

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED : 18.08.2016

ORDERS DELIVERED : 21.09.2016

DATED: 21.09.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal Nos.146 and 147 of 2011

and

M.P.No.1 of 2011 in S.A.No.146 of 2011

Ashokarajan

... Appellant
in both appeals

Vs.

1.Dr.Padmarajan
2.Sivakumar
3.Uma Shankar
4.Ramadass
5.Ravi
6.Balasubramanian
7.Kannan
8.Pushpraj
9.Veerapan
(Respondents 2 to 9 given up as
unnecessary parties)

..Respondents
in both appeals

Prayer in S.A.146 of 2011:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned I Additional District Judge, Coimbatore made in A.S.No.18 of 2007 dated 30.01.2010 thereby reversing the judgment and decree of the learned Subordinate Judge, Udumalpet, made in O.S.No.246 of 2003 dated 31.08.2006.

Prayer in S.A.147 of 2011:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned I Additional District Judge, Coimbatore made in Cross Appeal No.18 of 2007 dated 30.01.2010 thereby confirming the judgment and decree of the learned Subordinate Judge, Udumalpet, made in O.S.No.246 of 2003 dated 31.08.2006.

For Appellant in both appeals	: Mr.T.Murugamanickam
For Respondents in both appeals	: Mrs.Chitra Sampath Senior Counsel for M/s.R.Bharath Kumar for R1 R2 to R9 – Given Up

C O M M O N J U D G M E N T

The appellant in both the appeals is the first defendant in a suit for specific performance directing the first defendant to execute a partition deed as per partition agreement dated 25.11.2000 and to declare the settlement deed dated 29.04.2003 executed in favour of the first defendant by his father as null and void or in the alternative to partition the suit properties into two equal shares and allot one such share to the plaintiff. The first respondent herein is the plaintiff in the said suit.

2.The case of the plaintiff is as follows:

The plaintiff and the first defendant are the sons of one Sri Raman Chettiar and the defendants 2 to 9 are the tenants in the suit properties. The plaintiff's father purchased the suit properties and

developed the same with the contributions of the plaintiff. The first defendant never contributed any amount to purchase or develop the suit properties. The plaintiff was well placed and has a lucrative private practice and thus helped monetarily his father and the first defendant whenever required. The plaintiff's father due to his old age used to stay with the first defendant and taking such situation, the first defendant got a registered Will executed by his father in respect of the suit properties on 02.03.1999. On 09.03.1999, the first defendant also obtained power of attorney from his father. The plaintiff was not aware of the evil designs of his brother and came to know about the same only in the month of October 2000. Therefore, he approached his father and enquired about the Will. His father realised the mistake and wanted to have amicable settlement between all the parties. Accordingly, an agreement for partition dated 25.11.2000 was executed wherein the plaintiff, the first defendant and their father Raman Chettiar were the signatories. As per the said agreement for partition, the suit properties were divided into three shares. A schedule item therein was allotted to the father; B schedule therein was allotted to the plaintiff and C schedule therein was allotted to the first defendant. On the very same day, the respective sharers took possession of their respective properties and

are in enjoyment of the same. The first defendant being a signatory to the said agreement is bound by the same. As per the terms of the said agreement, the parties have to effect a partition deed in future. Under the said agreement, the father also repudiated the Will executed by him in favour of the first defendant. When the plaintiff was insisted for effecting regular registered partition deed as per the terms of the agreement, though the father was willing, the first defendant was postponing the same. The plaintiff's father became old and feeble. He was suffering with several health problems and required constant medical care. Therefore, he was staying with the plaintiff. However, the first defendant with evil intention, had taken the father from the custody of the plaintiff and by way of threat and compulsion, got a settlement deed dated 29.04.2003, executed by him in his favour with regard to the entire suit properties. The said settlement deed executed and registered was under force, fraud and undue influence. Therefore, the said settlement deed is illegal, null and void, not enforceable and not binding on the plaintiff. The plaintiff's father died on 07.05.2003 under mysterious circumstances. His death was due to complete negligence of medical attention and harsh treatment. After executing an agreement for partition, dated 25.11.2000, by throwing the property into the joint family, also by

repudiating Will dated 02.03.1999 and after giving possession of the suit properties to the respective sharers, the father had no right to execute the settlement deed dated 29.04.2003. The first defendant is also estopped from creating and claiming right under the settlement deed. The plaintiff being the elder brother, tried for amicable settlement with the first defendant. But the efforts proved futile. Therefore, the present suit is filed seeking for the relief as stated supra.

