2026:AHC:74330

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 10859 of 1981

Chhutta And Others

.....Petitioner(s)

Versus

The Board Of Revenue And Others

.....Respondent(s)

Counsel for Petitioner(s)	:	, Anubhav Sinha, Chandra Shekhar Garg, Daya Shankar Prasad Singh, H.O. Tiwari, Mahesh Sharma, Manoj Kumar Singh, R.K. Ojha
Counsel for Respondent(s)	:	D.N. Gupta, K.N. Saxena, Manvendra Nath Singh, Rajendra Gupta, Ram Kishore Pandey, S.B. Jauhari, S.C., S.S. Gupta, Santosh Kumar Gaur, Veer Bhagat Singh Kushwaha, Vijay Prakash Singh Kushwaha, Vinod Kumar Singh, Vinod Kumar Singh(Senior Adv.)

Court No. - 54

Reserved on - 24.2.2026

Delivered on - 7.4.2026

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Mr. R.K. Pandey, learned Counsel assisted by Mr. Chandra Shekhar Garg, learned Counsel for the petitioners, Mr. V.K. Singh, learned Senior Counsel assisted by Mr. Aman Srivastava, learned Counsel for private respondents and Mr. Om Anand, learned Standing Counsel for the State respondents.

2. Brief facts of the case are that dispute relates to total 146 plots area 55.84 acres situated in Village Bansi, Pargana Bansi, District Lalitpur (Jhansi) as mentioned in paragraph no. 1 of the writ petition. Respondent no.1-B/ Janki, respondent no.2/ Bhaiya Lal, respondent no.3/ Hardas filed a suit under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act claiming co-tenancy right along with defendant nos. 3 to 29 on the ground that Fattu and Nanha were common ancestors of the parties and land in

suit is coming down from time of ancestors which was acquired out of the nucleaus of the Joint Hindu Family Fund and parties have been in possession over the same. Defendant nos. 4,5,6,7,8,9,10,14 & 29 jointly filed written statement denying the plaintiff's claim. It was also mentioned in the written statement that land in suit exclusively belongs to aforementioned defendants and plaintiffs have no right and title in the land in suit nor they have been in possession over the land in suit. It was also mentioned in the written statement that suit is time barred. In the aforementioned suit, parties adduced oral and documentary evidences in support of their cases. Trial Court vide judgement and decree dated 30.10.1971 dismissed the plaintiff's suit recording finding that land in suit has not been proved to have come down from the time of common ancestor. Against the judgement and decree of Trial Court dated 30.10.1971, an appeal was filed by plaintiffs Janki and others before Commissioner which was registered as appeal no. 64 of 1971. The aforementioned appeal was heard by Additional Commissioner and the same was allowed vide judgement dated 19.8.1974 decreeing the plaintiff suit setting aside the judgement and decree of Trial Court. Against the judgement and decree dated 19.8.1974 passed by Additional Commissioner, petitioners filed second appeal before Board of Revenue which was registered as second appeal No. 9 (z) of 1974-1975. The aforementioned second appeal was dismissed by Board of Revenue vide judgement dated 12.8.1981 hence this writ petition on behalf of the petitioners for the following relief:-

> ***"To issue a writ, order or direction in the nature of certiorari quashing the order dated 12.8.1981 passed by opposite party no.I, and order dated 19.9.1974 passed by opposite party no. I-A."***

3. This Court admitted the writ petition on 2.9.1981 and directed the parties to maintain status quo.

4. In pursuance of the order of this Court dated 2.9.1981, the parties have exchanged their pleadings.

5. Learned Counsel for the petitioners submitted that suit under Section

229-B of U.P.Z.A. and L.R. Act filed by respondent nos. 2 to 4, respondent no. 1-B, 2 and 3 was dismissed by Trial Court in proper manner after framing issues and giving parties to lead evidence in accordance with law. He submitted that Additional Commissioner has decreed the plaintiff's suit in appeal without framing the point of determination as well as reversing the finding of fact recorded by Trial Court in proper manner. He submitted that second appeal filed by petitioners has been dismissed without considering the case as set up in second appeal. He submitted that in 1865 AD, there were only two plots and at present, there are 146 plots. He further submitted that Trial Court has recorded the finding of fact that acquisition were made at different time which is very much demonstrated from the different periods mentioned in respect to different plots in the khatauni ranging from 1303 fasli. He submitted that in case of plea of ancestral acquisition, identity as well as continuity should be same and Trial Court recording finding of fact that neither identity nor continuity remained same, as such, there was no scope for interference in appeal before Commissioner. He submitted that Board of Revenue and Additional Commissioner has erred in holding that acquisition were made out of the nucleaus of joint Hindu family although there is no pleading that there was any nucleaus in the family nor there is any finding to that effect. He submitted that no presumption attaches to the joint character of the property rather presumption attaches to the jointness of the family and any member of the joint family can acquire his separate property also. He submitted that no plea of amalgamation of khata was pleaded by the plaintiff in the plaint. He further submitted that admission of certain defendants has no binding effect on the contesting defendants. He further submitted that pedigree relied upon by the plaintiff has not been proved by them, as such, the suit cannot be decreed in any manner. He submitted that entries of 1865 fasli, 1303 fasli, 1309 fasli and 1359 fasli have been misread by Additional Commissioner as well as Board of Revenue. He submitted that Board of Revenue has decided the second appeal in illegal manner. He submitted that finding recorded by Additional Commissioner and Board of Revenue are based on surmises and conjectures, as such, the same cannot be sustained in the eye of law. He submitted that impugned judgement passed by Board of Revenue and Additional Commissioner should be set

