

Court No. - 19

Case :- SECOND APPEAL No. - 339 of 1985

Appellant :- Ramji Lal And Ors

Respondent :- Smt. Savitri Devi

Counsel for Appellant :- S.M Nasir,I.D.Shukla,Ishwar Dutt Shukla,S.K. Mehrotra,Santosh Kumar Mehrotra

Counsel for Respondent :- H.S. Sahai,J.N. Singh,N K Pandey,Priti Saxena,U.S. Sahai

Hon'ble Jaspreet Singh,J.

1. Heard Shri I.D. Shukla, learned counsel for the appellants. None has put in appearance on behalf of the respondent.
2. The Court had commenced the hearing of this matter on 23.08.2023 and it continued today but on both the dates, none had appeared on behalf of the respondent. Accordingly, the appeal is being decided in absence of the respondent.
3. This is the plaintiff's second appeal being aggrieved against the judgment of reversal passed by the lower Appellate Court in Civil Appeal No.54/1984 dated 09.04.1985 whereby the defendant's first appeal was allowed. Consequently, the suit filed by the plaintiff seeking a decree of partition was dismissed. In the aforesaid backdrop that the plaintiff has approached this Court.
4. During pendency of the instant appeal, the appellants as well as the respondent had expired, however, by making applications for substitutions, the legal heirs of the respective parties have been brought on record. For the sake of convenience, the Court shall be referring the parties as they were originally impleaded in the suit.
5. The instant second appeal was admitted by this Court on 14.08.2001

on the substantial question of law framed at S.No.2 in the memo of second appeal which read as under:-

"2. Whether the learned court misread and misinterpreted the family arrangement which was subsequently reduced to writing and made out a new case that Udho's half share was not claimed by Kashi Prasad in the plaint. It came in Mangal Prasad's share, as such Kashi Prasad was not entitled to get one-fourth share in Udho's half share which was shared by Mangal half and half which resulted in grave injustice to the appellants?"

6. In order to deliberate the substantial question of law, it will be relevant to take note of the facts giving rise to the instant second appeal first.

7. The plaintiff Kashi Prasad instituted a suit bearing No.356/1983 in the Court of Munsif, Gonda seeking a decree of partition from his step brother Mangal Prasad, the sole defendant in the suit. It was pleaded that Udho was the exclusive owner of two houses which were shown as House No.1 and House No.2 in the plaint in suit, situate in Mohalla Makarathiganj Dudhawa Bazaar, Paragana and District Gonda. It was further pleaded that the relationship between the plaintiff Kashi Prasad and defendant Mangal Prasad was that of step-brothers inasmuch as Kashi Prasad was son of Udho from his first wife whereas Mangal Prasad son of Udho was from his second wife. In order to avoid family disputes, Udho in his lifetime on 23.05.1965 in presence of certain arbitrators (Panch) had orally settled the said properties in the sense that House No.1 was treated as one unit depicting $\frac{1}{3}$ share whereas House No.2 was treated as second unit

depicting 2/3 share and thus in terms of settlement, the house No.1 was given to Mangal Prasad depicting 1/3 share whereas House No.2 was given to plaintiff Kashi Prasad depicting his 1/3 share and 1/3 share was retained in House No.2 by Udho.

8. It was thus stated that after the death of Udho, 1/3 share that he had retained in House No.1 now be equally divided between the plaintiff and the defendant and in this view of the matter, the suit for partition was filed claiming half share of 1/3 in House No.2 which was retained by Udho.

9. The suit came to be contested by filing written statement by Mangal Prasad where it was primarily stated that the suit was bad for not including all the properties inasmuch as apart from the house No.2, house mentioned in the plant i.e. Houses No.1 and 2 there was a third house which was gifted by Udho to his second wife (mother of the defendant) and the plaintiff and the defendant are in possession thereof after the death of the second wife of Udho. It was further stated that no such family arrangement was made by Udho on 23.05.1965. Even otherwise, if the said family settlement dated 23.05.1965 is proved, the same cannot be given effect to as it was inadmissible for want of proper stamp duty. It was also stated that the defendant had 1/3 share in all the houses and unless and until all the three houses are brought in for partition, the suit is not maintainable and deserves to be dismissed.

