentioned in sub-section (2) of Section 212 of the Code, 2006, however, after coming to the said conclusion a further observation, as under, was made :

"None of the authorities exercises either appellate or revisional jurisdiction over an order on a transfer application, which may have been passed by a authority subordinate to it."

18. We are of the opinion that the said observations were made without reference to the relevant provisions, including Section 210 of the Code, 2006 and without discussion on the subject matter.

19. In view of the above discussions, our answer to the question referred to us as under :

I. A revision petition under Section 210 of the Code, 2006 would be maintainable against an order passed/transferring any case or proceedings in exercise of powers under Section 212(2) of the Code, 2006.

II. The observations made in the case of **Sharda Singh (Supra)** in relation to the revisional jurisdiction, do not lay down correct law.

20. The reference is answered accordingly.

21. Let the matter be placed before the appropriate Bench.

(2025) 3 ILRA 223
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.03.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

Writ B No. 4405 of 1985
Connected with
Writ B No. 3396 of 1987

Agya Ram ...Petitioner
Versus
Joint Director of Consolidation & Ors. ...Respondents

Counsel for the Petitioner:
Sri S. Mirza, Sri H.S. Sahai, Sri Q.M. Haque, Sriu S. Mirza, Sri U.S. Sahai

Counsel for the Respondents:
C.S.C., Bal Keshwar Srivastava, Sri N.R. Tripathi, Sri Pankaj Kumar Srivastava, Pinki Devi, Sri Puttu \Lal Mishra, Sri Q.M. Haque, Sri R.K. Tripathi, Sri S.P. Dubey, Sri Shri Prakash Verma, Sri Vinod Kumar Gupta, Sri Z. Jilani

A. Civil Law -U.P. Consolidation of Holdings Act,1953-Section 9(A-2)-Co-tenancy and Succession rights-Adverse possession –Family settlement-Mutation proceedings-The dispute concerned Khata No.s5 and 41 in Village Pipra Ekdanga, District Gonda-Upon commencement of consolidation , names of Agya Ram, Parag, and Smt. Chhitna were recorded with shares-Smt. Yashodhara(daughter of Hardwar) filed objections claiming co-tenancy with her sister Chhitna-Agya Ram and Parag also claimed larger shares based on a compromise deed (1959) and a family settlement, asserting the land was ancestral property from one Matai-The Consolidation Officer held the property

was self-acquired by Hardwar and devolved upon his daughters, Smt. Yashodra and Smt. Chhitna, under section 171 of the U.P.Z.A.& L.R. Act,1950, granting each 1/3rd share alongside the petitioners-The Settlement Officer on appeal altered this, excluding Agya Ram and Parag entirely and distributing the property equally between Chinta and Yashodhra's heirs-The Deputy Director of consolidation upheld this, rejecting the compromise and family settlement for lack of evidence and held that possession alone does not establish title or adverse possession-The court held that the property was not proved to be ancestral-the compromise of 1959 was unproved and non-binding, especially in mutation proceedings-The plea of adverse possession failed due to contradictory pleadings, lack of evidence, and non-fulfillment of legal requirements-The family settlement was not credible, lacked proper documentation and excluded key parties like Smt. Yashodhara-The writ petitions were devoid of merit and were accordingly dismissed-The orders of the Consolidation authorities were upheld.(Para 1 to 46)

The writ petitions are dismissed. (E-6)

List of Cases cited:

1. Bhagwati Deen Vs Sheetiadin (2022) SCC Online All 349

2. Sohan Lal Vs Distt. D.D.C Hardoi & ors.MANU/UP/4198/2022

3. Kale & ors. Vs DDC & ors.(1976)3 SCC 119
4. Ram Milan Vs Kripa Shanker & ors.MANU/UP/2728/2023

5. Bhoop Singh Vs Ram Singh Major & ors.(1995) 5 SCC 709

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Heard Shri U.S.Sahai, learned counsel for the petitioners, Shri Mohd. Kashif Rafi and Shri Prakash Verma, learned counsel appearing on behalf of heirs of deceased respondent no.5 and Shri Pankaj Srivastava learned counsel for respondent no.7.

2. This judgement will decide Writ Petition No.4405 of 1985 (Agya Ram and another Vs. Assistant Director Consolidation and others) and connected Writ -B No.3396 of 1987 (Chhotey Lal and another Vs. Assistant Director of Consolidation and others).

3. Since both the writ petitions assail the common order passed by the Settlement Officer of Consolidation and the Deputy Director of Consolidation and involve common facts and questions of law, hence both the petitions have been clubbed and are being decided by this common judgement. Since the petitions are pending since 1985 and 1987 and few of the parties have expired and their legal heirs have been brought on record, however for the sake of convenience, the court shall be referring to the parties as they were originally impleaded before the consolidation courts.

4. The dispute relates to Khata No.5 which is a bhumidhari Khata and Khata No.41 which is a Sirdari Khata, situated in village Pipra Ekdanga, Pargana and Tehsil Utraula, District Gonda.

5. Upon commencement of consolidation operations in the village in question, the names of Agya Ram, Parag and Smt. Chhitna was recorded. Half share was shown of Smt. Chhitna whereas Agya Ram and Parag had 1/4th share therein.

