

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 4th October, 2013

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RFA 595/2004

MADAN LAL

..... Appellant

Through: Mr. Sunil Malhotra, Adv.

Versus

KULDEEP KUMAR & ORS.

... Respondents

Through: Mr. Saurabh, Adv. for R-1.
Mr. Neeraj Chaudhari & Mr.
Akshay Chandra, Adv. for R-2&3
UOI/L&DO.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This appeal impugns the judgment and decree dated 13.09.2004 of the Court of Additional District Judge (ADJ), Delhi of dismissal of suit No.247/1998 filed by the appellant / plaintiff for partition of property No.II-F/6, Lajpat Nagar, New Delhi and Shop No.81-A, Khanna Market, Lodhi Colony, New Delhi along with a strip of land adjacent thereto.

2. Notice of the appeal was issued and vide *ex parte* ad-interim order dated 22.11.2004, the parties directed to maintain *status quo* with regard to title and possession of the suit properties. The appeal, vide order dated 17.08.2006, was admitted for hearing and the *ex parte* ad-interim order made absolute till the disposal of the appeal. The parties being closely related, mediation was attempted on two occasions but remained unsuccessful. CM

No.12915/2009 filed by the predecessor of the respondents / defendants No.1 under Order 39 Rule 2A and 4 of the CPC was vide order dated 22.07.2013 directed to be taken up along with the hearing of the appeal.

3. The counsels have been heard.

4. The appellant / plaintiff instituted the suit from which this appeal arises against his brother Sh. Jagdish Lal who died during the pendency of the suit and whose legal heirs are respondents 1 (1) to (6) in this appeal, pleading:

- (i) that the appellant / plaintiff and the predecessor of the respondents / defendants No.1 were brothers, both residing in the same property bearing No.II-F/6, Lajpat Nagar, New Delhi on the first and the ground floors respectively; the said property was bequeathed to the parties by their father Late Sh. Boota Ram through registered Gift Deed dated 30.01.1980;
- (ii) that the appellant / plaintiff and the predecessor of the respondents / defendants No.1 had also purchased shop No.81A, Khanna Market, Lodhi Colony, New Delhi vide registered Sale Deed dated 24.01.1970; that as per the policy of the Government, the additional strip of land behind the said shop was also purchased by the appellant / plaintiff and the predecessor of the respondents / defendants No.1 from the department through a registered Lease Deed dated 02.04.1980;
- (iii) that the Lajpat Nagar house as well as the Khanna Market property were allotted by the respondents / defendants No.2&3

Land & Development Office (L&DO) and the land underneath both the properties was leasehold, lease whereof was granted by the respondents / defendants No.2&3 L&DO;

- (iv) that the Lajpat Nagar house was in or about the year 1983-84 got constructed by the appellant / plaintiff and the predecessor of the respondents / defendants No.1 and while the ground, first and second floors thereof were jointly constructed by them, the third floor was constructed by the appellant / plaintiff alone from his own funds and for his personal requirement;
- (v) that there was a lot of tension between the appellant / plaintiff and the predecessor of the respondents / defendants No.1 with respect to the said properties held jointly by them;
- (vi) the appellant / plaintiff and the predecessor of the respondents / defendants No.1 were also partners along with two other brothers of the parties in the business run in the name and style of M/s Time Centre from the Khanna Market property; a Deed of Dissolution thereof was executed on 26.06.1991 by all the partners;
- (vii) that an agreement was also entered into by virtue of which it was agreed upon that the ground floor of the Lajpat Nagar house shall be the property of the predecessor of the respondents / defendants No.1 and the other floors thereof will be the property of the appellant / plaintiff;