3.The first defendant filed a written statement and contested the suit. His case is as follows:

The suit properties were not developed from the contribution of the plaintiff. The father had no ancestral properties. By his own exertion and also work, he started a rice and flour mill at Udumalpet and he was having good income. Out of such income, he had purchased the suit properties in his name. Therefore, they are self acquired properties of the father. Though the plaintiff was given medical education at great expenses by the father, the first defendant was not given any professional education. The improvements in the suit properties were effected after the father came to the first defendant's house. Therefore such improvements were made at the

expenses of the first defendant also. The father was maintained by the first defendant till his death. The entire suit property was looked after by the first defendant as the power agent of his father. There was no good relationship between the father and the plaintiff. Though the father was not doing well, the plaintiff never cared to attend his father. The entire medical expenses were meted out of the salary of the first defendant. Out of love and affection and to help the first defendant, the father executed a registered Will on 02.03.1999. The said Will is the last and final Will. Yet the father wanted to give the properties to the first defendant even during his life time. Therefore, out of his free will and volition, he executed a registered settlement deed on 29.04.2003 in favour of the first defendant regarding the suit properties. The possession of the suit properties was also given to him on the date of settlement deed. The alleged partition agreement is not valid under law. Therefore, it is not admissible in evidence. The suit properties were never treated as common properties belonging to the three parties to the alleged agreement for partition. The said agreement is an unregistered one. The properties are self acquired properties of the father and therefore, his sons cannot claim any right at all over the same. By virtue of the settlement deed, the first defendant became absolute

title holder of the suit properties and enjoyment of the same. Therefore, the claim of the plaintiff is not maintainable.

4.The plaintiff examined himself as PW1. He also examined PW2 to 4 as third party witnesses. The plaintiff marked Exs.A1 to A11 in support of his case. On the other hand, the first defendant examined himself as DW1 and examined 5 third party witnesses as DW2 to DW6. Exs.B1 to B39 were marked on his side.

5.The trial court after considering the rival pleadings of the parties and the evidence let in by them, decreed the suit, thereby directing the first defendant to execute a sale deed in favour of the plaintiff in respect of 'B' schedule contained in agreement dated 25.11.2000. The trial court has also declared that the plaintiff is not entitled to any share in respect of plaint 'A' schedule property which was allotted to the said Raman Chettiar under the partition agreement. The trial court further declared that the settlement deed dated 29.04.2003 is not valid in so far as the 'B' schedule contained in the agreement dated 25.11.2000, allotted to the share of the plaintiff is concerned.

6.The plaintiff, aggrieved against the rejection of his claim over 'A' schedule, filed an appeal before the First Appellate Court in A.S.No.18 of 2007. The first defendant also filed Cross Appeal No.18 of 2007 aggrieved against the relief granted to the plaintiff.

7.The Appellate Court after considering the entire facts and circumstances and the submissions made by the respective parties, allowed the appeal filed by the plaintiff, thereby decreeing the suit for specific performance only to the 'B' and 'C' schedule as set out in Ex.A4 Agreement. The appellate Court also granted half share to the plaintiff in respect of the properties shown in 'A' schedule of Ex.A4. Thus, the cross appeal filed by the first defendant was dismissed.

8.Hence, the first defendant filed the present two second appeals before this court. While admitting these second appeals, this court framed the following common substantial questions of law:-

"i)Whether Ex.A4 Agreement of Partition is enforceable considering that the appellant and the first respondent herein had no pre-existing rights to enter into such an agreement?

ii)Whether the judgment of the Lower Appellate

Court is vitiated in that it has failed to see that the father of the parties did not cancel the Will Ex.B6 as per the recital of Ex.A4 Agreement, which itself indicate that Ex.A4 was no intended to be acted upon?"