10. In light of the aforesaid pleadings, the trial Court framed four issues, however, the main issue upon which the suit came to be contested were (i) whether the plaintiff is the co-owner of House No.2 along with the defendant and whether he has 1/4 share therein and (ii) whether the suit of

the plaintiff is liable to proceed in light of the defence raised in Para 18 of the written statement.

11. The trial Court after considering the oral as well as documentary evidence found that though the two houses belonged to Udho but he had entered into a family settlement in terms whereof in House No.1 depicting 1/3 share, it was given to the plaintiff whereas in House No.2, the defendant had 1/3 share and 1/3 share was retained by Udho upon his death that 1/3 share of Udho was to be shared equally between the plaintiff and the defendant and since Udho died in estate, accordingly, 1/3 share of Udho was held to be that of plaintiff and the defendant. Accordingly, by means of the judgment and decree dated 10.02.1984, the suit of the plaintiff was decreed.

12. The defendant namely Mangal Prasad being aggrieved against the judgment and decree dated 10.02.1984 preferred a regular Civil Appeal No.54/1984 before the District Judge, Gonda which thereafter was transferred to the Court of 5th Additional District Judge, Gonda for hearing.

13. The lower Appellate Court after hearing the parties found that the alleged document which was marked as Exhibit-2 was not a family settlement but was a partition deed and on account of being inadmissible for want of stamp duty and its registration, no rights could have accrued. It also found that the third house which was in the name of the plaintiff while he was a minor and the plaintiff was in its position, consequently, the same could not be treated as a property of the defendant but for the reason regarding the family settlement as considered by the trial Court, the suit was not liable to be decreed and the Additional District Judge, Court No.5,

Gonda on 09.04.1985 allowed the appeal of the defendant and dismissed the suit. It is being aggrieved against the said judgment and decree passed by the lower Appellate Court that the appellant has approached this Court.

14. Shri I.D. Shukla, learned counsel for the appellant has submitted that the lower Appellate Court had erred in treating the said family settlement as a partition deed and it also erroneously harboured the view that it required registration and stamp duty which is not quite correct and it is now well settled that a family settlement does not require registration if it is reduced in writing for record. He has relied upon a decision of the Apex Court in **Kale and others v. Dy. Director of Consolidation and others, (1976) 3 SCC 119** and another decision of the Division Bench of this Court in **Mohd. Zakir and others v. Amir Ahmad and others, 1983 LCD 94**. It is thus urged that the judgment passed by the lower Appellate Court is against the dictum of the decision of the Apex Court as well as the Division Bench of this Court. Hence, the appeal deserves to be allowed.

15. At the outset, it will be relevant to notice the dictum of the Apex Court in the celebrated case in **Kale** (supra) and the relevant portion thereof read as under:-

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

“The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in

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

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term “family” has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a *spes 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. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

“A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

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

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

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

“(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

16. This Court recently had the occasions to consider the issue of family

settlement in **Ram Milan v. Kripa Shanker and others - Neutral Citation No.-2023:AHC-LKO:53100** and while dealing with the said issue, this Court has also noticed not only the decision of the Apex Court in **Kale (supra)** but other decisions of the Apex Court on the aforesaid subject and the relevant portion thereof read as under:-

"34. After the aforesaid propositions is noticed, it would indicate that even in **Khushi Ram (supra)**, the Apex Court while dealing with the second question relating to family settlement has relied upon the aforesaid decision of **Kale Vs. DDC (supra)**.

35. For the moment, if the objections raised by Sri Chaudhary regarding admissibility of Exhibit-5 being a photocopy is ignored for the time being and the document Exhibit-5 is seen, it would indicate that it is a family settlement which was arrived at between the parties wherein the respective shares have been indicated and demarcated. It also states that the shares have been demarcated in terms of this family settlement and thus it would be clear that it does not in any manner record a past transaction or a settlement which has been arrived at rather in order to sink the disputes, the parties had entered into this settlement and they have re-adjusted their shares. This document Exhibit-5 in view of the propositions that if the family arrangement is reduced into writing containing the terms and recitals of the family arrangement made under the document then such a document would require registration, as evident from the propositions laid down by the Apex Court in **Kale vs. DDC (supra)** in paragraph 10 (4) becomes applicable.