- (viii) that the predecessor of the respondents / defendants No.1 after the settlement and in contravention of lease of the land underneath wanted to convert the ground floor of the Lajpat Nagar house to commercial and which was resisted by the appellant / plaintiff who also filed a suit for permanent injunction in which an interim order directing maintenance of *status quo* qua possession and user had been made; that the said action of the predecessor of the respondents / defendants No.1 had **threatened** the said property being re-entered by the respondents / defendants No.2&3 L&DO;
- (ix) that the predecessor of the respondents / defendants No.1 had been avoiding to settle the matter with respect to the Khanna Market property, regarding its goodwill, income and profits etc. including the additional strip of land adjacent thereto which formed part of the shop itself; and,
- (x) that the Khanna Market property was in possession of the predecessor of the respondents / defendants No.1 who was liable to render true and correct accounts of the business being carried on therein since 26.06.1991, since when the appellant / plaintiff had been ousted therefrom.

Accordingly, relief of partition of the Lajpat Nagar house and the Khanna Market property and relief of rendition of accounts of the business being carried on from the Khanna Market property was claimed.

5. The predecessor of the respondents / defendants No.1 contested the suit, by filing a written statement, on the grounds:

- (a) that the appellant / plaintiff had concealed that by virtue of the Dissolution Deed dated 26.06.1991, the partnership between the appellant / plaintiff and the predecessor of the respondents / defendants No.1 and their two other brothers was dissolved in respect of business being carried on in the aforesaid Khanna Market property and in another shop bearing No.47 also in Khanna Market;
- (b) that thereafter by virtue of Family Settlement Deed, the ground floor of the Lajpat Nagar house and the Khanna Market property vested in the ownership of the predecessor of the respondents / defendants No.1 and the first, second and third floors of the Lajpat Nagar house vested in the ownership of the appellant / plaintiff;
- (c) that the original of the said Family Settlement Deed was with the appellant / plaintiff;
- (d) that the second and third floors of the Lajpat Nagar house were let out at a rent of Rs.3,200/- per month and Rs.2,600/- per month; that prior to the Family Settlement, the said rent was being equally shared by the appellant / plaintiff and the predecessor of the respondents / defendants No.1; however after the Family Settlement, the appellant / plaintiff alone had been receiving the rent;

- (e) denying that the third floor of the Lajpat Nagar house had been constructed by the appellant / plaintiff alone from his own funds;
- (f) denying that he wanted to convert the ground floor of the Lajpat Nagar house into commercial; and,
- (g) that as the appellant / plaintiff had not honoured the Family Settlement and had filed a suit for partition, the predecessor of the respondents / defendants No.1 was entitled to half of the rent of the second and third floors of the Lajpat Nagar house from June, 1991 onwards which had been exclusively appropriated by the appellant / plaintiff; accordingly a counter claim for the same was also made.

6. The respondents / defendants No.2&3 in their written statement *inter alia* pleaded that the lease of the land underneath both the properties could not be sub-divided.

7. The appellant / plaintiff filed a replication to the written statement of the predecessor of the respondents / defendants No.1 *inter alia* pleading:

- (I) that the Dissolution Deed dated 26.06.1991 was of partnership but did not settle any title of the Khanna Market property;
- (II) denying that any valid or lawful settlement enforceable in law had taken place between the appellant / plaintiff and the predecessor of the respondents / defendants No.1 though admitting the agreement whereunder the ground floor of the Lajpat Nagar house was to belong to the predecessor of the

respondents / defendants No.1 and upper floors to the appellant / plaintiff; denying that there was any valid Family Settlement and pleading that under the law such settlement has to be registered and otherwise the same is of no consequence;

- (III) denying that there were any tenants on the second and third floors of the Lajpat Nagar house and pleading that even otherwise since the predecessor of the respondents / defendants No.1 was enjoying the fruits of occupation of the Khanna Market property and which were much more than the monthly value of the rent of the second and third floors of the Lajpat Nagar house, he was not entitled to any share in the rent;
- (IV) admitting that the tenant in the Lajpat Nagar house was paying Rs.2,900/- per month but pleading that the same comprised of rent of Rs.2,000/- per month and Rs.900/- per month for fixture and fittings and that the fixture and fittings were taken away by the predecessor of the respondents / defendants No.1 in June, 1991 and the same were got arranged by the tenant and the rent was accordingly reduced to Rs.2,200/- per month;
- (V) denying that there was any valid or lawful settlement of the Khanna Market shop and pleading that in any case there was no settlement with respect to the additional strip of land adjacent thereto; and,
- (VI) denying the counter claim of the predecessor of the respondents / defendants No.1 also for the same reason.