9.Mr.T.Murugamanickam, learned counsel for the appellant submitted as follows:

The suit was filed after five years from the death of the father. The plaintiff and the father was not in talking terms. The agreement for partition marked as Ex.A4 was obtained by force and therefore, it is not valid. The father who was under the care of the first defendant, executed the Will followed by a settlement deed in favour of the first defendant out of his free will and volition. Ex.A4 agreement is not enforceable, since the plaintiff and the first defendant had no pre- existing right to enter into such partition agreement, as the suit properties are admittedly self acquired properties of the father. Even otherwise, the conditional performance under Ex.A4 was to be done only by the father and as it was not enforced within three years during the life time of the father, it cannot be enforced against the first defendant after the period of limitation. Ex.A4 agreement, at the best may be treated as a contract and hence as per section 40 of the Contract Act, only the

father has to perform the promise and not the first defendant. As per Section 56 of the Contract Act, an agreement to do an impossible act itself is void. Execution of the Will is admitted by the parties under Ex.A4 Agreement. Therefore, further proof is not required to prove the said Will. The father himself has not cancelled the Will during his life time.

10.In support of his submission, the learned counsel for the appellant relied on the following decisions:

- i) AIR 1951 Madras 213, Radhakrishnayya vs Sarasamma;
- ii) Vol.59 MLJ 150, Made Gouda (dead) & others vs Chenne Gouda & others;
- iii) Vol.83 LW 205, Board of Revenue, Madras vs Lakshmanan Chettiar;
- iv) Vol 13, L.W 475, Vairavan Chettiar vs. Srinivasachariar;

11.Per contra, Mrs.Chitra Sampath, learned Senior counsel appearing for the first respondent/plaintiff submitted as follows:

The plaintiff sought the relief with alternative prayers. Therefore, either way, the plaintiff has to succeed. Ex.A4 Agreement only says that the father would cancel the Will. Nowhere in the

written statement, the defendant has stated that he inherited the properties by way of Will. When the plaintiff denied the Will, the defendant has not examined the attestors. Therefore, the Will is not proved. Ex.A4 Agreement is only a family arrangement between the parties. If it is a family arrangement, no pre existing right of the parties is required. The first defendant being the person succeeding to the estate of the deceased father, is bound by Ex.A4 and thus, such agreement is enforceable through the first defendant. Even if the Will is admitted by the other side, the examination of attesting witnesses is not to be dispensed with.

12.In support of her submission, the learned Senior counsel relied on the following decisions:

- i)AIR 1966 SC 323, Ram Charan Das vs Girja Nandini Devi;
- ii)AIR 1971 SC 1041,Krishna Beharilal (dead) by his legal representatives vs. Gulabchand;
- iii)AIR 1976 SC 807, Kale and others vs Deputy Director of Consolidation and others;
- iv)2006 (4) SC 658, Hari Shankar Singhania vs Gaur Hari Singhania;

13.Heard the learned counsel appearing for the appellant and

the learned Senior counsel appearing for the first respondent and perused the materials placed before this court.

14.The respondents 2 to 9 are given up as unnecessary parties in the second appeal as they are only tenants in the suit properties. They also remained exparte before the courts below. Thus, the fight is between the plaintiff and the first defendant, who are brothers and the sons of one Sri Raman Chettiar. The plaintiff is a doctor by profession. I have already discussed in detail about the case of respective parties and therefore I am not repeating the same once again hereunder except to certain extent of the facts and circumstances, which are necessary for deciding the present second appeal.

15.It is an admitted case of the plaintiff and the first defendant that the suit properties were purchased by their father Sri Raman Chettiar under Ex.A2 and A3 dated 25.08.1971 and 09.12.1976 respectively. The plaintiff claims the relief based on an unregistered document dated 25.11.2000, marked as Ex.A4, styled as "agreement of partition". Admittedly the plaintiff, the first defendant and their father were parties to the said agreement. The plaintiff claims that though the suit properties originally belonged to his father as his self

acquired property, by way of entering into the said agreement of partition, the father treated the said properties as the joint family property and agreed for partition of the same between the parties as per the terms contained therein. Therefore, according to the plaintiff, the 'B' schedule of the said agreement of partition allotted to his share should come to him and to that effect, the first defendant has to execute a partition deed, since Ex.A4 was not a registered one. The plaintiff also challenged the subsequent settlement deed dated 29.04.2003 marked as Ex.B18, wherein and whereby the father settled the suit properties in favour of the first defendant. Alternatively, the plaintiff also prayed for partition of the suit properties into two equal shares and sought allotment of one such share to him.

