



2025:AHC-LKO:51495

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

AFR

RESERVE JUDGMENT

Reserved On 12.08.2025

Delivered on 29.08.2025

WRIT - B No. - 669 of 2025

Shahadat Ali And Another

.....Petitioner(s)

Versus

Board Of Revenue, U.P., Lko. Thru. Member And
8 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Mohammad Aslam Khan, Faiz Ahmad Khan
Counsel for Respondent(s)	: C.S.C., Pankaj Gupta, Pt. Devesh Kumar Mishra

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Mohammad Arif Khan, learned Senior Advocate assisted by Sri Mohammad Aslam Khan, learned counsel for the petitioners as well as Dr. Krishna Singh, learned Standing Counsel for resp. nos. 1 and 9 and Sri Pt. Devesh Kumar Mishra, learned counsel for respondent no. 2.

2. The petitioners have filed the present writ petition assailing the order of the Board of revenue dated 17/06/2025 whereby it has allowed the 2nd appeal preferred by opposite party No. 2, and set aside the 1st appellate order dated 31/08/2020 passed by the Additional Commissioner, Devi Patan Division, Gonda as well as the order of the trial Court dated 21/12/2021 passed by the Sub Divisional Magistrate, Mahsi, Bahraich and remanded the matter back for determination afresh after following the directions contained therein .

3. The property which is subject matter of the present partition dispute was initially recorded in the name of one Razaq who was the recorded tenure holder of Plot No. 572, area 0.588 hectares situated in Village -

Tajwapur, Pargana - Fakharpur, Tehsil - Mahsi, District - Bahraich. Razaq died in 1960, and was survived by 3 sons namely Jumai, Siddiqui and Birahim. The 1st son Jumai, had 3 sons namely Rajjab Ali (respondent No. 2), Abdul Hasan (respondent No. 7) and Taami, (who was initially made respondent No. 6 in the present writ petition but was deleted by order of this Court dated 24/07/2025), while Siddiqui had 3 sons namely Jalil @ Jami Ahmad, Poosu, Ali Hasan and lastly Birahim had one son Shahadat Ali who is the petitioner no.1, while petition No. 2 is the wife of petitioner no.1.

4. The suit was filed by opposite party No. 2 on 26/10/2015 in the Court of Sub Divisional Magistrate, Mahasi, District Bahraich stating that property situated at plot No. 572/0.617 hectares is the ancestral property of petitioner no.1 and respondent no. 2, 3, 4, 5 and 7. The 3 sons of Razaq namely Jumai, Siddiq and Birahim had 1/3rd share each in the property, and after their death their sons have inherited their share of the property in equal shares to which they were entitled. Taami son of Jumai has sold his share in favour of petition No. 2 while Abdul Hasan has sold his share to respondent No. 2.

5. In the plaint preferred by opposite party No. 2 it was clearly stated that oral partition has already taken place between all the tenure holders, but with regard to payment of revenue rent and exact location of their plots is a constant dispute occurring between the parties and also as the Highway having come up known as the Bahraich - Chahlari Highway adjacent to the disputed plot the plaintiff demanded that he be given a share adjacent to the road which has been denied and also that they want legal partition due to which the suit was being filed.

6. In the suit proceedings the defendants therein appeared and opposite party No.s 3 and 4 filed joint written statement clearly admitting the facts pertaining to the family partition having already taken place. It was further stated that petitioner No.1 who has 1/3rd share, out of which he has sold 2/3rd of his share to his wife through registered sale deed 17.1.2007 and she is in possession of the said land. Petitioner No.2 had also purchased the share of Taami under registered sale deed dated 7.11.2002 and her name was duly mutated in pursuance of the sale deed

and she is possession over the said land. It is in aforesaid circumstances that preliminary decree dated 22.8.2016 were drawn up where share of all the parties was determined. The share of the petitioners was determined as 2/9 and Sahadat Ali son Birahim and Smt. Jannatul Nisan wife of Shahadat Ali were jointly given 4/9 share while Jalil @ Jami Ahmad son of Siddiqui were given 1/9 share each. Pursuant to the preliminary decree kurra was directed to be prepared in consonance with Rule 109 (5) of U.P. Revenue Rule, 2016. The said kurra report was submitted on 14.8.2020 against which objections were filed by opposite party No.2 which were rejected and final decree was passed on 31.8.2020.