8. After the demise of the original defendants No.1 Sh. Jagdish Lal, his widow Smt. Nirmal Rani also filed a written statement on the same lines as Sh. Jagdish Lal.

9. On the pleadings aforesaid of the parties, the following issues were framed on 06.12.2000:

“(i) *Whether there was a family settlement and a partition of the property has already been effected as alleged in preliminary objection of the Written Statement? OPD.*

(ii) *Whether the plaintiff is entitled to the relief of partition and rendition of account? OPP*

(iii) *Relief.”*

And following additional issue was framed on 27.01.2003:

“(ii)(a)*Whether the defendant is entitled for rendition of accounts? OPD.”*

10. The appellant / plaintiff besides himself examined three other witnesses. The respondents / defendants No.1 besides examining one of them viz. Sh. Kuldeep Kumar, examined two other witnesses. The respondents/defendants no.2&3 (L&DO) examined one of its officers.

11. The learned ADJ has dismissed the suit, finding / observing / holding:

(i) that while according to the respondents / defendants No.1 there was a family partition by virtue of which partition of the properties had been effected and the suit for partition and rendition of account thus did not lie, according to the appellant /

plaintiff the alleged family partition was inadmissible in evidence since it was an unregistered document; by virtue of the family arrangement, the property was being partitioned and therefore it was required to be compulsorily registered; that since the family arrangement was not registered, therefore it was inadmissible in evidence; even otherwise, the said family arrangement was not a voluntary affair but was executed under pressure of police and was never acted upon as was evident from the predecessor of the respondents / defendants No.1 himself claiming share in the rental income and also partition of the property;

- (ii) that it was the contention of the respondent / defendant No.1 that the plea that the family arrangement was executed under police pressure was an afterthought and there was no such plea of the appellant / plaintiff in the pleadings; that the family arrangement was acted upon and the parties were enjoying their rights in respective properties;
- (iii) that as per the document of family arrangement Ex.PW2/D1, the ground floor of the Lajpat Nagar house and the shop in Khanna Market had fallen to the share of the predecessor of the respondents / defendants No.1 and the first, second and third floors of the Lajpat Nagar house had fallen to the share of the appellant / plaintiff;

- (iv) that it was the undisputed fact that as per the Dissolution Deed dated 26.06.1991, the partnership business being run in the Khanna Market property was to be run exclusively by the predecessor of the respondents / defendants No.1;
- (v) that the appellant / plaintiff in his replication to the written statement of the predecessor of the respondents / defendants No.1 had not denied the execution of the Family Settlement and had only taken the plea, that the same being not registered, was of no consequence;
- (vi) however the appellant / plaintiff in his evidence took a new plea for the first time that the Family Settlement was executed under police pressure and the same was not acted upon, without having pleaded so;
- (vii) that the appellant / plaintiff in cross-examination admitted that he had not made any police complaint in regard to execution of family arrangement under police pressure;
- (viii) that the family arrangement was dated 17.06.1991 and the suit was filed on 05.12.1992 and between the said two dates, the appellant / plaintiff had ample opportunity to complaint if he had been compelled to execute the family settlement under police pressure; however neither was any such complaint made nor even any notice issued to the predecessor of the respondents / defendants no.1 of having got the family settlement executed under police pressure; no such plea was taken in the plaint or in

the replication also; thus the plea of Family Settlement having been executed under police pressure did not inspire confidence;