16. On the other hand, the first defendant contended that the father being the absolute owner of the suit properties, exercised his right over the same by executing the Will under Ex.B6 dated 02.03.1999 in favour of the first defendant and subsequently executed a registered settlement deed under Ex.B18 in his favour and therefore, the plaintiff, who is not having any right over the suit property by birth, cannot seek share in the suit properties. In so far

as the agreement of partition marked as Ex.A4 is concerned, it is contended by the first defendant that the same cannot be enforced for two reasons viz., i) there was no pre-existing right on the plaintiff and the first defendant over the suit properties; ii) Even as per the terms of the agreement, only the father has to perform his obligation, which cannot be sought against the first defendant, after the death of the father.

17. Though elaborate argument was advanced by both sides, the crux of the issue involved in this matter is roaming around three documents viz., Ex.B6 Will dated 02.03.1999, Ex.A4 Agreement of partition dated 25.11.2000 and Ex.B18 Registered Settlement dated 24.09.2003. Out of those three documents, two viz., the Will and the Settlement Deed were executed by the father in favour of the first defendant, whereas the agreement of partition was entered into by all the three parties. Though the Will and Settlement Deed confer right on the first defendant in respect of entire suit properties, the agreement for partition, if sustained, would certainly alter such position. Therefore, this court has to first decide about the validity and sustainability of Ex.A4 Agreement.

18.The first objection raised by the learned counsel for the appellant is that Ex.A4 Agreement cannot be enforced as the plaintiff and the first defendant are not having any pre-existing right over the suit properties on the date of entering such agreement. He further contended that the father's self-acquired property cannot be treated as joint family property and consequently, the plaintiff cannot claim any share over the same based on such agreement.

19.In support of such contention, Mr.T.Murugamanickam, learned counsel for the appellant relied on the Division Bench decision of this Court reported in ***AIR 1951 Madras 213 (Radhakristnayya v. Sarasamma)***. In the said decision at paragraph No.7, it has been observed as follows:

There is an exhaustive treatment of the question in two Bench decisions reported in Suhashini Poddar v. Sreenath Chakravarthi and Khirode Sundari v. Chunilal. The first of these decisions is a decision of Mitter and Waight JJ. The question in that case was whether an allottee under a partition decree was a bona fide assignee for value within the meaning of Sub-clause (b) of S. 36(2) of the Bengal Money Lenders Act. If the allottee was an assignee for value he would be protected and the decree was not liable to be

reopened at the instance of the judgment debtor.

At page 773, a clear and precise statement of the law is found:

“Although partition thus resembles an exchange it is not an exchange. There is no conveyance but only transformation of the property. The estate in common is transformed, that is, it takes only another form, namely, two or more estates to be possessed and enjoyed in severalty. By the partition a co-sharer gets a separate allotment by virtue of his antecedent title as co-sharer. There is thus no acquisition of property in another independent right. It is not a conveyance—it is not an exchange—and the separate allotment is not obtained by another independent title.”

20. He further relied on the decision reported in **Vol.59 MLJ 150 (Made Gouda (dead) & others v. Chenne Gouda & others)** to contend that a person cannot convey title merely because he was recognised as a co-sharer by another person when in fact he is not having any pre-existing right over such share. Likewise, he relied on the decision of the Full Bench of this Court reported in **Vol.83 LW 205 (Board of Revenue, Madras v. Lakshmanan Chettiar)**, wherein it has been observed as follows:

“The essential difference between a conveyance and a release lies in the fact that, in the latter, there is no transfer of an interest or

right to another, who had no pre-existing right in it to any extent. A release of a right or of a claim can only be in favour of a person who had a pre-existing right or claim and by reason of the release the latter's right or claim is enlarged or is made fuller in its content."