7. While preparing final decree Sub Divisional, Magistrate held that the request made by the plaintiff for giving more portion of land on the District Highway has been rejected and the kurras have been prepared on the basis of the actual possession of all the parties on the basis of family partition which has already taken place between the respective parties who are in possession of their respective share on the basis of the partition and have also constructed houses on the said lands. He was further of the view that subsequently some of the share holders have sold the land by registered sale deed wherein in the sale deed the exact location of the land has been clearly described by clear boundary and accordingly rejected the objections and confirmed the kurras prepared by the concerned Lekhpal on 17.1.2020.

8. Against the decree dated 31.8.2020 an appeal was filed by opposite party Nos. 2, 3 , 4 and 5 before Commissioner, Devi Patan Division, Gonda.

9. The main grievance raised was that the partition has been done in clear violation of the statutory provisions contained in Rule 109 (5) (c) of the U.P. Revenue Code Rules and the appellants claim their rights to the portion of the land in equal share which fell adjacent to the District highway and, therefore challenged the validity of the Kurra dated 17.1.2020 prepared by the Lekhpal.

10. The Additional Commissioner, duly considered the contentions of rival parties and dismissed the appeal. While dismissing the appeal he returned the following findings:-

11. He held that there has been *Vahami Batwara* between the parties, this fact is admitted by all the parties and further all the parties are in possession of the shares allotted to them as per the said settlement. To evidence the said fact he took into consideration that:-

(i) Firstly, the plaintiff/appellant had clearly stated this fact in his plaint that a family partition/settlement had taken place, and Birahim was allotted the plot on the northern side. Southern side was given to Siddique and South to Siddiqui there existed the land Jumai and while all the three brothers were allotted land land from South side in equal portion to which they are in possession. After the death of Birahim, Siddiqui and Jumai and their sons are in possession of the said land.

(ii) Secondly, for construction of canal a portion of the land i.e. 0.80 acres of land was acquired by sale deed dated 5.3.1997 which was executed in favour of the Governor of Uttar Pradesh through Executive Engineer, Saryu Nahar Khand, Bahraich, which was executed by Birahim and Jalil, Pushu and Ali Hasan sons of Siddiqui. The land which was acquired fell into their share. There is no dispute that appellant obtained compensation/sale consideration. In the said sale deed a chak marg has been mentioned on the southern side which clearly indicates that to the South of the land of Birahim father of the petitioner there exists a chak road.

(iii) Thirdly, Taami brother of Rajjab Ali i.e. opposite party No.2 sold his entire share in favour of Smt. Jannatul Nishan wife of Shahadat Ali by means of registered sale deed dated 7.11.2002. In the said sale deed also the boundaries are clearly stated and south side of the said land, plot of the petitioner has been described and accordingly on perusal of the said sale deeds it was found that all the share holders are in possession of respective shares and the said family partition has been accepted by the all the parties. He further recorded that on both sides of Gata No.572 there existed a chak road at the time of family settlement and it is only after on the northern side when the district highway was constructed that the present litigation was initiated claiming share and access to the said highway.

12. In the aforesaid circumstances the appellate authority concluded that

the appellant himself has entered to a sale deed dated 19/09/1998 where he has clearly described the land with mets and bounds in the plot of the appellant has been described on the south side along with the chak marg, and even in the sale deed executed by Tammi brother of the appellant sold his share to Ms Jaintulnisha the boundaries were clearly demarcated and the plot of the petitioner was described on the southern side. He had also looked into the sale deed executed by Siddiqui and Binahim in favour of the State government for construction of canal where also the plots were clearly demarcated and identified and accordingly on the faces of the aforesaid facts he concluded that a family partition had already taken place and the chorus have been prepared correctly and no interference is required in the order of the trial court dated 31/08/2020 and consequently dismissed the appeal.

13. The petitioner being aggrieved by the order trial Court as well as by the appellate court for the 2nd appeal before the Board of revenue. Before the Board of revenue was contended that the *Khurras* were prepared by the Lekhpal in his report dated 17/01/2020 illegally and arbitrarily and contrary to the provisions of Rule 109(c) of the U.P Revenue Court Rules, 2016 (*hereinafter referred to as "the Rules, 2016"*). It was the case of the petitioner/appellant that the Kurra should have been prepared in according to Rule 109 (c) and (f) of the Rules, 2016 which provides that as far as possible no party shall be given all the inferior or all the superior class of land, and the plot or any part thereof is of commercial value or is adjacent to Road, Abadi or any other land of commercial value, the same shall be allotted to each tenure holder proportionately and accordingly the property should be allotted proportionately adjacent to the Road, Abadi or other land of commercial value.

14. It was contended that irrespective of the family partition, the land adjacent to the District highway should be proportionately and equally distributed amongst all the shareholders, and the Lekhpal not having followed the aforesaid condition had committed manifest illegality, and prayed for setting aside of the order of the trial court in the 1st appellate court.

15. The Board of Revenue had also held that the property was in joint possession of all the tenure holders, and the shares of individual tenure

holders can be determined only by a legal petition.

16. The arguments of the petitioner found favour with the Board of revenue, and the 2nd appeal is allowed and the order of the trial court as well as the 1st appellate Court was set aside and the matter was remitted back to the trial Court for adjudication of fresh, after holding that all the tenure holder is were entitled to equal share in the property falling on the district highway, and also passed several directions as to how the Khurras be prepared, and further directed that the proceedings be concluded within 6 months.

17. The order of the Board of Revenue dated 17/06/2025 has been challenged in the present writ proceedings.

18. The primary issue canvassed by the learned Senior Advocate appearing on behalf of the petitioners is that the Khurras were prepared by the Lekhpal by his report dated 17/01/2020, were totally in accordance with the provisions of Rule 109(g) of the Rules, 2016 which provides that if the court tenure holders are in separate possession on the basis of mutual consent or family settlement, the Khurras shall, as far be possible, be fixed accordingly. It was vehemently Submitted that there was no infirmity in the order of the trial court as well as the 1st appellate court where the entire evidence was considered specially the fact that that there was a family partition on the basis of mutual consent and all the shareholders were in possession of the respective shares.

19. It was submitted that in case there is a family settlement, and the tenure holders are in separate possession, then Rule 109(5) (g) would prevail and there would have been no occasion to prepare the *Khurras* in accordance with Rule 109(5) (c) &(f) of the Rules, 2016.

20. Shri M.A. Khan, Senior Advocate, argued that the record contains overwhelming evidence confirming that all tenure holders had mutually accepted the family partition and were in possession of their respective shares accordingly. He stated that the Sub-Divisional Magistrate, while adjudicating the suit under Section 117 of the U.P. Revenue Code, 2006 had rightly dismissed the objections raised by Opposite Party No. 2 against the Khurra prepared by the Lekhpal on 17/01/2020.

21. Furthermore, it was noted that even the co-tenure holders did not dispute this fact, which was clearly supported by three sale deeds:

(i) 05/03/1997: The State purchased portions of the disputed land from Birham and Siddiq for construction of canal.

(ii) 19/09/1998: Opposite Party No. 2 purchased his brother Abdul Hassan's share.

(iii) 17/11/2002: Tommi, brother of Opposite Party No. 2, sold his share to Smt. Jaitulnisha.

22. Each sale deed recorded the precise boundaries of the land sold, indicating that the transactions of sale of disputed land were of an exact plot of land on the basis of metes and bounds rather than mere undivided shares, further affirming the existence and acceptance of the family partition.

23. It was further submitted that the Board of Revenue has committed a manifest error of law and fact by not adequately considering the aspect of family settlement, and on the other hand, relying on provisions of Rule 109 (5)(c) and (f) of the U.P. Revenue Code Rules, 2016 to set aside the order of the trial Court as well as the 1st appellate court. According to the petitioner, if the matter falls under sub Clause (e) of Rule 109(5) of the Rules, 2016, then it was not open for the Lekhpal to invoke sub-Rule (c) and (f) of Rule 109(5) of the Rules, 2016.

24. Counsel for the respondents, on the other hand, would contend that the Board of Revenue has correctly appreciated the entire controversy and held that the Kurras ought to have been prepared keeping in mind the principles enshrined in sub Clauses (c) and (f) of Rule 109(5) of the Rules, 2016. It was stated that whenever an application for partition is moved, it ought to be decided strictly in light of provisions of Rule 109 of the Rules, 2016, and submitted that the land which was adjacent to the District highway was a valuable piece of land and all the co-tenure holders were entitled to an equal share of the valuable piece of land. It was also submitted that even if in the sale deeds, the area of property transferred was described by metes and bounds, it would not affect the suit for partition in as much as a co-tenure holder would be entitled only

to sell his share in the property and the sale deed would be void to the extent it provides for transfer of the properties by metes and bounds.

25. I have heard the learned counsel for the parties at length and perused the record.

26. The facts in the present case are not in dispute, inasmuch as the respondents are seeking partition of plot No. 572, area 0.588 hectares, situated in the Village - Tajwapur, Pargana - Fakharpur, Tehsil - Mahsi, District - Bahraich, which was recorded in the name of Razzaq. Razaq had 3 sons, namely Jumai, Siddique, and Birahim. After the death of Razzaq in 1960, all three sons succeeded to his property, receiving 1/3 share each.

27. There was a *Vahami Batwara* (oral partition) between the parties, and on the basis of the oral partition of the 3 parties were allotted their share in the disputed property. The northernmost plot was given to Birahim, below that plot was the plot of Siddique, and the southernmost plot was Jumai. The fact of *Vahami Batwara* has been accepted by the opposite party No. 2, namely Rajjab Ali, who initiated the present litigation by filing a suit under Section 117 of the U.P Revenue Code, 2006. In the said plaint filed before the Sub Divisional Magistrate, the fact of family partition was accepted, and no objection against the said settlement was stated by him in the entire plaint. The reason for filing the suit for partition was said to be the dispute over the payment of land revenue between the co-sharers, and while accepting the *Vahami Batwara*, it was stated that there was a requirement to legally partition the said property.

28. The suit proceedings were resisted by the petitioners, who were made the defendants therein, and stated that all the tenure holders were in possession of the respective shares after the partition and had also made houses on the said land.

29. After the partition, 3 sale deeds have been executed by the tenure holder is selling their portion of the land, and especially opposite party No. 2 was the plaintiff, had himself purchased the entire share of his brother Abdul Hassan by means of a sale dated 19/09/1998. In the sale deed, the purchase was made of the share which was described in meats

and bounds. The details of the sale deeds are as under:-

(i) 05/03/1997: The State purchased portions of the disputed land from Birham and Siddiqui for the construction of a canal.

(ii) 19/09/1998: Opposite Party No. 2 purchased his brother Abdul Hassan's share.

(iii) 17/11/2002: Tommi, brother of Opposite Party No. 2, sold his share to Smt. Jaitulnisha.

30. All the sale deeds were brought on record to evidence the fact that all the parties have entered into a sale deed by specially describing the land in metes and bounds, and they did not merely sell only their share in the property.

31. On a fair consideration of the entire facts, the question which is for consideration before this Court is as to whether, when a partition has already taken place amicably between the co-sharers, should the Court proceed to partition the property again?

32. The object of the family arrangement is to protect the family from long-drawn litigation and perpetual strife, 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. 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 administering 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 specific successions 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.

"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".

33. 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.

34. The aforesaid principle was affirmed by the Supreme Court in the case of **Ravinder Kaur Grewal v. Manjit Kaur, (2020) 9 SCC 706 : 2020 SCC OnLine SC 612 at page 723**

“25. Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that when 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 and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such 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, as observed in Kale [Kale v. Director of Consolidation, (1976) 3 SCC 119] . In the said reported decision, a three-Judge Bench of this Court had observed thus: (Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC pp. 125-26, para 9)

“9. ... 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 successionis 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.”