- (ix) that the appellant / plaintiff had examined his two brothers and a brother-in-law all of whom had deposed of the Family Settlement dated 17.06.1991 having been arrived at under police pressure; however all of them admitted their signatures on the Family Settlement;
- (x) that the Deed of Family Settlement having been signed by as many as five witnesses, it was unbelievable that all of them could have signed under police pressure of only one police official who was deposed to be present;
- (xi) that in fact one brother and the brother-in-law of the appellant / plaintiff had in cross-examination stated that the Deed of Family Settlement was not even executed in their presence, falsifying their testimony of the same having been executed under police pressure;
- (xii) that the said witnesses who were close relatives of the appellant / plaintiff were thus deposing at the behest of the appellant / plaintiff;
- (xiii) relying on ***Kale Vs. Deputy Director of Consolidation*** 1976 (3) SCC 119, ***K.G. Shivalingappa (dead) by Lrs. Vs. G.S. Aishwarappa*** 2004 VIII AD(SC) 128 and host of other judgments, it was held that a partition deed though unregistered could be relied upon to establish the severance of joint status;

- (ix) that there was evidence to show that the properties were partitioned and the respective parties were enjoying the properties and it's usufruct separately;
- (x) that the appellant / plaintiff in cross-examination admitted that he was in possession of first, second and third floors of the Lajpat Nagar house and the predecessor of the respondents / defendants No.1 was in possession of ground floor of the Lajpat Nagar house;
- (xi) that the appellant / plaintiff in his cross-examination also admitted that though prior to the date of Family Settlement i.e. 17.06.1991, the rent of the second and third floors of the Lajpat Nagar house was being shared between the appellant / plaintiff and the predecessor of the respondents / defendants No.1 but thereafter the rent was being appropriated by him only;
- (xii) that the appellant / plaintiff in cross-examination had further admitted that Khanna Market property was exclusively with the predecessor of the respondents / defendants No.1 and after him with the respondents / defendants No.1;
- (xiii) that all the aforesaid facts were also admitted by the witnesses of the appellant / plaintiff;
- (xiv) that the aforesaid facts clearly showed that the Family Settlement had been acted upon in its true spirit;
- (xv) that though the appellant / plaintiff in the plaint itself had referred to the agreement with respect to the Lajpat Nagar

house but had suppressed that the same also dealt with the Khanna Market property;

(xvi) that the appellant / plaintiff had thus admitted the Family Settlement qua the Lajpat Nagar house but not qua the Khanna Market property;

(xvii) that the appellant / plaintiff could not be permitted to accept part of the settlement and renege from the other part;

(xviii) that the predecessor of the respondents / defendants No.1 and after him the respondents / defendants No.1 were not disowning the Family Settlement and their only plea was that in case of partition, the respondents / defendants No.1 were also entitled to rental income of the Lajpat Nagar house; this did not in any manner reflect that the family arrangement had not been acted upon;

(xix) that the respondents / defendants No.1 had thus established that there was a Family Settlement and partition of the Lajpat Nagar house and the Khanna Market shop;

(xx) that the floor wise division of the Lajpat Nagar house did not amount to sub-division of the land underneath the house; reliance in this regard was placed on *Inderjeet Singh Vs. Trilochan Singh* 1991 RLR 239; and,

(xxi) however the additional strip of land adjacent to Khanna Market shop did not find mention in the Family Settlement and accordingly the same was liable to be partitioned; however the

same being incapable of division by metes and bounds was liable to be sold and the sale proceeds divided / shared between the appellant / plaintiff and the respondents / defendants No.1.

Accordingly, the suit for the relief of partition of Lajpat Nagar house and the Khanna Market shop and for the relief of rendition of accounts of the business of the Khanna Market shop was dismissed and the additional strip of land adjacent to Khanna Market shop ordered to be sold and the sale proceeds thereof to be divided equally between the appellant / plaintiff and the respondents / defendants No.1.