21. Another Full Bench Decision of this Court reported in **Vol.13 L.W 475 (Vairavan Chettiar v. Srinivasachariar)** is also relied on by the learned counsel wherein it has been observed as follows:

*" It is difficult to see how there can be any co-parcenary between the father and the sons as regards self-acquired property over which the sons have no legal claim or enforceable rights. Co-parcenary and survivorship imply the existence of co-ownership and of rights of partition enforceable at law and a mere moral injunction can hardly be the foundation of a legal right. As observed by the Privy Council in **Rani Sartaj Kuari v. Deoraj Kuari**, the property in the paternal or ancestral estate acquired by birth under the Mitakshara law is so connected with a right to partition that it does not exist where there is no right to it. A contention was raised during the course of the argument before the Privy Council in **Raja Chelikani venkayamma v. Raja Chelikani Venkataramanayamma**, that sons acquire a right by birth in the father's self-*

acquired property. Lord Macnaghten observed that he did not quite understand what that right was and observed:

“He is his father's son, and if his father does not dispose of it, it will come to him; but is it anything more than a spes?”. So far as a father's self-acquisitions are concerned, the son, though undivided has only a spes successionis and he stands in relation to that property in the same position as an heir under Hindu Law.

22.I have given careful consideration to the above submissions and the case laws. There is no quarrel about the proposition that a person not having pre-existing right over a property, can neither claim a share as a matter of right nor venture to act upon such property in the capacity of a sharer. All these decisions, in my considered view, reiterate such position with which I respectfully agree. But the present scenario is totally different. Here in this case, the father himself became one of the parties to the agreement for partition of his self acquired properties thereby agreeing to allot such shares to the other two parties viz. his sons.

23.I have perused the Ex.A4 Agreement. There is no dispute to the fact that parties to the agreement are the plaintiff, the first

defendant and their father. It is seen from the recitals of the said agreement that though the suit properties are self-acquired properties of the father, the same were agreed to be partitioned among the parties, in order to avoid unnecessary litigation and problems between themselves in future. Therefore, it is evident from the recitals of Ex.A4 that the suit properties, though acquired by the father, were treated as the joint family properties for the purpose of partition among the parties. Though law prohibits the children to claim share over the self acquired property of the father as a matter of right during his life time, it should be borne in mind that no law prohibits a father from treating his self acquired property as a joint family property, so as to divide the same among the members of joint family. For that matter, it is open to any of the members of joint family to throw their self acquisition into common hotch pot. Needless to state that a "self acquired" property need not necessarily be a "selfishly acquired" property. No morally responsible father would ever say "its mine, you children keep away". Equally, no responsible and dutiful children will ever drive the father to say so.

24. In a family consisting of father and children, if an arrangement is made in respect of the properties either self-acquired by anyone, or owned by the joint family or in the nature of ancestral,

the intention of the parties in treating those properties all along is relevant and important than going by the very nature of acquisition itself. Once the family decides to enter into an arrangement in respect of those properties and accordingly executes a document thereby clearly indicating the intention of the family as how the properties are treated and sought to be enjoyed by parties referred to therein, such intention alone should prevail over all other technical objections, if any, like nomenclature of the document, registration, etc., After all, the family has every right to decide and exhibit its intention as agreed upon by its members for prevailing peace among them. Let the technicalities do not stand in the way. At the end of the day, the peace in the family is the utmost requirement which is to be achieved at any cost. No doubt, in a family, at times, emotional outburst may result in making certain unbalanced document relating to the properties, between its members. Such document, in a given case, might confer or convey the entire property to one or more of the family members excluding the other members. After some cooling time, another document, similar in nature, might come into existence contra to the one executed earlier thereby creating right on other members. Needless to say that these emotional outbursts in a family, are common and not unusual depending upon the conduct of

parties both with their legal and moral obligations. Therefore, such conveyances cannot be taken as a conclusive proof of the real intention of the family, especially when one party is fully benefited and the other party is totally denied. Therefore, in those circumstances, it is for the court to consider and decide based on the document which is benefiting all the parties without any bias or partiality, showing or exhibiting the real intention of the family thereby bringing peace among its members. In this case, the father wanted the peace to prevail among his sons. He wanted the sons to avoid the future litigation. Hence, by way of executing Ex.A4, he joined with his sons and showed his intention of treating the suit properties as joint family properties and divided the same into three schedules and allotted each one to take one schedule as contained therein.