6. Smt. Yashodra filed her objections under Section 9 (A-2) of the U.P. Consolidation of Holdings Act, 1953

(hereinafter referred to as the ***"Act of 1953")*** claiming co-tenancy right alongwith her sister Smt. Chhitna. The petitioners Agya Ram and Parag also filed their objections stating therein that they together had 2/3rd share in both the Khata Nos.5 and 41 which was incorrectly shown as half share with Chhitna whereas she only had 1/3rd share therein. This was claimed on the basis of a compromise said to have been entered between the parties in mutation proceedings before the court of Tehsildar on 28.2.1959.

7. Another set of objections was filed by Awadh Ram claiming co-tenancy rights but the same was turned down and thereafter he did not pursue his claim any further and for the said reason, the main contest remained between Smt. Chhitna, Smt. Yashodra and Parag and Agya Ram.

8. Before the Consolidation Officer, the case as set up by the petitioners namely Agya Ram and Parag was that the disputed Khatas in question were procured/ created by Hardwar and Har Krishan who were real brothers. It was further stated that a family settlement was arrived at between the parties and as a consequence 2/3rd share came in the hands of Parag and Agya Ram together whereas 1/3rd share was that of Smt. Chhitna. It was further stated that since Hardwar was the elder brother, hence his name was recorded and after his death, the name of his wife Smt. Pran Dei was recorded. After the death of Pran Dei, in the mutation proceedings, before the Tehsildar, a settlement/ compromise was arrived at wherein Smt. Chhitna had acknowledge and accepted the share of Parag and Agya Ram together having 2/3rd whereas Smt. Chhitna would have 1/3rd. Thus, it was stated that the entry in the base year Khatauni noticing half share of Chhitna was incorrect and Smt. Chhitna though had filed her separate objections they were not tenable as Smt. Chhitna in pursuance of the compromise entered before the Tehsildar was estopped from taking a contrary plea nor she could challenge the 2/3rd share of the petitioners.

9. Awadh Ram who had filed his set of objections claimed that the property in question was created by the common ancestor Matai who was survived by his four sons namely Hardwar, Har Krishan, Hardutt and Har Prasad. It was further stated that Hardwar was the eldest and hence his name was duly recorded in representative capacity. However, the family continued to remain joint and as such upon the death of Matai, the rights in the two disputed Khatas came to be devolved on the four sons of Matai and Awadh Ram being the son of Har Prasad who had his co-tenancy rights in the property. It was also stated that Smt. Chhitna,Parag and Agya Ram had fraudulently got their names mutated to the exclusion of Awadh Ram and accordingly the said entries were incorrect.

10. The third set of objections were filed by Smt. Yashodra who is the daughter of Hardwar and she claimed that the property was self created by her father namely Hardwar and after his death, it devolved on Smt. Pran Dei and upon the death of Smt. Pran Dei who at the relevant time was survived by her two daughters namely Chhitna and Yashodra. Accordingly, Smt. Chhitna has no exclusive right to exclude the share of Smt. Yashodra and she had half share in the disputed Khata.

11. Smt. Chhitna while filing her objections had stated that at the time of

death of Smt. Pran Dei, Smt. Yashodra had relinquished her rights and therefore she could not claim any right. Smt. Chhitna also disputed the right of Parag and Agya Ram on the premise that the property in question was created solely by Hardwar and upon the death of Hardwar, the property devolved on Smt. Pran Dei and from Pran Dei, Smt. Chhitna got her exclusive right. Smt. Chhitna also disputed that no such compromise was arrived at in the court of Tehsildar on 28.2.1959 as alleged by Parag and Agya Ram. She also disputed that Har Krishna who was the brother of Hardwar did not have any right in the property and therefore no right could devolved on Parag and Agya Ram, hence Smt. Chhitna must be considered and recorded as the sole tenure holder of both the Khatas in dispute.

12. At this stage, it will be relevant to notice that Smt. Yashodra died during the proceedings and she was represented and her claim was contested by her son Raghu Nandan. Upon the death of Smt. Chhitna, her case was taken forward by her son namely Chhotey Lal whereas Parag and Agya Ram who died during the pendency of the writ peition are represented by the legal heirs of Parag and Agya Ram who are the petitioners.

13. In the light of the aforesaid conflicting claims filed before the Consolidation Officer, who framed eight issues. After permitting the parties to lead evidence, the Consolidation Officer recorded a finding that it could not be proved that the property in question was ever recorded in the name of Matai, the common ancestor. The oldest revenue record which was placed on record by Smt. Chhitna was a copy of Khatauni of 1358 fasli (1951 C.E.) year wherein Khata Nos.5 and 41 were recorded in the name of Hardwar son of Matai. It also held that Awadh Ram could not bring any document on record to indicate that disputed Khatas at any point of time was recorded in the name of Matai, hence in absence thereof, it could not be said that the property was ancestral and it devolved on the four sons of Matai.

14. He further held that Awadh Ram could not indicate that the name of Hardwar was recorded in the representative capacity and with the said findings, the claim of Awadh Ram was turned down.