12. I may at the outset record that the respondents / defendants No.1 have not challenged the decree for partition of the additional strip of land adjacent to the Khanna Market shop. I have during the hearing enquired from the counsels as to what value they give thereof but neither counsel has instructions in this regard and it is not deemed expedient to adjourn the matter for the said purpose inasmuch as the said exercise can be done in the proceedings for final decree for partition.

13. The counsel for the appellant / plaintiff has challenged the judgment and decree, insofar as of dismissal of suit for partition of the Lajpat Nagar house and the Khanna Market shop and for rendition of accounts of the profits earned from the Khanna Market shop, contending:

(A) that a Family Settlement can only be with respect to coparcenary property or property acquired by inheritance and not with respect to acquired property; that in the present case the Lajpat Nagar house had been acquired by Gift Deed, even

though by the father and not by inheritance and the Khanna Market shop had been acquired by purchase;

- (B) that there was no occasion for a Family Settlement as there was no dispute; though the appellant / plaintiff had in the plaint pleaded that there was tension between the appellant / plaintiff and the predecessor of the respondents / defendants No.1 with respect to the properties held by them jointly but the predecessor of the respondents / defendants No.1 in his written statement had denied the said fact;
- (C) that a reading of the deed of the Family Settlement in the present case shows that the same is not a memorandum or record of a settlement or partition already effected but in fact the partition in itself and such a document is compulsorily registrable and being not registered, is of no avail;
- (D) that the predecessor of the respondents / defendants No.1 in his written statement having also sought the relief of partition and of recovery of his share of rent of the second and third floors of the Lajpat Nagar House, had himself also given a go bye to the Family Settlement;
- (E) that the deed of Family Settlement was not signed by all the family members; admittedly the appellant / plaintiff and the predecessor of the respondents / defendants No.1 had two other brothers also;

- (F) that Family Settlement can only be where the property is acquired from joint family funds; it is argued that the property in the present case could have been acquired by either of the appellant / plaintiff or the predecessor of the respondents / defendants No.1 along with a stranger and in which case there could be no partition by Family Settlement and thus there can be no Family Settlement merely because the appellant / plaintiff and the predecessor of the respondents / defendants No.1 were brothers;
- (G) that no case of any oral settlement preceding the execution of the deed of Family Settlement has been pleaded or proved;
- (H) that the deed of Family Settlement vesting the Khanna Market shop in the predecessor of the respondents / defendants No.1 only, thereby extinguishing the rights of the appellant / plaintiff therein, required compulsory registration;
- (I) Reliance is placed on:
- (i) **Kale** (supra);
 - (ii) **Roshan Singh Vs. Zile Singh** AIR 1988 SC 881;
 - (iii) **K.G. Shivalingappa** (supra);
 - (iv) **Jagdish Rai Vs. Tek Chand** 94 (2001) DLT 719; and,
 - (v) **Smt. Chanderwati Vs. Lakhmi Chand (Dead) through Lrs.** AIR 1988 DEL 13.

14. Per contra, the counsel for the respondents / defendants No.1 has contended that the appellant / plaintiff having divided the properties with the predecessor of the respondents / defendants No.1 is estopped from suing for partition. Reliance is placed besides on *Kale* supra on *Amarjeet Lal Suri Vs. Moti Sagar Suri* 119 (2005) DLT 295.

15. The counsel for the respondents / defendants No.2&3 L&DO has reiterated that both the Lajpat Nagar house as well as Khanna Market property are situated on leasehold land, leases of which are in the joint names of appellant / plaintiff and the predecessor of the respondents / defendants No.1 and cannot be sub-divided. He however agrees that this Court besides in *Inderjit Singh* supra, has in *Chiranji Lal Vs. Bhagwan Das* AIR 1991 Delhi 325, *Mohinder Singh Vs. Kartar Lal* MANU/DE/1309/1997 & *Ram Lal Sachdeva Vs. Sneh Sinha* 83 (2000) DLT 141 held that partition of superstructure on the leasehold land is not prohibited by the term of the Lease Deed prohibiting sub-division.