25. At this juncture, it is to be noted that even according to the first defendant, as could be seen from the written statement, the plaintiff was not having lucrative practice and he was not able to maintain his family and that the father had been giving amounts to the plaintiff for his family expenses. Therefore, it is admitted by the first defendant that the plaintiff is not an affluent person. All these

factors undoubtedly justify that Ex.A4 is the only document showing the real intention of the family. Therefore, I am of the view that the suit properties having been treated as joint family properties under the said agreement of partition, the respective parties have got their vested right in respect of the schedule allotted therein from the date of entering into such agreement. It is also to be noted at this juncture that under the said agreement, the father has agreed to cancel the Will already executed in favour of the first defendant. It is also categorically recited therein that from the date of the said agreement, the properties allotted to the respective parties are to be taken possession and enjoyed with absolute right. True that the said agreement also contemplates executing an appropriate document, presumably the registered partition deed between the parties, thereby obligating the father to execute such document in favour of the plaintiff and the first defendant as and when required. When such being the recitals and terms of the agreement, I do not think that the first defendant can dispute the claim of the plaintiff his respective right over the suit properties.

26.As I have already discussed supra that the intention of the father is very clear under the agreement Ex.A4 to treat the property as joint family property, the above decisions relied on by the learned

counsel for the appellant with regard to his contention on the question of pre existing right do not apply to the present facts and circumstances. As rightly pointed out by the learned Senior Counsel for the first respondent, the said document under Ex.A4 though styled as agreement for partition, has to be treated as family arrangement between the parties.

27.a) At this juncture, it is relevant to refer to the decision of the Apex Court reported in ***AIR 1966 Supreme Court 323 (Ram Charan v. Girja Nandhini Devi)***, wherein it has been observed in paragraph No.11 as follows:

"...In the first place once it is held that the transaction being a family settlement is not an alienation, it cannot amount to the creation of an interest. For, as the Privy Council pointed out in Mst.Hiran Bibi's case, AIR 1914 PC 44 in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. It is not necessary, as would appear from the decision in Rangasami Gounden v. Nachiappa Gounden, 46 Ind. App 72: (AIR 1918 PC 196), that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way.

and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection."

(emphasis supplied)

b) In *AIR 1971 Supreme Court 1041 (Krishna Beharilal (dead) by his legal representatives v. Gulabchand & others)* it has been observed at paragraph No.8 as follows:

"... To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in *Ram Charan Das v. Girija Nandini Devi*, (1965) 3 SCR 841 at pp. 850 and 851 = (AIR 1966 SC 323 at pp.328 and 329) the word "family" in the context of the family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement."

c) In *AIR 1976 SC 807 (Kale and others v. Deputy Director of Consolidation and others)* it has been observed in paragraph Nos.9 and 10 as follows:

9. Before dealing with the respective

contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. 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 good will 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 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 form 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. To-day 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 lines 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.

10. In other words to put the binding effect and the essentials 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 bonafide 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 immoveable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Sec.17(1)(b)?) 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 items claims or titles in favour of such a person and acknowledges him to be the sole owners, 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 bonafide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

d) In **2006(4) SCC 658 (Hari Shankar Singhania v. Gaur Hari Singhania)**, it has been observed at paragraph No.43, 48 and 53 as follows:

43. The concept of "family arrangement or settlement" and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation, etc. should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this court that, any such arrangement would be upheld if family settlements were entered into to allay disputes existing or apprehended and even any dispute or difference apart, if it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection may suffice as observed by this court in ram Charan Das. v. Girjanandini Devi.

.....

48. In Maturi Pullaiah v. Maturi Narasimham this court held that :

"Though conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bonafide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it."

....

53. Therefore, in our opinion, technical considerations should give way to peace and harmony in the enforcement of family arrangements of settlements.

28. The first defendant strongly relied on the Will originally executed by father under Ex.B6 dated 02.03.1999. No doubt, it is a registered Will. The very fact that the father has subsequently joined the execution of the agreement dated 25.11.2000 with the plaintiff and the first defendant would go to show that the said Will has been impliedly revoked or cancelled by the father through his own conduct of entering into such agreement. Therefore, even though the said Will is taken to be a genuine document, in view of the execution of

Ex.A4, the Will has lost its sanctity and validity. Hence, the said Will is not helping the first defendant in any manner.

29.While coming to the other document viz., registered settlement deed dated 24.09.2003, executed in favour of the first defendant, I am of the view that the father having treated the property as joint family property by committing himself and entering into an agreement of partition under Ex.A4, is not entitled to treat the whole property once again as self acquisition and execute the settlement deed in respect of the entire property in favour of the first defendant. As per the terms of the agreement, it is evident that it has been acted upon at once.