15. The Consolidation Officer, further went on to hold that since it was clearly proved that the property was self-acquired by Hardwar and upon the death of Hardwar, it devolved on his wife Pran Dei who died sometimes in the year 1959 and thereafter Pran Dei was succeeded by her two daughters namely Smt. Chhitna and Yashodra. It further held that even though in terms of Section 171 of the U.P. Z.A. & L.R.Act, 1950 (hereinafter referred to as ***"Act of 1950")*** the property would devolve on the two daughters of Hardwar but since a compromise was entered between Chhitna and Agya Ram and Parag and they have been in possession of the disputed plots, but, the fact remains that Yashodra was also the real sister of Chhitna and daughter of Hardwar. Therefore, in absence of any relinquishment at the behest of Smt. Yashodra in accordance with law, she could not be deprived of her share. Therefore, the Consolidation Officer granted 1/3rd share to Smt. Yashodra, 1/3rd to Smt. Chhitna and 1/3rd jointly to Agya Ram and Parag. It also noticed that since Smt. Yashodra had died during the pendency of the proceedings before the Consolidation Officer, hence her share

would be inherited by her son and similarly the share of Smt. Chhitna would be inherited by her sons namely Chhotey Lal and Ram Achebar.

16. This judgement of the Consolidation Officer dated 10.12.1982 came to be challenged before the Settlement Officer, Consolidation. Three appeals came to be filed; one by the legal heirs of Smt. Yashodra ; the other by the legal heirs of Smt. Chhitna and the third by Agya Ram and Parag. The Settlement Officer of Consolidation after hearing the parties, dismissed the appeal of Agya Ram and Parag and further held that since it was not disputed that Smt. Yashodra and Smt. Chhitna were the daughters of Hardwar, hence both would have half share therein which was going to be distributed amongst legal heirs of Smt. Chhitna and Smt. Yashodra. The Settlement Officer of Consolidation went on to consider the shares amongst the legal heirs of Smt. Yashodra and Smt. Chhitna and held that since Chhitna was survived by her two sons namely Ram Achebar and Chhotey Lal they would have 1/4th share therein whereas the other half would be inherited by Raghu Nandan son of Yashodra.

17. The judgement passed by the Settlement Officer of Consolidation dated 13.3.2008 further came to be assailed before the Deputy Director of Consolidation where again three revisions were filed Revision No.724 was filed by Agya Ram and Parag as they were completely ousted as it had been held by the Settlement Officer of Consolidation that they had no right in the disputed Khatas. Revision No.723 was filed by Raghu Nandan (son of Yashodra) wherein he disputed the distribution of shares amongst him and his other cousin brothers (sons of Chhitna). The third revision came to be filed by the heirs of Chhitna.

18. All the three revisions were clubbed together and decided by a common judgement dated 22.4.1985 passed by Deputy Director of Consolidation, Gonda wherein it held that there could be no compromise which could bind the parties arrived at in mutation proceedings in the year 1959 as all the concerned parties were not parties to the said compromise. It also noticed that the plea taken by Agya Ram and Parag that there was a family settlement also could not be proved in accordance with law as it had already been held concurrently that the property in question was not created by Matai but only by Hardwar. As per the law of succession, the property would devolve only on the legal heirs of Hardwar i.e. his two daughters namely Chhitna and Yashodra. Smt. Chhitna on her own even by compromise or alleged settlement could not create rights in favour of a party who had no right. Any right created in favour of a third party could only be done by an instrument such as a Will, Gift or a Sale but not by a compromise nor as a family settlement. It thus concluded that merely by getting the names recorded, Agya Ram and Parag could not claim right to the property specially when Smt. Chhitna herself disputed the alleged compromise said to have been arrived at in the court of Tehsildar in the year 1959. Also for the reason that the alleged compromise was signed only by Parag and neither Chhitna nor Yashodra or Agya Ram had put their signatures/thumb impressions.

19. The Deputy Director of Consolidation also held that mere possession at the behest of Agya Ram and Parag could not confer any right or title and

the plea of adverse possession as raised by Agya Ram and Parag was not sustainable in law. Accordingly, the revision of Agya Ram and Parag was dismissed.

20. Considering the revision preferred by the legal heirs of Smt. Chhitna and Yashodra, the Deputy Director of Consolidation found that once both Smt. Chhitna and Yashodra had expired but in absence of any date of death, it could not be ascertained that whose share would be succeeded by which of the legal heirs and in what proportion, hence in order to adjudicate the respective shares of the legal heirs of Yashodra and Chhitna, the Deputy Director of Consolidation remanded the matter to the Consolidation Officer with the limited directions vide its judgement dated 22.4.1985.

21. It will further be relevant to notice that insofar as Agya Ram and Parag are concerned, since they were completely non suited and excluded by the Deputy Director of Consolidation as well as Settlement Officer of Consolidation, hence, they preferred Writ Petition No.4405 of 1985. Similarly, the legal heirs of Chhitna also assailed the order of remand passed by the Deputy Director of Consolidation, hence, they filed Writ Petition No.3396 of 1987.

22. It will be relevant to notice here that Raghu Nandan son of Yashodra participated in the proceedings for determination of share in terms of remand order passed by the Deputy Director of Consolidation dated 22.4.1985 and in furtherance thereof, the order was passed by Consolidation Officer and Settlement Officer of Consolidation which came to be assailed in the revision wherein the Deputy Director of Consolidation by means of the order dated 28.10.2009 had categorically upheld the shares between the heirs of Chhitna and Yashodra and this was further challenged in Writ Petition No.732 (Consolidation) of 2009 which came to be dismissed for non prosecution on 27.10.2014 and the recall application which was moved was also dismissed on 2.8.2019 and to that extent, the inter se claim between the heirs of Chhitna and Smt. Yashodra came to be concluded, finally.