16. I will first take up the argument of the counsel for the appellant / plaintiff, of the respondents / defendants No.1 and their predecessor, by themselves in the written statement / counter claim seeking the relief of partition and realization of their share of arrears of rent of the second and third floors of the Lajpat Nagar house, had given a go bye to the deed of Family Settlement, inasmuch as if the said argument were to be accepted, the other arguments raised would only be of academic interest.

17. I am in agreement with the learned Additional District Judge that the respondents / defendants No.1 and their predecessor, by in their written

statement and counter claim seeking the relief of partition and accounts of rent of the second and third floors of the Lajpat Nagar house had not given a go bye to the defence in the written statement, of the Family Settlement and of the properties of which partition was sought having already been partitioned. A careful perusal of the written statement of the respondents / defendants No.1 and their predecessor shows that though they therein also claimed the relief of partition and the counter claim of recovery of their share of arrears of rent of the second and third floors of Lajpat Nagar house, but after praying for dismissal of the suit. Thus the claim for partition and of recovery of share of rent of the second and third floors of the Lajpat Nagar house was in alternative to the plea of dismissal of the suit. It is well settled position in law (See *B.K.N. Narayana Pillai Vs. P. Pillai* (2000) 1 SCC 712) that a defendant in a suit is entitled to set up alternative pleas / defences. A holistic reading of the written statement / counter claim of the respondents / defendants No.1 and their predecessor shows that the prayer for partition and recovery of their share of rent was in alternative to the prayer for dismissal of the suit.

18. I am strengthened in taking the said view from a perusal of the order sheet in the suit. After the predecessor of the respondents / defendants No.1 had filed the written statement with the aforesaid prayer and counter claim, the appellant / plaintiff in his replication did not state that the suit should be decreed on admissions. No application under Order 12 Rule 6 of the CPC was also filed. On the contrary, an application for amendment of the plaint and for impleadment of the respondents No.2&3 L&DO was filed and which was allowed. Even thereafter the appellant / plaintiff did not seek a decree

in the suit as would have been the case if both the appellant / plaintiff and the predecessor of the respondents / defendants No.1 had been seeking for partition. The only inference is that the appellant / plaintiff also understood the prayer in the written statement / counter claim of the respondents / defendants No.1 and their predecessor, of partition and for recovery of their share of rent of the second and third floors of the Lajpat Nagar house, as in alternative to the main defence of dismissal of the suit for the reason of the Family Settlement. The parties got the Issues framed also on the said lines and did not press any other Issue. Had the parties not been at issue for the reason of both claiming partition, the suit would have been decreed under Order 15 of the CPC and Issues only qua rendition of accounts would have been got framed.

19. Not only so, the parties thereafter proceeded for lengthy trial, adjudication of applications for interim relief and appointment of Local Commissioner. The appellant / plaintiff could not after such conduct, spring a surprise on the respondents / defendants No.1 by contending that as per the written statement of the respondent / defendant No.1 and their predecessor itself, the appellant / plaintiff was entitled to the reliefs claimed in the suit.

20. I now proceed to examine the appeal on merits. The counsel for the appellant / plaintiff inspite of being prodded has been unable to in any of the judgments cited or otherwise show that a Family Settlement can only be with respect to coparcenary or inherited property and not with respect to the self-acquired joint property of family members. The contention that merely because the property can be jointly acquired with non family members also,

there can be no settlement of self-acquired property even if jointly owned by family members, is to say the least found preposterous.

21. I have gone through the dicta of the Supreme Court in **Kale** supra which is the locus classicus on Family Settlement and do not find the same to be restricting Family Settlement only to settlements of coparcenerary or inherited properties and assets. Rather, it has been held:

“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.”