30.Further, as rightly found by the lower Appellate Court, the Settlement Deed itself seems to have been obtained under suspicious circumstances. The lower Appellate Court elaborately considered this aspect from paragraph Nos.54 to 61 of its judgment. Reasonable doubt was raised as to why the Settlement deed was to be registered at Pollachi, other than the place where the father was living especially, when a registered office is available in that place itself. This has not been properly explained. So also, the date of purchase

of the stamp papers and the date of discharge of the plaintiff's father from the hospital appears to be on the same day, which also raised a doubt about the genuineness of the transaction. When Ex.A4 referred to the Will, the settlement deed curiously not referred to the Ex.A4 Agreement. All these suspicious circumstances would certainly drive to a conclusion that the settlement deed was not genuinely executed and intended to be acted upon. Therefore it is evident that the first defendant wanted to grab the entire properties whereas it is not so by the plaintiff. This is evident from the documents which are relied on by the respective parties. While the Will and the Settlement Deed relied on by the defendant sought to confer the entire suit properties in favour of the first defendant, the agreement relied on by the plaintiff confers the properties equally between all the three parties viz., the father and two sons. Therefore, the fairness of the transaction and the genuineness of the intention of the family are apparently evident on the face of Ex.A4, while the same are lacking in the Will and Settlement Deed.

31.Insofar as the other contention of the first defendant viz., that only the father has to perform and not the first defendant under Ex.A4 Agreement is concerned, I am of the view that such contention

cannot be accepted for the simple reason that pursuant to the death of the father, the first defendant being one of the beneficiary under Ex.A4 and also getting half share in 'A' schedule under Ex.A4, is bound to perform the obligation enshrined on the father under Ex.A4. He cannot escape by saying that only father has to perform. Therefore, I reject such contention of the first defendant.

32.Likewise, the other contention of the learned counsel for the appellant that Ex.A4 is to be treated only as contract, also cannot be sustained for the reason that the Ex.A4 Agreement cannot be treated as contract between the parties and on the other hand, as observed supra, it has to be treated only as family arrangement. Under such circumstances, application of Section 40 and 56 of the Contract Act neither warranted nor attracted in this case.

33.Much efforts were taken by both sides by making their respective submissions on the question of the proof of the Will. According to the learned counsel for the appellant, once the execution of the said Will is admitted under Ex.A4, further proof is not required. On the other hand, it is contended by the learned Senior Counsel that even if the Will is admitted, no dispensation of the examination of attesting witness is permissible. I do not think that both sides are

required to venture so much into that aspect in view of the fact that the very father who executed the said Will has subsequently chosen to execute Ex.A4 agreement followed by Ex.B18 Settlement Deed. I have already pointed out that execution of Ex.A4 Agreement makes the Will under Ex.B6 as an indirect revocation. After all, the intention of the testator is relevant which is very much evident under Ex.A4. Therefore, the question of proving or not proving the Will does not play much importance in this case, as rights of the parties need not be traced from the said Will.

34.The trial court failed to consider all these aspects and dismissed the suit, whereas the appellate court thoroughly considered all the facts and circumstances and allowed the appeal thereby granting the relief of specific performance however confining only to the 'B' and 'C' schedule. Insofar as 'A' schedule shown in Ex.A4 is concerned, the Appellate Court has rightly found that in view of the death of the father and in view of its finding that the settlement deed is not valid, the plaintiff and the first defendant are equally entitled to in equal share in 'A' schedule mentioned in Ex.A4.

35.Considering all these aspects, I am of the view that the appellant has not made out a case in both the second appeals and consequently, the common substantial questions of law raised in

these appeals are answered against the appellant and in favour of the first respondent. Accordingly, both the second appeals fail and the same are dismissed. No costs. The connected miscellaneous petition is also dismissed.

21.09.2016

Index :Yes/No
Internet: Yes/No
vri

To

1.I Additional District Judge,
Coimbatore.

2.The Subordinate Judge,
Udumalpet.

K.RAVICHANDRABAABU,J.

Vri

PRE DELIVERY COMMON JUDGMENT

IN S.A.NOS.146 AND 147 OF 2011

21.09.2016