23. In the aforesaid backdrop, the only two writ petitions which survived were Writ Petition Writ -B No.4405 of 1985 and Writ -B No.3396 of 1987.

24. Shri U.S.Sahai, learned counsel appearing for the petitioners in Writ Petition Writ -B No.4405 of 1985 has submitted that the orders passed by the Settlement Officer of Consolidation and Deputy Director of Consolidation are bad in the eyes of law since they do not take note of the law of succession which would govern the rights of the parties in the correct perspective. It has been submitted that the property belonged to Matai and upon his death, it devolved on his four sons. He further urged that upon the death of Hardwar, the property would devolve on his widow Pran Dei and after the death of Smt. Pran Dei, since Chhitna and Yashodra were married daughters, they would not inherit the property rather Agya Ram and Parag being the sons of Har Krishan would be preferential heirs in terms of order of succession as per U.P.Z.A.& L.R.Act, 1950, hence, they would be entitled to succeed to the entire share of Hardwar. He further urged that the Consolidation authorities have misconstrued the factum of the compromise which in effect was a family settlement. Once the property was ancestral and it had devolved on the four

sons of Matai, Agya Ram, Parag, Yashodra, Smt. Chhitna, these were children in the third generation from Matai and they were legally entitled to enter into a family settlement readjusting their shares in the manner as they pleased and it cannot be said that the compromise or the family settlement was bad in the eyes of law.

25. Shri Sahai, learned counsel for the petitioner has further submitted that even otherwise it was not disputed that Agya Ram and Parag were in settled possession of the property in question and their continuous possession was admitted to the contesting parties. Thus, they had already perfected their rights and alternatively they would have the right in the property on the basis of adverse possession as well.

26. Moreover, it is urged that at no point of time, name of Smt. Yashodra was incorporated. Accordingly, she could not have any right and this aspect has not been considered by the Settlement Officer of Consolidation and the Deputy Director of Consolidation who have erroneously excluded and completely deprived the petitioners of their shares in the disputed Khatas. It is thus urged that the impugned orders passed by the Settlement of Consolidation and the Deputy Director of Consolidation are patently illegal and as such deserve to be set aside.

27. Mohd. Kashif Rafi and Shri Prakash Verma, learned counsel who appeared on behalf of the heirs of Chhotey Lal and Ram Achebar (both sons of Smt. Chhitna) and Shri Pankaj Srivastava, learned counsel who appeared on behalf of the heirs of Raghu Nandan (son of Yashodra) supported the judgements passed by the Settlement Officer of Consolidation and Deputy Director of Consolidation and prayed that the writ petitions be dismissed.

28. It was also contended that the plea of adverse possession as raised by the learned counsel for the petitioners was not sustainable as it was a mutually destructive plea where on the one hand, the petitioners claim rights on the basis of co-tenancy having perfected their rights in terms of a compromise of 1959, hence their claim of co-ownership and adverse possession cannot be sustained, simultaneously. It was further urged that even if the plea of compromise and adverse possession is considered separately, even then the ingredients required to establish the same, were neither fulfilled nor any evidence in this regard was led, hence on the strength of aforesaid plea, the impugned orders cannot be said to be bad.

29. It was also urged that the learned counsel for the petitioners have argued a contradictory plea to what had been pleaded before the Consolidation Courts. It is not permissible for the petitioners to change their stand during the course of arguments whereas their entire case as per the pleadings before the Consolidation Officer and even uptill filing of the writ petition had been that the property was created by the father of Chhitna namely Hardwar and the father of the petitioners namely Har Krishan. Having abandoned the aforesaid plea in absence of any evidence, it was now not open for the petitioners to state that the property was ancestral and moreover there was no material on record to establish the same specially when the Consolidation Officer had already recorded a finding of fact that the property was created by Hardwar alone. It is thus submitted that the submissions

advanced by the learned counsel for the petitioners are not sustainable and as such the writ petitions deserve to be dismissed.

30. Learned counsel Shri Mohd. Kashif Rafi and Shri Prakash Verma appearing for the legal heirs of Chhotey Lal and Ram Achebar (sons of Chhitna) could not dispute the fact that though they had challenged the order passed by the Deputy Director of Consolidation insofar as it remanded the matter for determining the shares *inter se* between the heirs of Chhhitna and Yashodra and this has already been decided and the writ petition filed by Raghu Nandan bearing Writ Petition No.732 (Consolidation)/ 2009 impugning the order of determination of shares in pursuance of the remand order had attained finality, hence the said Writ -B No.3396 (Consolidation) of 1987 also does not survive on its own except in case if the writ -B No.4405 (Consolidation) of 1985 is allowed.

31. Shri Pankaj Srivastava, learned counsel also did not dispute the fact that as far as the heirs of Raghu Nandan are concerned (sons of Yashodra), their rights have already been decided in terms of the remand order dated 22.4.1985 passed by the Deputy Director of Consolidation and his challenge to the same, has also attained finality on dismissal of his Writ Petition bearing No.732 of 2009.