Reliance was placed on "Kerr on Fraud" holding:

“that 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.”

It was further held:

“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. 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.....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.....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.”

Halsbury's Laws of England observing as under were quoted with approval:

“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 Supreme Court held the following to be the essentials of a Family Settlement:

- “(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 arrangements 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 bonafide 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.*

22. I am unable to appreciate as to how, while applying the aforesaid principles, so long as the arrangement is between the family members, it matters whether the properties / assets / affairs being settled are inherited by the Family Members from a common ancestor or have been jointly acquired by the Family Members. No assistance is forthcoming from the counsel for the appellant / plaintiff. The counsel for the appellant / plaintiff appears to confuse the expression used by the Supreme Court in the judgment *supra*, of

‘legal heirs’ used to describe, amongst who all a Family Settlement can be, with the assets / affairs which can be settled by a Family Settlement / Family Arrangement. The reasoning given in **Kale** supra for according said status to Family Settlements / Family Arrangements equally applies to the inherited assets as well as self-acquired assets.

23. The Supreme Court in **Kale** ,has invoked the rule of ‘estoppel’ to waive the legal and technical lacunas in family settlements / arrangements. The said rule of estoppel applies against the appellant / plaintiff in the present case also. Not only is the appellant / plaintiff estopped for the reason of having signed the deed of Family Settlement, whereunder he made the predecessor of the respondents / defendants No.1 agree to the appellant / plaintiff becoming the exclusive owner of the first, second and third floors of the Lajpat Nagar house, but also for the reason that the said Family Settlement dated 17.06.1991 also led to the predecessor of the respondents / defendants No.1 agreeing to the terms and conditions of the Dissolution Deed dated 26.06.1991 of the partnership business, whereunder the predecessor of the respondents / defendants No.1 took over the business exclusively till then being carried on in partnership in the Khanna Market property. It is well nigh possible that had the appellant / plaintiff on 17.06.1991 not executed the deed of Family Settlement whereunder the Khanna Market shop jointly owned by the appellant / plaintiff and the predecessor of the respondents / defendants No.1 was to exclusively vest in the predecessor of the respondents / defendants No.1, he would not have shortly thereafter on 26.06.1991 agreed to the dissolution aforesaid. With respect to the dissolution of the partnerships also it may be stated that there

are two Dissolution Deeds on record, one of the partnership business of M/s. Jagdish Watch Company being carried on in shop No.47, Khanna Market by the appellant / plaintiff, predecessor of the respondents / defendants No.1 and their brother Sh. Hira Lal and the other of the partnership business in the name and style of M/s Time Centre being carried on in shop No.81A, Khanna Market subject matter of this lis by the appellant / plaintiff and the predecessor of the respondents / defendants No.1 and their two brothers Sh. Hira Lal and Sh. Joginder Pal. The predecessor of the respondents / defendants No.1 took over all the debts and liabilities of the partnership business in the Khanna Market shop subject matter of this lis. The appellant / plaintiff after having so made the predecessor of the respondents / defendants No.1 act, is estopped from resiling.

24. I also do not find any merit in the only other argument of the counsel for the appellant / plaintiff, of the Family Settlement having been reduced to writing, being required to be registered. I have already quoted hereinabove the parameters laid down by the Supreme Court in *Kale* and as per which the family arrangement can be oral and in which case no registration is necessary and even where it is reduced into writing, it requires registration only when the terms of the writing affect the partition and not where writing is merely a record of the oral partition.

