

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 476 of 2017**

- 1.** Prayag Raj Agrawal S/o Late Kundanlal Agrawal Aged About 59 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
- 2.** Kiran Agrawal W/o Prayag Raj Agrawal, Aged About 56 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
- 3.** Ravi Kumar Agrawal S/o Prayag Raj Agrawal, Aged About 37 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.

---- Petitioners**Versus**

- 1.** Vinod Kumar Agrawal S/o Kundanlal Agrawal Aged About 53 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
- 2.** Vidya Devi W/o Late Kundanlal Agrawal Aged About 75 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
- 3.** Tarachand Agrawal S/o Late Kundanlal Agrawal Aged About 55 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
- 4.** Smt. Ramrati Bansal W/o Roshanlal Agrawal Aged About 61 Years D/o Late Kundanlal Agrawal R/o Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
- 5.** Smt. Laxmi Bansal, W/o Late Vishwanath Agrawal Aged About 55 Years R/o Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
- 6.** Smt. Sudha Agrawal, W/o Purushottam Agrawal Aged About 51 Years R/o Titlagarh, Police Station Titlagarh, District Balangir (Orissa)
- 7.** Jagannath Agrawal S/o Late Chandagidas Agrawal Aged About 65 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
- 8.** Ramkishan Agrawal S/o Late Chandagiram Aged About 58 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.

9. Ramesh Agrawal S/o Late Chandagiram Agrawal Aged About 52 Years R/o School Road, Nagar Ambikapur, Gurudwara Ward, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.
10. Ram Aoutar Agrawal S/o Chandagiram Agrawal Aged About 63 Years R/o Mohalla Maharana Pratap Chowk, Vyapar Vihar, Pawan Harbal, Nagar Bilaspur, Tahsil Bilaspur, And District Bilaspur, Chhattisgarh.
11. Smt. Bhagwati Devi W/o Govind Agrawal Aged About 67 Years R/o Dimbara Road, Shyam Auto Center, Raigarh, District Raigarh, Chhattisgarh.
12. Smt. Indramani Devi W/o Vijay Agrawal Aged About 56 Years R/o Main Road, Kumar Medicos (Kharlia), District Raigarh, Chhattisgarh.
13. Smt. Tulsi Agrawal W/o Jai Prakash Agrawal, Aged About 54 Years D/o Late Chandagiram Agrawal, R/o Maharana Pratap Chowk, Vyapar Vihar, National Auto Center, Bilaspur, Tahsil Bilaspur And District Bilaspur, Chhattisgarh.
14. State Of Chhattisgarh Through Collector, District Surguja, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Manoj Paranjape, Advocate
For State	:	Mr.Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11/08/2017

1. By the impugned order dated 24.4.2017, the trial Court has held that unregistered mutual partition deed cannot be relied upon unless the said document is registered.
2. Learned counsel for the petitioners would submit that the petitioners/defendants No.1 to 3 are relied upon the said documents to establish the conduct of respondent No.1/plaintiff, therefore, registration is not required.
3. I have heard learned counsel for the petitioner and perused the impugned order.

4. It is well settled law that when a deed reduced in writing evidencing partition, it would have the effect of declaring exclusive title to whom the property is allotted, it is required to be registered under Section 17(1) (b) of the Act, 1908, but if the terms of the family arrangement are only reduced in writing, it would be out-side the purview of Section 17(1) (b) of the Act, 1908. The law in this regard is well settled by the Supreme Court in case of **Kale and others Vs. Deputy Director of Consolidation and others**¹. Paragraph 10 (4) of the report provides as under:-

“10. * * * *

(1) * * * *

(2) * * * *

(3) * * * *

(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) (sic) (Sec. 17(1)(b)?) of the Registration Act and is, therefore, not compulsorily registrable;”

5. Recently, the Supreme Court in case of **K.G. Shivalingappa (D) by L.Rs. and others Vs. G.S. Eswarappa and others**² noticing the decision of **Kale** (Supra), reiterated principle in this regard and held as under:--

1 AIR 1976 SC 807

2 AIR 2004 SC 4130

“13. In *Nani Bai v. Gita Bai Kom Rama Gunge* (AIR 1958 SC 706), it has been held by this Court that though partition amongst the Hindus may be effected orally but if the parties reduce it in writing to a formal document which is intended to be evidence of partition, it would have the effect of declaring the exclusive title of the coparcener to whom a particular property was allotted in partition and thus the document would be required to be compulsorily registered under Section 17(1)(b) of the Registration Act. However, if the document did not evidence any partition by metes and bounds, it would be outside the purview of Section 17(1)(b) of the Indian Registration Act. This decision was followed in *Shiromani and others v. Hem Kumar and others*, AIR 1968 SC 1299 and *Roshan Singh v. Zile Singh*, AIR 1988 SC 881. In *Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Amabadas Bukate*, 1996 (6) SCC 373, after analyzing the judgments, referred to above, this Court observed:

"Partition, specially among the coparceners, would be a "Transfer" for purposes of Registration Act 1908 or not has been considered in *Nani Bai v. Gita Bai Kom Rama Gunge* (supra) and it has been held that though a partition may be effected orally, if the parties reduce the transaction to a formal document which was intended to be evidence of partition, it would have the effect of declaring the exclusive title of the coparcener to whom a particular property was allotted (by partition) and thus the document would fall within the mischief of Section 17(1)(b) of the Registration Act under which the document is compulsorily registrable. If, however, that document did not evidence any partition by metes and bounds, it would be outside the purview of that section."

6. In view of above, the trial Court has rightly held that document evidencing partition creating right in favour of the parties is a document requiring partition and it is compulsorily registrable under the provision of Section 17(1)(b) of the Act, 1908. The said document cannot be divided in two parts at convenience of the petitioners herein. If the document is unregistered, it is compulsorily registrable. It must be registered in accordance with law. Therefore, the plea raised by the petitioners deserves to be and is accordingly rejected. The trial Court is absolutely justified in rejecting the application filed by the petitioners.
7. Accordingly, the writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-