32. In the light of the aforesaid factual matrix practically it is only the Writ Petition No.4405 of 1985 which survive for consideration and unless the same is allowed, it will not impact the rights of the heirs of Chhitna and Yashodra.

33. In this view of the matter, the Court considers it proper to deal with the submissions of Shri U.S. Sahai in Writ -B No.4405 of 1985.

34. To recapitulate the primary three submissions made by Shri U.S.Sahai, are :-

(i). The property was ancestral and emanated from

Matai. Accordingly, upon the death of Matai, the property would devolve on his legal heirs i.e. the four sons namely Hardwar, Har Kishan, Har Dutt and Har Prasad.

(ii). Shri Sahai also submits that Agya Ram and Parag perfected their rights by adverse possession.

(iii). The petitioners had right in the property on the basis of family settlement/ the compromise arrived at in the court of Tehsildar in the year 1959.

35. This court deems appropriate to first take up the plea of adverse possession as raised by the learned counsel for the petitioners.

36. Before proceeding further, it will be relevant to notice that the law of adverse possession in respect of agricultural properties operates a little differently. Even though it is now well settled that the person who pleads adverse possession has no special equities in his favour as it is an attempt to deprive the lawful owner of his rights. Thus, in order to prove the plea of adverse possession the party pleading it has to strictly adhere to the pleadings and standard of proof required to establish the said claim.

37. It will also be relevant to state that on one hand, the petitioners have been claiming rights on the basis of a family settlement and it also claims right on the

basis of succession claiming entire rights to the exclusion of all others. In such circumstances, the petitioners cannot plead adverse possession as it would be a mutually destructive plea. Nevertheless, even if at all, the plea of adverse possession is considered, though it is quite contrary to the pleadings of the petitioners who stated that the property in question was created by father of Chhitna namely Hardwar and father of the petitioners namely Har Krishan. In light of the contrary pleadings, the bona fides of the petitioners becomes doubtful but nevertheless in order to successfully plead and prove the plea of adverse possession, it ought to have been indicated clearly as to who was the true owner of the property? when and how the petitioners came in the possession of the property and from which point of time their possession became hostile and to the knowledge of the true owner and that from that given point of time despite knowledge, the true owner did not take any legal steps to oust the persons pleading adverse possession, only then after the expiry of prescribed period as provided in law, the plea can be said to be substantiated.

38. This Court in ***Bhagwati Deen v. Sheetladin; 2022 SCC OnLine All 349***, had the occasion to consider the applicability of law of adverse possession relating to agricultural properties and the same was followed by this Court in ***Sohan Lal vs. Distt. D.D.C. Hardoi and Ors. MANU/UP/4198/2022*** and the relevant portion as considered by this Court in para-11 of ***Sohan Lal (supra)*** is being reproduced hereinafter:-

11. Having taken note of the aforesaid as well as considering the decision of this Court in the case of Bhagwati Deen (supra), wherein a detailed discussions has been made on the plea of adverse possession by referring to other decisions of this Court and of the Apex Court. Para-28 of the said report reads as under:-

"28. Lately, this Court also had the occasion to consider the aforesaid issue of adverse possession in the case of Chit Bahal Singh v. Joint Director of Consolidation, decided on 29.04.2022 and by relying upon the decision of Babu Ali v. D.D.C. (supra) the plea of adverse possession was rejected. The relevant paras explaining the law and the preparation of entries and what ingredients have to be met are being extracted hereinafter:-

"11. The para-89-A, 89-B and 102-B of the Land Records Manual (here-in-after referred as "the manual'), relevant for the purpose, are extracted below:—

"89-A. List of changes.-After each Kharif and rabi portal of a village the Lekhpal shall prepare in triplicate a consolidated list of new and modified entries in the Khasra in the following form:

Form No. P-10

Khasra No. of Plot	*Area*	*Details of entry in the last year*	*Details of entry made in the current year*	*Verification report by the Revenue Inspector*	*Remarks*
1	*2*	*3*	*4*	*5*	*6*

(ii) The Lekhpal shall fill in the first four Columns and hand over a copy of the list to the Chairman of the Land Management Committee. He shall also prepare extract from the list and issue to the person or persons concerned recorded in Columns 3 and 4 to their heirs, if the person or persons concerned have died, obtaining their signature in the copy of the list retained by him. Another copy shall be sent to the Revenue Inspector.

(iii) The Revenue Inspector shall ensure at the time of his partial of the village the extract have been issued in all the cases and signatures obtained of the recipients.

89-B. Report of changes.- The copy of the list with the Lekhpal containing the signatures of the recipients of the extracts shall be attached to the Khasra concerned and filed with the Registrar (Revenue Inspector) alongwith it on or before 31st July, of the following year (sub-paragraph (iv) of the paragraph 60).

102-B. Entry of possession (Column 22) (Remarks column).- (1) The Lekhpal shall while recording the fact of possession in the remarks Column of the Khasra, write on the same day the fact of possession with the name of the person in possession in his diary also, and the date and the serial number of the dairy in the remarks Column of the Khasra against the entry concerned.

(2) As the list of changes in Form p-10 is prepared after the completion of the patal of village, the serial number of the list of changes shall be noted in red ink below the entry concerned in the remarks column of the Khasra in order to ensure that all such entries have been brought on the list.