25. The writing in the present case is in Hindi under title “Parivarik Samjhauta” and the recital thereof is to the effect that the appellant / plaintiff and the predecessor of the respondent No.1 ‘are dividing their joint properties in the manner appearing in the document’. Thus the document is merely a record of what was being done by the parties and does not by itself

partition the properties. The counsel for the appellant / plaintiff instead of reading from the document in Hindi, has relied on the language in the impugned judgment and in the pleadings, of the properties having been partitioned “by virtue of” the Deed of Family Settlement but which is not the correct way of interpretation of Deeds or documents. At this stage, I may record that though the counsel for the appellant / plaintiff has argued that there was no occasion for Family Settlement since there were no dispute but as aforesaid, the appellant / plaintiff himself only pleaded tension between the parties with respect to the joint properties but notwithstanding the denial thereof by the predecessor of the respondents / defendants No.1, in his affidavit by way of examination-in-chief has also deposed that there were disputes between the appellant / plaintiff and the predecessor of the respondents / defendants No.1 with respect to the properties held jointly by them. The appellant / plaintiff cannot now be heard to contend otherwise.

26. Similarly, the plea raised by the appellant / plaintiff of the Family Settlement having not been acted upon is also *mala fide*. The appellant / plaintiff not only in his pleadings but even in evidence has pleaded that after the date of Family Settlement, the appellant / plaintiff and the predecessor of the respondents / defendants No.1 were dealing exclusively with the properties which had fallen to their respective share including by removal by the predecessor of the respondents / defendants No.1 of the fittings and fixtures provided to the tenant on the floors of the Lajpat Nagar house which had fallen to the share of the appellant / plaintiff and by exclusive realization of rent thereof by the appellant / plaintiff.

27. Coming back to the aspect whether the writing titled “Parivarik Samjhauta” is a record of the Family Settlement or itself creates any rights, I have during the hearing put to the counsel for the appellant / plaintiff whether not ordinarily a formal writing, as the typed document in the present case, is prepared after the parties have reached an understanding and / or orally agreed amongst themselves. Again no answer is forthcoming. All that can be said is that the appellant / plaintiff neither in his own evidence nor in the cross-examination of the witnesses of the respondent / defendant No.1 has built up a case of there being no such understanding / arrangement having been reached prior to the signing of the document. From the factum of the document titled “Parivarik Samjhauta” in the present case being part of a mutual settlement taking place at that time not only qua joint properties but also joint businesses, the preponderance of probability is in favour of the appellant / plaintiff and the predecessor of the respondents / defendants No.1 and their other two brothers having first arrived at an understanding of partitioning all the assets and businesses and having got prepared the documents affirming the same and thereafter executing the documents on a difference of few days. For this reason also, I am of the view that the document titled “Parivarik Samjhauta” was never intended to be itself creating rights in different properties but is merely a memorandum of settlement already arrived at.

28. The other judgments relied upon by the counsel for the appellant / plaintiff turn on the peculiar language of the documents subject matter thereof and do not lay down anything which would dissuade me from the

view taken. Rather *Smt. Chanderwati* supra is not even a case amongst family members.

29. No merit is therefore found in the appeal.

30. I may record that though the finding of the learned Additional District Judge, of the additional strip of land adjacent to the Khanna Market shop being not part of the Khanna Market shop, appears to be erroneous inasmuch as the title thereof was acquired by the appellant / plaintiff only for the reason of being owner of the shop and the counsels also admit that the said strip of land is incapable of independent use and has always been treated as part and parcel of the Khanna Market shop which under the Family Settlement had fallen to the share of the predecessor of the respondents / defendants No.1, but the said finding having not been challenged and having attained finality, is incapable of interference in this appeal.

31. I may also record that during the hearing attention of the counsel for the appellant / plaintiff was invited to the recent Division Bench judgment of this Court in *Madhur Bhargava Vs. Arati Bhargava* MANU/DE/0397/2013, also dealing extensively with the subject of Family Settlement and the counsel for the appellant / plaintiff after lunch after going through the said judgment was unable to dissuade me from changing the view taken.

32. The appeal is accordingly dismissed with costs to the respondents / defendants No.1.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

OCTORBER 04, 2013
'gsr'..