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38. Thus, the issue involved in the instant appeal regarding registration of a family settlement is answered accordingly in light of the decision of the Apex Court in **Kale Vs. DDC (supra)** and applying the same to the instant case, it would indicate that by virtue of the said document which otherwise was not admissible but that family settlement for the first time was reduced in writing and by virtue of the said document, the parties re-adjusted their shares and as noticed above, it required registration."

17. From the perusal of the exposition of law which has been extracted above and in light thereof, it has to be seen whether the document dated 23.05.1965 would be covered as a family settlement or it would be a partition-deed which would require registration and stamp duty.

18. From the perusal of the said document, it would indicate that it was

reduced in writing and executed by Udho son of Bhawani that he is the owner of the property and he wished to distribute the property during his lifetime and, therefore, he had two houses, one house depicted 1/3 share whereas House No.2 depicted 2/3 share out of which 1/3 share retained by Udho and 1/3 share was given to his other son Mangal Prasad. It also indicates that this has been done in presence of Panch. It also indicates that there is another house which was in the name of Kashi Prasad which is not subject matter of the settlement nor Mangal Prasad would have any right thereof. It was also indicated that Udho would also execute the sale-deed within two months.

19. Having taken note of the said document and the evidence which is available on record, certain undisputed facts emerge (i) the properties which were the two houses subject matter of the suit was created and belonged to Udho. There is nothing on record to indicate that the said properties were ancestral and was inherited by Udho. Thus, it can safely be presumed that Udho was its owner throughout his lifetime.

20. From the document in question it would reveal that Udho in his lifetime had partitioned property in such a manner that two houses were taken as one composite unit and House No.1 depicted 1/3 share which was given to the plaintiff whereas the other house depicted 2/3 share out of which 1/3 share was given to Mangal Prasad and 1/3 share was retained by Udho himself. The family settlement in order to be binding and effective it has to be seen that the parties thereof had some pre-existing right.

21. In the instant case, till the lifetime of Udho, both Kashi Prasad and Mangal Prasad (who were step sons amongst themselves) could not have

any preexisting rights and the division of the said properties could have been divided by Udho in his lifetime only by partitioning and given specific shares to his children. This by any measure cannot be treated as a family settlement inasmuch as by this being made by the creator of the property and rights were created in favour of both the plaintiff and the defendant for the first time and perhaps this very same reason why in the said document Udho clearly stated that he would execute the sale-deed within two months.

22. In light of the aforesaid, it is clear that the findings returned by the trial Court that it was a family settlement and did not require registration and stamp duty is not in accordance with law. The lower Appellate Court has taken the correct view which is supported by the decision of the Apex Court in **Kale** (supra) and even this Court in **Ram Milan** (supra) has noticed the aforesaid and held that when rights are created in an immovable property for the first time amongst the persons then it requires registration as well as it is attracted stamp duty and in absence thereof, the said document cannot be relied upon or acted by in view of the embargo in Section 35 of the Indian Stamp Act.

23. This Court is of the considered view that document dated 23.05.1965 which was executed by Udho clearly was a document of partition where he had created rights in favour of his two sons by dividing the property and also he would execute the sale-deed so that the rights in favour of the parties could be crystallized.

24. In this view of the matter, this Court finds that limited question placed before this Court regarding the document dated 23.05.1965, the

same is to be treated as a partition-deed and unless and until the same was registered and proper stamp duty paid could not have been taken note of.

25. Having answered the aforesaid question, this Court finds that the appeal has no merit and is accordingly dismissed. The judgment passed by the lower Appellate Court is affirmed. In the facts and circumstances, there shall be no order as to costs.

26. The record of the trial Court shall be remitted forthwith.

Order Date :- 02.11.2023

Rakesh/-