(3) If the Lekhpal fails to comply with any of the provisions contained in paragraph 89-A, the entry in the remarks Column of the Khasra will not be deemed to have been made in the discharge of his official duty."

12. Reading of the aforesaid provisions makes it clear that if any entry is made in PA-10, the same shall be communicated to the person or persons concerned recorded in columns 3 and 4 or their heirs and obtain their signatures. Records on being submitted to the Revenue Inspector, he shall ensure at the time of Padtal i.e. verification of the village that it has been issued in all the cases and the signatures obtained by the recipients. Therefore, in case, any entry made on the basis of adverse possession the same was to be communicated to the person concerned and the person claiming is required to prove that it was in accordance with the manual and as to what was nature of possession and when it started in the knowledge of the tenant and the possession was continuous and how long it continued.

13. This Court considered this issue in the case of Mohd. Raza v. Deputy Director of Consolidation, 1997 RD 276 and held that the entries in the revenue papers not prepared by following the procedure prescribed under the Uttar Pradesh Land Records Manual and PA-10 notice was not served on the main tenant, such entries are of no evidentiary value and would not confer any right.

14. This court, in the case of Gurumukh Singh v. Deputy Director of Consolidation, Nainital, (1997) 80 RD 276, has also held that the entries will have no evidentiary value if they are not in accordance with the provisions of Land Records Manual and the burden to prove is on the person who is asserting the possession on the basis of adverse possession. Relevant paragraphs 6 and 7 are extracted below:—

"6. It is clear from Para A-102C of the Land Records Manual that the entries will have no evidentiary value if they are not made in accordance with the provisions of Land Records Manual. There is presumption of correctness of the entries provided it is made in accordance with the relevant provision of Land Records Manual and secondly, in case where a person is claiming adverse possession against the recorded tenure-holder and he denies that he had not received any P.A. 10 or he had no knowledge of the entries made in the

revenue records, the burden of proof is further upon the person claiming adverse possession to prove that the tenure-holder was duly given notice in prescribed Form P.A. 10. Para A-81 itself provides that the notice will be given by the Lekhpal and he will obtain the signature of the Chairman, Land Management Committee as well as from the recorded tenure-holder. It is also otherwise necessary to be provided by the person claiming adverse possession. The law of adverse possession contemplates that there is not only continuity of possession as against the true owner but also that such person had full knowledge that the person in possession was claiming a title and possession hostile to the true owner. If a person comes in possession of the land of another person, he cannot establish his title by adverse possession unless it is further proved by him that the tenure-holder had knowledge of such adverse possession.

7. In Jamuna Prasad v. Deputy Director of Consolidation, Agra, this Court repelled the contention that the burden of proof was upon the person who challenges the correctness of the entries. It was observed:

"Learned counsel for the Petitioner argued that there was a presumption of correctness about the entries in the revenue records and the onus lay upon the Respondent to prove that the entries showing the Petitioner's possession had not been in accordance with law. This contention is untenable Firstly, it is not possible for a party to prove a negative fact. Secondly, the question as to whether the notice in Form P.A. 10 was issued and served upon the Petitioner also is a fact which was within his exclusive knowledge."

"Petitioner's contention that the burden lay on the Respondents to disprove the authenticity and destroy the probative value of the entry of possession cannot be accepted. In my opinion, where possession is asserted by a party who relies mainly on the entry of adverse possession in his favour and such possession is denied by the recorded tenure-holder, the burden is on the former to establish that the entries in regard to his possession was made in accordance with law."

15. This Court, in the case of Sadhu Saran v. Assistant Director of Consolidation, Gorakhpur, (2003) 94 RD 535, has held that it is well settled in law that the illegal entry does not confer title. Therefore even if the entry has been made, it does not confer right title or interest if it is not in accordance with law and the prescribed procedure. This Court and the counsel for the parties also could not get the same in the Lekhpal diary. The provision of PA-24 has come vide notification dated 03.07.1965, therefore it is also of no assistance because entry could not have been made on the basis of PA-24 in Khatauni of 1373 fasli and it is also without number and year.

16. This Court, in the case of Putti v. Assistant Director of Consolidation, Bahraich, (2007) 2 All LJ 43, has held that the court should be slow to declare the right on the basis adverse possession otherwise it may become a weapon in the hands of mighty persons to acquire the property of the weaker sections of society. It has further held that there shall not be presumption of continuous possession to declare right and title on the basis of adverse possession unless year to year entries made in accordance with law in the Khasra or Khatauni and proved by cogent and trustworthy evidence, the burden to prove which is on the person who claims Sirdari or Bhumidhari rights on the

basis of adverse possession. Relevant paragraph-41 is extracted below:—

"41. Right to claim title on the basis of adverse possession is a legacy of British law. Courts should be slow to declare right on the basis of adverse possession. In case liberal approach is adopted to extend right and title on the basis of adverse possession then it may become a weapon in the hands of mighty persons to acquire the property of the weaker sections of the society. Accordingly, it shall always be incumbent upon the Courts to do close scrutiny of the evidence and material on record within the four corners of law as settled by Apex Court, discussed herein above. Even little reasonable doubt on the evidence relied upon by a party to claim right and title on the basis of adverse possession may be sufficient to reject such claim under a particular fact and circumstance. There shall not be presumption on continuous possession to declare right and title on the basis of adverse possession unless year to year entries made in accordance to law in the Khasra or Khatauni are proved by cogent and trust worthy evidence. burden of proof of such entries shall lie, as discussed herein above, on the person who claims Sirdari or bhumidhari right on the basis of adverse possession. In the absence of any such proof, presumption shall be in favour of recorded tenure-holder whose name has been recorded in column-1 of the Khatauni."

