



2026:AHC-LKO:19207

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

FIRST APPEAL FROM ORDER No. - 158 of 2026

Arvind Kumar Yadav And Another

.....Appellant(s)

Versus

Santosh Kumar And Another

.....Respondent(s)

Counsel for Appellant(s)	: Yogendra Nath Yadav, Saurabh Yadav
Counsel for Respondent(s)	: Sudhir Kumar Pandey, Annapurna Agnihotri

Court No. - 20

HON'BLE PRASHANT KUMAR, J.

1. Heard Shri Yogendra Nath Yadav along with Shri Saurabh Yadav, learned counsel for the appellants as well as Ms. Annapurna Agnihotri, learned counsel for the respondents and perused the record.

2. The instant appeal has been preferred against the judgment and order dated 22.12.2025 and decree dated 07.01.2026 passed by the Special Judge (S.C./S.T. Act), Ambedkar Nagar in Regular Civil Appeal No.31 of 2025, whereby judgement and order as well as decree dated 16.09.2019 passed by the civil court have been set aside and the matter has been remanded for fresh consideration.

3. The brief facts of the case are that the appellant is alleged to have got a sale deed executed on 02.03.2005. However, the respondents herein filed a suit, being Suit No. 290 of 2005, for cancellation of the said sale deed, alleging that the same had been obtained by fraud as no sale consideration had been paid. The aforesaid suit was dismissed for want of prosecution as service could not be effected, against which the respondents preferred an appeal before the appellate court. The appellate court observed that the parties ought to have moved a recall application, and accordingly, the appeal was dismissed with liberty to approach the Civil Court. However, the respondents herein filed a fresh suit, being Suit No. 810 of 2012. An objection was raised on the grounds of *res judicata* and limitation, and the said suit was dismissed. The respondents thereafter preferred an appeal, being Regular Civil Appeal No. 31 of 2025, before the appellate court.

The appellate court, vide its impugned order dated 22.12.2025, has set aside the judgment, order, and decree dated 16.09.2019 passed by the Civil Court and has remanded the matter for fresh consideration, with liberty to the parties to lead evidence.

4. This order has been assailed by the appellants by means of the instant appeal.

5. Shri Yogendra Nath Yadav, learned counsel for the appellants submits that the suit was clearly barred by limitation and *res judicata*. Hence the appellate court ought not to have remanded the matter, but ought to have dismissed the appeal.

6. Per contra, Ms. Annapurna Agnihotri, learned counsel for the respondents, submits that the instant appeal has been filed only against the remand order, and it is open for the parties to raise all issues before the Civil Court. She further submits that the principle of *res judicata* would not be applicable, as the matter was not finally decided by the appellate court, the earlier suit having been dismissed merely for want of prosecution. She further submits that under Order IX, Rule 4 of the C.P.C., the plaintiff is entitled to file a fresh suit, or the Court may restore the earlier suit. She also submits that Section 14 of the Limitation Act is in favour of the respondents.

7. Heard learned counsel for the parties and perused the record.

8. It is evident that the respondents herein filed a suit for cancellation of sale deed dated 02.03.2005 and the same was dismissed for want of prosecution as no steps had been taken to serve the respondent, against which an appeal was filed. During pendency of this appeal, an application for withdrawal of the appeal with permission to file a recall application was filed, which was allowed and the appeal was dismissed as withdrawn. However, instead of filing recall application, the respondents herein had filed fresh suit being Suit No.810 of 2012. This suit was opposed by the appellants on two grounds one on *res judicata* and other on limitation. However, the said suit was dismissed on 16.09.2019 on the ground of limitation, against which the respondents herein had preferred an appeal and the same was allowed vide order dated 22.12.2025, whereby the

appellate court has simply remanded the matter back to the civil court to be heard afresh after adducing evidence on all the issues.

9. During the course of argument, the learned counsel for the appellants sought permission of this Court to withdraw the present appeal with liberty to the appellants to raise all the issues before the civil court.

10. Learned counsel for the respondents has no objection to the same.

11. Accordingly, the appeal is **dismissed** as withdrawn with the aforesaid liberty.

(Prashant Kumar,J.)

March 17, 2026

Anupam S/-