aside and judgement of Trial Court should be maintained.

6. On the other hand, learned Senior Counsel for private respondents submitted that Trial Court has not exercised the jurisdiction in proper manner accordingly Additional Commissioner has considered the entire aspect of the matter and decreed the plaintiff's suit under Section 229-B of U.P.Z.A. and L.R. Act considering the evidence on record. He submitted that Board of Revenue has rightly maintained the judgement and decree passed by Additional Commissioner by dismissing the second appeal filed by petitioners. He submitted that revenue entry was properly taken into consideration in order to decide the suit under Section 229-B of U.P.Z.A. and L.R. Act in proper manner. He submitted that there is a presumption of joint Hindu family as held by this Court from time to time and if any number of joint Hindu family is claiming exclusive right that he has to prove that how he has acquired right being member of joint Hindu family. He submitted that finding of fact recorded by Additional Commissioner as maintained in second appeal cannot be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

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

8. There is no dispute about the fact that suit under Section 229-B of U.P.Z.A. and L.R. Act filed by contesting respondents was dismissed by Trial Court but in appeal, Additional Commissioner has decreed the plaintiff's suit. There is also no dispute about the fact that second appeal filed by petitioners was dismissed by Board of Revenue.

9. In order to appreciate the controversy involved in the matter, the perusal of the issues framed by the Trial Court in the aforementioned suit will be relevant for perusal which are as under:-

> **"प्रश्न न० : ।:- क्या प्रतिवादी, न० 3 अभी भी राम दास को बेवा है और इस भूमि में सह काश्तकार है ?**
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> **प्रश्न न० : 2: क्या वादोगण प्रतिवादी गण:3 ता 29 के साथ, सीरदार है जिस प्रकार कहा है ?**

प्रश्न न० : 3:क्या वाद में पराव जस्ता न बनाने का दोष हे ?

प्रश्न न० : 4 वादी गण को क्या सहायता मिल सकती है ?

प्रश्न न० : 5: क्या वाद में धारा 34 (5) एल० आर० एक्ट बाधक है ?

प्रश्न न०: 6:क्या श्रौमतो झुनरी रामदास की कानूनी वारिस है ?"

10. The Trial Court dismissed the plaintiff's suit considering the issues framed in the proceeding as well as the evidences adduced by the parties holding that plot in question are not ancestral plot and identity of plot as well as continuity of entry is not established. Perusal of finding of fact recorded by Trial Court on issue no. 2 will be relevant which is as under:-

"प्रश्न नं० :2:- वादीगण ने अर्जी दावा के साथ बहुत सजरा दिया है और कहा है कि वह भूमि पूर्वजों में चली आ रही है और फरीकैन की मौरूसी काश्तकारी है। अपना बयान में हरदास वादी ने वंशावली बयान की है, मगर जिरह में उसने कहा है कि उसने नने व फतूं को नहीं देखा है हटारे उसी के वह सजरा उसकी मां व कब्जे ने बताया है उसकी मां मर चुकी है वाको गौरा वह है, मगर उसे पेश नहीं किया है वादी ने कहा है कि भूमि फतू व नने के समय से चली आती है वादीगण ने खसरा व खतौनी की नकल अवश्य दाखिल की है उनको यह साबित करना होगा कि विवादित खाता इसी रूप से फतू व नने है अपने एकनानियत के साथ चला आता है मौरूसी भूमि साबित करने के लिए यह अति आवश्यक है कि वादीगण ने कोई ऐसी नकल दाखिल नहीं की है, जिससे विवादित खाता फतू और नने के नाम लिखा हो। खसरा 1865 ई० में दो नंबर फतू नाम लिखा है खतौनी 1303 पर आंशिक बल दिया गया है, मगर उसमें भी हम देखते हैं कि कुछ नंबरान खाता नंबर 17 में केवल दूरजू के नाम लिखी है और कुछ नंबरान खाता नंबर 26 में अमान, जवाहर पुत्रगण नन्हे दुर्गु पुत्र खगू व परिक्कत पुत्र रामवेद के नाम लिखे हैं। खसरा 1303 फ० में इंद्राज इसी प्रकार के अलग-अलग हैं एक नंबर 1186 पर अकेले पिरक्का का नाम, अन्य नंबरान पर अंकित दूरमु का नाम है, कुछ पर अमान का नाम है उसके अलावा एक बात और ध्यान में रखने की है कि खतौनी 1303 फसली में खाता नंबर 17 पर दुर्गु के नाम लिखे हैं, उन पर कोई कृषिकाल नहीं पड़ा है और जो नंबर खाता नंबर 26 पर अमान माद ने नाम लिखे है उन पर विभिन्न कृषि काल पड़े हैं इससे साबित होता है कि विवादित भूमि एक ही खाता हो और एक ही समय से नहीं आई है अगर कुल विवादित भूमि का खाता पहले फतू व नने का होता तो कृषि काल एक होता वादी की ओर से कहा गया है कि खाता नंबर 26 को लगान पर लिखा है कि शामिल खाता नंबर 17 इसलिए दोनों खतौनी को एक समझना चाहिए अगर ऐसा होता तो दोनों खाते शामिल किए जाते और सबका

कृषि काल एक ही होता खाता नंबर 26 के ऊपर लिखा है जिसमें उसको हक दखील कार हासिल नहीं है। इसका मतलब है कि वह भूमि गैर दखीलकारी खाता न० 17 पर दरजू अकेला लिखा है और वह भी भू आराजी सीर लिखा है। 1303 फसली में दूरजू दखील कार लिखा है वादीगण की ओर से यह भी कहा गया है कि खतौनी 1366-68 फसली में भैयालाल वादी नत्थू, धान सिंह, अजुध्दा व अन्य प्रतिवादीगण अलग अलग नंबरान पर वर्ग 7 में लिखे है इसका मतलब है कि उन लोगों का कब्जा रहा है नकल देखने से प्रतीत होता है कि बहुत सी जमीन उसमें से परती निकल गई अगर यह लोग सहकाश्तकार होते तो वर्ग 7 में नहीं लिखे जाते। 1366 फसली के इस इंद्राज से उस समय उन लोगों का कब्जा साबित नहीं हो सकता है। इसीलिए यह नहीं कहा जा सकता है कि वादीगण या अन्य प्रतिवादीगण का कब्जा है।

हरी, गुल्ले और भुज्जे प्रतिवादीगण ने पहले जवाब दावा दिया मगर बाद में दरखास्त दी कि वह वादी के कथन को स्वीकार करते हैं इन लोगों के नाम भी मौजूदा खतौनी में लिखे हैं इसलिए वादीगण की ओर से कहा गया है कि वह लोग वादीगण का भाग स्वीकार करके अपवा भाग कम करते हैं इसलिए उनका कथन और स्वीकृतता को बहुत महत्व मिलना चाहिए और उसके आधार पर वादीगण का कथन स्वीकार होना चाहिए। हरी, गुल्ले व भुज्जे ने पहले जवाब दावा दिया और वादीगण के अधिकारों से इंकार किया है बाद में वह बदल गए और अब वादीगण का कथन स्वीकार कर लिया है। मेरी राय में यह किसी भी समय दावा स्वीकार कर सकते हैं, मगर उनके इस स्वीकार करने को कोई ठोस महत्व नहीं दिया जा सकता है और केवल उसी के आधार पर वादीगण का दावा पर कोई विशेष बल नहीं पड़ सकता। मैं वादीगण एवं अन्य प्रतिवादीगण के नाम इस भूमि पर नहीं है। पिछले इंद्राज में जो 1303 फसली में थे उनसे भी यह साबित नहीं होता है कि विवादित भूमि इसी दशा में फरीकैन के पूर्वजों के नाम रही है। मेरी राय में यह साबित नहीं है कि विवादित भूमि अपनी एकालियत के साथ इसी रूप में फरीकैन के पूर्वजों से चली आई है इसलिए उसको सब फरीकैन को मुश्तरका काश्त नहीं कहा जा सकता है। 1359 फसली में यह भूमि गुंदे गयासी, बहारे, रामदास के नाम लिखी है। खतौनी 1377 फसली में वह भूमि गुंदे हल्का कुटे प्यारेलाल, हरी, परिक्कत, गोरेलाल, भुज्जा, बहोरे और बड़ी बहू के नाम लिखी है अब बड़ी बहू के स्थान पर श्रीमती झुनरी होना चाहिए जैसा कि ऊपर कहा गया है कि शहादत से यह साबित नहीं होता है कि विवादित भूमि सब फरीकैन की मौरूसी हो और एक ही पूर्वजों से अरसे से मूल रूप में चली आ रही हो इसलिए यह भी नहीं कहा जा सकता कि वादी का प्रतिवादीगण 3 ता 29 या 4 ता 30 के साथ सह सीरदार है। अतः प्रश्न का उत्तर वादी के खिलाफ दिया जाता है।"

11. In view of categorial finding of fact recorded by Trial Court considering the entry of 1303 fasli, 1359 fasli, 1366-68 fasli, 1377 fasli to the effect that plot in dispute is not proved to be ancestral as well as identity of plots and continuity of entry of the plot in question are not

established, the first appellate Court cannot allow the appeal of plaintiff's on the ground that there was presumption of joint Hindu family as well as joint Hindu nucleous fund in the old time, as such, and judgement and decree of first Appellate Court which has been maintained in second appeal by Board of Revenue in arbitrary manner cannot be sustained in the eye of law.

12. This Court in the case reported in ***1978 RD Page 51 Bala Charan and Others Vs. State of U.P. and Others*** has held that there would be a presumption of joint Hindu family but there can be no presumption of that a property standing in the name of a member of the joint Hindu family is also a joint family property. Paragraph no.5 of the judgement rendered by this Court in ***Bala Charan and Others (Supra)*** will be relevant for perusal which is as under:-

> ***"5. In the case in hand no evidence was adduced on behalf of the opposite parties that there was nucleus from which the plots in question were acquired. It was not proved that the Patta was acquired out of the joint family funds, nor was it established that the income raised out of the plots in question was utilised by the other members of the joint Hindu family, nor any effort was made to show that the plots in question were blended with the joint family property and the opposite parties had thus acquired co-tenancy rights therein. The fact that the plots standing in the name of Mitthoo were held to be joint family property would not go to prove that the plots in question which stood in the name of Thakur were also joint family property. The Deputy Director of Consolidation had thus erred in holding that the opposite parties had acquired co-tenancy rights in the said plots. The Consolidation Officer had also erred likewise. In my view the Settlement Officer (Consolidation) had applied the correct principles of law to the facts of the case. The orders passed by the Deputy Director as also the Consolidation Officer cannot, therefore, be maintained."***

13. Apex Court in the case reported in **(2003) 10 Supreme Court Cases**

310 D.S. Lakshmaiah and another vs. L. Balasubramanyam and another has held that property cannot be presumed to be joint family property merely because of existence of a joint family. Paragraph nos.17 to 21 of the judgment of Apex Court rendered in **D.S. Lakshmaiah (Supra)** will be relevant for perusal which are as under "-

> "*I7. In view of the aforesaid discussion, the respondents having failed to discharge the initial burden of establishing that there was any nucleus in the form of any income whatsoever from Item No.2 property and no other nucleus was claimed, the burden remained on the respondents to establish that Item No.1 property was joint family property. In this view, the fact that the first appellant has not led any evidence to establish his separate income is of no consequence insofar as the claim of the respondents is concerned. Under these circumstances, for failure to lead evidence, the respondents' claim of Item No.1 to be joint family property would fail as rightly held by the first appellate court.*
>
> *18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.*
>
> *19. Another contention urged for the respondents was that assuming Item No.1 property to be self-acquired property of appellant No.1, he blended the said property with the joint family property and, therefore, it has become the joint family property. Assuming the respondents can be permitted to raise such a plea without evidence in support thereof, the law on the aspect of blending is well settled that property separate or self-acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to*

waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation {see Lakkireddi Chinna Venkata Reddy v. Lakkireddi Lakshamama [1964 (2) SCR 172] and K.V. Narayanan v. K.V. Ranganadhan & Ors. [(1977) 1 SCC 244]}.

20. In the present case, respondents have not led any evidence on the aforesaid aspects and, therefore, it cannot be held that the first appellant blended Item No.1 property into the joint family account.

21. In view of aforesaid discussion, Item No.1 property cannot be held to be joint family property. The impugned judgment of the High Court is, therefore, set aside and the appeal allowed and the judgment and decree of the first appellate court is restored. In the circumstances of the case, parties are left to bear their own costs."

14. Apex Court in the recent judgment reported in **2025 LiveLaw (SC) 494 Angadi Chandranna vs. Shankar & others** reiterated the same view. Paragraph No.13 of the judgment of Apex Court rendered in **Angadi Chandranna (Supra)** will be relevant for perusal which is as under :-

"13. Further, it is a settled principle of law that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. This Court in

R.Deivanai Ammal (Died) v. G. Meenakshi Ammal12, dealt with the concept of Hindu Law, ancestral property and the nucleus existing therein. The relevant paragraphs are extracted below for ready reference:

> *"13. First let us consider the nature of the suit properties, namely, self-acquired properties of late Ganapathy Moopanar or ancestral properties and whether any nucleus was available to purchase the properties. Under the Hindu Law it is only when a person alleging that the property is ancestral property proves that there was a nucleus by means of which other property may have been acquired, that the burden is shifted on the party alleging self-acquisitions to prove that the property was acquired without any aid from the family estate. In other words the mere existence of a nucleus however small or insignificant is not enough. It should be shown to be of such a character as could reasonably be expected to lead to the acquisition of the property alleged to be part of the joint family property. Where the doctrine of blending is invoked against a person having income at his disposal and acquiring property, the reasonable presumption to make is that he had the income at his absolute disposal unless there is evidence to the contrary. If a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and treated as property acquired from the joint family nucleus, it is absolutely essential that such a coparcener should not only barely plead the same, but also establish the existence of such a joint family fund or nucleus. Even if the joint family nucleus is so established, the prescription that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus. The proof required is very strict and the burden is on the person who sets up a case that the property in the name of a female member of the family or in*

> *the name of the manager or any other coparcener is to be treated as joint family property. There should be proof of the availability of such surplus income or joint family nucleus on the date of such acquisitions or purchases. The same is the principle even in the cases where moneys were advanced on mortgages over immoveable properties. The onus is not on the acquirer to prove that the property standing in his name was purchased from joint family funds. That may be so, in the case of a manager of a joint family, but not so in the case of all coparceners. For a greater reason it is not so in the case of female members.*

14. The doctrine of blending of self-acquired property with joint family has to be carefully applied with reference to the facts of each case. No doubt it is settled that when members of a joint family by their joint labour or in their joint business acquired property, that property, in the absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. But the essential sine qua non is the absence of a contrary intention. If there is satisfactory evidence of an intention on the part of the acquirer such property to treat it as his own, but not as joint family property, the presumption which ordinarily arises, according to the personal law of Hindus that such property would be regarded as joint family property, will not arise.

15. It is a well-established principle of law that where a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. But no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus should be such that with its help the property claimed to be

joint could have been acquired. A family house in the occupation of the members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of considerable value.

16. In a Hindu joint family, if one member sues for partition on the foot that the properties claimed by him are joint family properties then three circumstances ordinarily arise. The first is an admitted case when there is no dispute about the existence of the joint family properties at all. The second is a case where certain properties are admitted to the joint family properties and the other properties in which a share is claimed are alleged to be the accretions or acquisitions from the income available from joint family properties or in the alternative have been acquired by a sale or conversion of such available properties. The third head is that the properties standing in the names of female members of the family are benami and that such a state of affairs has been deliberately created by the manager or the head of the family and that really the properties or the amounts standing in the names of female members are properties of the joint family. While considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. The extent of the property, the income from the property, the normal liability with which such income would be charged and the net available surplus of such joint family property do all enter into computation for the purpose of assessing the content of the reservoir of such a nucleus from which alone it could, with reasonable certainty, be said that the other joint family properties have been purchased unless a strong link or nexus is established between the available surplus income and the alleged joint family properties. The person who comes to Court with such bare allegations without any substantial proof to back it up should fail.

17. It is also a well-established doctrine of Hindu Law that property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims upto it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be

established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred from acts which may have been done from kindness or affection. The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention by his waiving or surrendering his special right in it as separate property. Such intention can be discovered only from his words or from his acts and conduct."

15. In the instant matter, plot in question was not proved to be ancestral as well as identity of plots and continuity of entry of the plot in question has not been established, as such, co-tenancy cannot be allowed only on the ground that there was presumption of joint family in the old time.

16. Considering the entire facts and circumstances of the case as well as ratio of law laid down by this Court as well as Apex Court, the impugned orders dated 12.8.1981 passed by Board of Revenue and 19.9.1974 passed by Additional Commissioner are liable to be set aside and the same are hereby set aside.

17. The writ petition stands **allowed** and the judgement of Trial Court dated 30.10.1971 is maintained.

18. No order as to costs.

(Chandra Kumar Rai,J.)

April 7, 2026
Vandana Y.