17. The Hon'ble Apex Court, in the case of P.T. Munichikkanna Reddy v. Revamma, 2008 (26) LCD 15, has held that in case of adverse possession, communication to the owner and his hostility towards the possession is must. The relevant paragraphs 19 to 23 are extracted below:—

"19. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

20. While dealing with the aspect of intention in the Adverse possession law, it is important to understand its nuances from varied angles.

21. Intention implies knowledge on the part of adverse possessor. The case of Saroop Singh v. Banto, (2005) 8 SCC 330 in that context held:

"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak, (2004) 3 SCC 376).

30. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Mohd Mohd. Ali v. Jagadish Kalita, SCC para 21)"

22. A peaceful, open and continuous possession as engraved in the maxim nec vi, nec clam, nec precario has been noticed by this Court in Karnataka Board of Wakf v. Government of India, (2004) 10 SCC 779 in the following terms:

"Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession"

It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper owner of the property. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper owner."

39. Applying the aforesaid principles to the present case as already noticed above, neither there was adequate pleadings nor there was any evidence in this regard nor it could be shown that the possession of the petitioners if at all was ever adverse or recorded in column 9 of the Revenue records maintained under the U.P. Land Records Manual nor that P.A.-10 was ever issued to the true owners and was served, hence in absence thereof, the plea of adverse possession is clearly misconceived and is turned down.

40. Now in case if the plea of family settlement and compromise is considered, it will worthwhile to state that both family settlement and the compromise operate and different spheres. It would be appropriate to notice the celebrated case of the Hon'ble Apex Court relating to family settlement which still holds goods is ***Kale and others Vs. Deputy Director of Consolidation and others : 1976 (3) SCC 119,*** the proposition laid down therein was followed by this Court while considering the plea of family settlement in ***Ram Milan Vs. Kripa Shanker and others : MANU/UP/2728/2023*** wherein this Court had considered the aforesaid plea relating to a family settlement all the leading decisions right from Kale Vs. D.D.C.(supra) with the aid of several decisions of the Apex Court and the relevant portion of Ram Milan (supra) reads as under :-

"25. Sri Vibhansu Srivastava, learned counsel for the appellants has relied upon the decision of Khushi Ram (Supra) wherein the Apex Court dealing with the question as to whether a decree passed in a civil suit requires registration and after considering the provisions of Section 17 of the Registration Act, 1908 held that the decree if it relates to the subject matter of the suit, it was not required to be registered under Section 17 (2) (vi) of the Registration Act, 1908 and thus it was covered by the exclusionary clause.

26. The other question which was referred to the Apex Court regarding the family settlement, the Apex Court after relying upon the celebrated decision of the Apex Court in Kale Vs. DDC (supra) held that the propositions laid in Kale Vs. DDC (supra) was still binding and thus the Court is required to take a broad approach while dealing with family settlements, however, what needs to be seen in the said case that the issue was whether the parties could be treated as a family in order to enter into a family settlement and it is in the aforesaid context that the said decision was rendered.

27. In Korukonda (supra), the Apex Court noticing the earlier decisions on the issue of family settlement and requirement of its registration held that in case a document is in the nature of memorandum evidencing a family settlement already entered into and having been prepared as record so that there are no confusion in future, it need not be stand or register, however, where there has been a partition then there may be no scope for invoking the concept of antecedent rights as such then such a document would require registration.

28. The decision of Compac Enterprises (supra) relates to a consent decree wherein it has been held by the Apex Court that the consent decree are intended to create estoppel by judgment against the parties thereby putting an end to the future litigations, however, this is not an absolute formulation and a consent decree would not serve as an estoppel where the compromise was vitiated by fraud, misrepresentation or mistake.

29. As far as the decisions cited by Sri Chaudhary are concerned in Kale Vs. DDC (supra), the Apex Court has noticed the various nuances relating to the family settlement which are undobtedly followed till today and shall be appropriately considered while dealing with the respectful submissions of the parties.

30. Learned counsel for the respondents has relied upon a decision of Ripu Daman (supra) which is also in respect of an issue as to whether a compromise decree in respect of land which is not the subject matter of suit but is part of the settlement between the family members required compulsory registration and after noticing the provisions of Section 17 of The Registration Act, 1908 and other decisions of the Apex Court held that the compromise decree which declares a pre-existing rights and does not by itself create a new right or title in the property does not require registration, however, if the decree were to create a right for the first time or title or interest in the immovable property then it would require registration.

31. In J. Yashoda (supra), the Apex Court dealing with the Section 65 of The Evidence Act, 1872 has held that as a general rule, secondary evidence is admissible only in the absence of primary evidence and the law requires a proper explanation for absence of the primary evidence only then the secondary evidence can be admitted.

32. In the backdrop of the aforesaid propositions of law cited by the respective parties and noticing the questions of law required to be answered, it would be apposite to consider the effect of the family settlement filed as Exhibit-5 and the effect of the consent decree dated 01.11.1972 which is Exhibit-2.