35. In the instant case, the trial court had correctly applied the law and decided the matter in light of the undisputed *Vahami Batwara* between the parties. Such a partition is recognized by Rule 109(5) of the Revenue Court Rules, 2016 (*hereinafter referred to as “the Rules, 2016”*), which is quoted herein below:-

“109 (5) The Lekhpal shall submit the Kurra report within a period of one month from the date of receiving the order in this regard and at the time of preparation of Kurra he shall observe the following principles-

(a) the plot or plots shall be allotted to each party in proportionate to his share in the holding;

(b) the portion allotted to each party shall be as compact as possible;

(c) as far as possible no party shall be given all the inferior or all the superior classes of land;

(d) as far as possible existing fields shall not be split up;

(e) Plots which are in the separate possession of a tenure holder shall, as far as possible, be allotted to such tenure holder if they are not in access of his share;

(f) If the plot or any part thereof is of commercial value or is adjacent to road, abadi or any other land of commercial value, the same shall be allotted to each tenure holder proportionately and in the case of second condition the same shall be allotted proportionately adjacent to road, abadi or other land of commercial value; and

(g) If the co-tenure holders are in separate possession on the basis of mutual consent or family settlement, the Kurra shall, as far as possible, be fixed accordingly.”

36. Accordingly, while preparing Kurra the Lekhpal shall first enquire about the existence of any family settlement, or in case the poor tenure holders are in separate possession on the basis of mutual consent, and if it is so, we shall prepare Kurras taking into consideration such family

settlement in accordance with sub Clause (g) of Rule 109 (5) of the Rules, 2016.

37. In case it is found that there is no family settlement, but the tenure holders are in separate possession of the joint property, then, in case they are not in excess of their share, prepare the *Kurras* on the basis of such possession as per sub Rule (e) of Rule 109 (5) of the Rules, 2016.

38. The Lekhpal, if he finds that the conditions contained in sub rules (g) and (e) are not applicable shall thereafter proceed to partition the property considering the conditions laid down in sub Rules (a), (b), (c), (d), and (f) of rule 109 (5) of the Rules, 2016.

39. This Court, upon considering various judgments of the Supreme Court as well as provisions of the Revenue Court Rules, is of the considered opinion that primacy has to be given to family settlement, which has been acted upon, and the co-tenure holders are in possession of their respective shares. In case there is no dispute between the parties with regard to the family settlement, the *Kurras* has to be prepared to take into consideration the family settlement, which is duly recognised in sub Rule (g) of Rule 109 (5) of the Rules, 2016.

40. Applying the aforementioned principle to the present case, it is evident that the trial court has appropriately taken into account the fact that the parties are in possession of their respective shares pursuant to a family settlement, under which the land was equally divided among the three sons of Razzaq. In addition, the court noted that three sale deeds had been executed between the parties, each describing the disputed land with precise boundaries. This clearly indicates that the parties were *ad idem* regarding the partition of the land by metes and bounds, and that there was no dispute concerning the validity of the family settlement, and therefore proceeded to partition the property in terms of the *Vahami Batwara*. It is relevant to note that even the plaintiff at no stage had assailed the validity or existence of the *Vahami Batwara*.

41. Furthermore, the plaintiff himself had purchased the share of his brother, Abdul Hassan, through a registered sale deed dated 19/09/1998. The property acquired was distinctly described with defined boundaries,

further reinforcing the conclusion that each co-tenure holder is in possession of his respective share.

42. The 2nd appellate court, which is the Board of Revenue, had clearly failed to appreciate the fact of partition having already taken place on the basis of an oral family settlement. It further fell into error when they found a lacuna in the judgment of the trial court, having ignored the provisions of sub-Rules (a), (b), (c), (d), and (f) of Rule 109 (5) of the Rules, 2016. As we have already held, in case it is found that there has been a family settlement between the co-tenure holder, then primacy has to be given to such a settlement, the property ought to be partitioned on the basis of the same, in case the same has been arrived at bonafidely.

43. In light of the above, the writ petition is **allowed**, the judgment of the Board of Revenue dated 17/06/25 is set aside, and the judgments of the Sub Divisional Magistrate dated 31/08/2020 and the 1st appellate Court dated 21/12/2021 are affirmed.

(Alok Mathur,J.)

August 29, 2025

A. Verma