"33. First and foremost, it will be relevant to notice what is a family settlement and how the same is to be construed and for the aforesaid purpose, the decision of the Apex Court in Kale Vs. DDC (supra) would be helpful and the relevant paragraphs of the said decision

are being noticed hereinafter for ready reference:-

9…….By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise Kerr on Fraud at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

"The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend."

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain .and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes succession is so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family

property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

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."

41. The Hon'ble Apex Court in the case of ***Bhoop Singh Vs. Ram Singh Major and others : (1995) 5 Supreme Court Cases 709,*** has held as under (relevant paragraph 12) :

"12. The aforesaid decisions do not cover the whole ground, according to

us. They meet our approval as far as they go. But something more is required to be said to find out the real purport of clause (vi). It needs to be stated that sub- section (1) of section 17 mandates that the instrument enumerated in clauses (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property, the value of which is Rs.100/- or upwards. When the document purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest therein, whether vested or contingent, it has to be registered compulsorily. The Act does not define "instrument". Section 2(14) of the Indian Stamp Act, 1899, defines "instrument" to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Sub-section (2) of section 17 of the Act engrafts exceptions to the instruments covered only by clauses (b) and (c) of sub-section (1). We are concerned with clause (vi) of sub-section (2). Clause (vi) relates to any decree or order of a court, except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding. Clause (v) is relevant which in contrast reads thus:

"Any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another instrument which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest;".

The Explanation amplifies that a contract for the sale of immovable property containing a recital of payment of any earnest money or of the whole or any part of the purchase price shall not be deemed to be required or ever to have required registration."

42. Considering the law which has been crystalized by the Hon'ble Apex Court in various decisions which have been noticed in Ram Milan (supra), this Court finds that the plea of family settlement also does not impresses the court for the reason that it has not been indicated as to how the property was acquired by Matai. There was no material brought on record to indicate that the property in question was created by Matai. Surprisingly, only in the year 2006, the petitioners have attempted to introduce certain documents by filing a supplementary affidavit which had never seen the light of the day despite the proceeding pending since 1959 when Smt. Pran Dei expired. The three courts of Consolidation have crystalized the controversy and as already noticed above, the petitioners have been taking contrary stand inasmuch as before the consolidation officer, it was their specific pleading that the property was created by Har Krishan and Hardwar and it was never their case that it was ancestral. Even while filing the writ petition, the plea remained the same and without amending the writ petition or the pleadings, merely by introducing a supplementary affidavit and by filing certain documents which have not been tested in trial cannot be a ground to permit the petitioners to take a somersault in respect of their case contrary to the plea upon which they had contested proceedings throughout.

43. Be that as it may, unless and until the petitioners could indicate that they had any pre existing rights till then the family settlement as pleaded, cannot be sustained. It also could not be established

by the petitioners that their father Har Krishan had acquired the property alongwith Hardwar and therefore, again there cannot be any plea of family settlement specially between Chhitna and the petitioners in exclusion to the others that would necessarily include Smt. Yashodra to say the least.

43. For the said reasons, the plea of family settlement also does not inspire confidence and the reasonings given by the Deputy Director of Consolidation as well as Settlement Officer of Consolidation to discard the plea of family settlement does not suffer from any palpable error.

44. Upon examining the plea of a compromise said to have occurred before the court of Tehsildar, the same did not find acceptance before the Settlement Officer of Consolidation and the Deputy Director of Consolidation and this Court also agrees with the reasonings that the said compromise in mutation proceedings was in any case not binding in the sense that it could deprive a lawful owner of his right. It could not be disputed by learned counsel for the petitioners that the alleged compromise said to have been filed in the court of Tehsildar was only signed by Parag. It did not have the signatures of Smt. Chhitna, Smt. Yashodra or even Agya Ram himself. Even if at all for the sake of arguments, the said compromise is taken into consideration, even then it cannot have any binding impact as it was held in a mutation proceedings whereas the same came to be disputed in proceedings under Section 9-A (2) of the Act of 1953 which are substantive proceedings where the rights of the parties including their title is decided and the same has a binding impact including it operates as res-judicata in terms of Section 49 of the Act of 1953 before any other revenue or civil court. In the proceedings before the Consolidation Officer, the said compromise was neither proved despite the fact that Smt. Chhitna had denied the said compromise. It was always open for the petitioners to have proved the compromise but it was not proved and thus by merely taking the plea without proving the said compromise in accordance with law, it cannot be treated to have been proved. There was no justification for the said compromise to be accepted when it was not signed by Yashodra, Parag and Chhitna. Hence, the plea of compromise is also turned down.

45. Lastly, the plea that the property was ancestral also in the light of the aforesaid discussion, learned counsel for the petitioner could not prove that the property was ancestral and even otherwise it was contrary to his pleadings, thus the said plea also does not have any merit.

46. For all the aforesaid reasons, the petition bearing Writ -B No.4405 of 1985 has no merit and is accordingly ***dismissed.*** So also the Writ -B No.3396 of 1987 meets the same fate. It is accordingly ***dismissed.***

Costs are made easy.

(2025) 3 ILRA 240
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 15451 of 1996

Rama Shanker & Ors. ...Petitioners
Versus
The Board of Revenue, U.P., Allahabad & Ors. ...Respondents

Counsel for the Petitioners: