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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 13th November, 2018

Date of decision : 18th December, 2018

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O.M.P. 306/2009

SH. INDERJIT BAJAJ & ORS.

..... Petitioners

Through: Mr. Manish Makhija, Advocate.
(M:9810043363)

versus

SH. SUBHASH CHANDER BAJAJ & ORS. Respondents

Through: Mr. Manish Vashisht, Mr. Sameer Vashisht and Mr. Kapil Gupta, Advocates for Respondent Nos.1 to 3. (M:9871657630)
Mr. K.P. Mavi, Advocate for Respondent No.5. (M:9810435717)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present petition is filed by the Petitioner challenging the award dated 27th March, 2009 passed by the Ld. Sole Arbitrator. The background of the dispute is that Late Sh. Amar Nath Bajaj - the father of the parties had four sons, the oldest of them being Sh. Inderjit Bajaj. The other sons are Sh. Rajinder Kumar Bajaj, Sh. Subhash Chander Bajaj and Sh. Baldev Raj Bajaj. The family had various businesses including partnership firms, an HUF and other properties in the name of Sh. Amar Nath Bajaj. During his lifetime, Sh. Amar Nath Bajaj had made a Will dated 2nd May, 1983. Sh. Amar Nath Bajaj passed away on 30th January, 1987.

2. Thereafter, there was a deed of retirement from partnership in respect of the firm M/s Jai Hind Timber Store which is a document in writing dated

1st April, 1997. Apart from these documents, a third document titled Memorandum of Family Settlement dated 30th July, 1997 was also entered into between the parties.

3. Disputes had arisen in respect of the shares of the parties and the various assets and vide order dated 15th December, 2003, a Ld. Sole Arbitrator was appointed to adjudicate the disputes. The Ld. Sole Arbitrator divided the parties into various groups.

- Group no.1 consisted of Sh. Subhash Chander Bajaj
- Group No.2 and 3 consisted of Sh. Inderjit Bajaj and Sh. Rajinder Kumar Bajaj and
- Group no.4 consisted of the LRs of Sh. Baldev Raj Bajaj.

4. In the award, the Ld. Sole Arbitrator initially sets out the entire case between the parties. The first issue considered by the Ld. Arbitrator was whether by virtue of the deed of retirement dated 1st April, 1997, Sh. Subhash Chander Bajaj and Sh. Baldev Raj Bajaj of group no.1 and 4 had retired from the partnership of M/s Jai Hind Timber Store and whether the Memorandum of settlement dated 30th July, 1997 was executed by them. This issue arose because these two groups claimed, in the arbitral proceedings, that Sh. Inderjit Bajaj i.e. group no.2 was in charge of the business and several blank papers were signed by them including blank stamp papers at his behest. The execution of the documents were thus denied by Groups 1 and 4. The Ld. Sole Arbitrator, after considering the evidence of the witnesses came to the following conclusion in respect of this issue:

“28. It is significant to note that the original settlement deed (photocopy RW2(a/3)) at front page which is a

stamp paper all the brothers have signed and also on the other papers of this document. On the first page showing the date, the month and the year, there is a correction made in ink in the second digit '9' in the year '1997' and the said correction has been signed by all the brothers. In case this page of the stamp paper had not been typed before being signed by the brothers there could not have arisen any occasion for the correction being made as noted above and then the same being signed by the brothers.

29. This fact alone in my opinion is sufficient to prove that this story now being concocted by Group No.1 and 4 of Inderjit eldest brother having influence on the younger brothers and obtaining signatures of the younger brothers on blank stamp papers and other papers is incredible.

30. The retirement deed dated 1st April, 1997 RW2 (a/2) executed on a stamp paper has signatures of all the partners. Subhash Chander and Baldev Raj apparently retired from the partnership business of Jai Hind Timber Store. Subhash Chander admitted in cross-examination that prior to 1st April, 1997 he was actively participating in the conduct of the partnership business but since 1st April, 1997 he had stopped completely from participating in business of partnership. He had not given any reason for his stopping in participating in business of partnership from 1st April, 1997 onwards. The only inference is that he and Baldev Raj willingly and voluntarily retired from the said partnership business vide said retirement deed dated 1st April, 1997.

31. The learned counsel for Group No.1 has argued that in case the Retirement Deed was a genuine document, there is no reason why in the family settlement this business is shown allocated to Group No.2 and 3. Mere fact that the brothers have shown this business being allocated to Group No.2 and 3 in the family settlement does not mean that actually

Subhash Chander and Baldev Raj had not executed the retirement deed dated 1st April, 1997 by which they retired from the said business.

32. I thus hold that Jain Hind Timber Store belongs to only Group No.2 and 3 and Group No.1 and Group No.4 have no rights in the said partnership business since 1st April, 1997. ”

Thus, the Arbitrator held that Retirement the deed dated 1st April, 1997 is valid and duly signed by all the parties.

5. Insofar as the Memorandum of family settlement dated 30th July, 1997 and its validity is concerned, the Ld. Arbitrator after perusing the entire evidence on record and the possession of the properties held by the various parties, holds as under:

“50. It is settled legal position that in case the family settlement deed only records the division already made orally amongst the family members the same is not required to be compulsorily registered. In case the family settlement deed which is required to be compulsorily registered has been acted upon even then the validity of such a settlement deed can be upheld. This family settlement deed in a way partly records the allocation and division already made as per the will of the father although no mutations have been made in the municipal records or any other official records giving recognition to such division made under the will. It is true that the brothers have been in physical possession of the properties allocated to them as per the will. All the groups are not challenging the allocations made as per the will.”

6. From the above findings, it is clear that the Ld. Arbitrator came to a conclusion that the Memorandum partly records the allocation and division already made as per the Will and also considered the physical possession of

the properties allocated as per the Will, as also possession currently held by the parties.

7. However, the award does not end here, it goes on to hold that the Memorandum is unfair to Sh. Subhash Chander Bajaj and further holds that the family settlement itself partitioned certain joint properties which were not allocated in the Will or in the retirement deed. On the basis of that, there is no evidence led by Group no.2 and 3 to prove that any oral partition had taken place of the joint properties which were recorded in the Memorandum. The Ld. Arbitrator holds that since the Memorandum was not duly stamped and registered, it is invalid. Paragraphs 50 to 54 of the award are set out herein below:

“50. It is settled legal position that in case the family settlement deed only records the division already made orally amongst the family members the same is not required to be compulsorily registered. In case the family settlement deed which is required to be compulsorily registered has been acted upon even then the validity of such a settlement deed can be upheld. This family settlement deed in a way partly records the allocation and division already made as per the will of the father although no mutations have been made in the municipal records or any other official records giving recognition to such division made under the will. It is true that the brothers have been in physical possession of the properties allocated to them as per the will. All the groups are not challenging the allocations made as per the will.

51. As the family settlement which divides the other joint properties is on the face of it appears to be unfair to Subhash Chander Bajaj. Thus to that extent the family settlement cannot be legally sustained.

52. It is pertinent to note that the will of the father could not have partitioned joint Hindu property

without consent of the other members of the joint Hindu family. Significantly, all the members of the joint Hindu family have agreed to the allocations made in the will. Be as it may, no overt act has taken place since the demise of the father in relation to allocations of the joint family properties. As a matter of fact the will had allocated the properties as per the existing possession with regard to possession of particular property by particular member and that position continues till date.

53. The family settlement deed has by itself partitioned certain joint properties which were not allocated in the will apart from mentioning the existing fact of retirement of the two partners from the partnership firm M/s. Jai Hind Timber Store.

54. It is true that in so many words the settlement deed does not refer to earlier executed retirement deed. This would only show that the family settlement deed has not been properly drafted. There is no evidence led by group No2 and 3 to prove that any oral partition of the joint properties has taken place amongst the brothers and the memorandum of settlement only recorded the same. Mere fact that the deed has been given a title of memorandum does not itself imply that there had taken place at first an oral settlement which was later in point of time reduced into writing. So this settlement of deed on the face of it was required to be registered compulsorily as it divides immovable properties of value of more than Rs.100/-. There is no evidence showing that the settlement deed has been acted upon. On this ground also this settlement deed has to be held as invalid.

8. By holding so, the Ld. Arbitrator held that the shop-cum-godown no. 1/57 B, Kirti Nagar, New Delhi, is therefore liable to be divided amongst the legal heirs of Sh. Amar Nath Bajaj.

9. Insofar as the present petition is concerned, parties have restricted

their submissions in respect of the legal issue as to whether the Memorandum of family settlement dated 30th July, 1997 required registration and if so, what would be the status of the shop and godown no.1/57 B, Kirti Nagar, New Delhi.

10. It is the submission of Ld. Counsel for the Petitioner, on the basis of various judgments, that the Memorandum merely recorded the partition which was already entered into. There was nothing new that was being done in the Memorandum and hence it did not require registration. He submitted that most of the division had already taken place between the parties and the parties were in physical possession of their respective properties. He relies upon two documents i.e. a document allocating Taxpayers Identification Number (TIN) by the Sales Tax Department which shows that M/s Bajaj Plywood and Timbers which belonged to the Petitioners i.e. group no.2 and 3 was operating from the said premises. He further relied on a document dated 6th April, 1999 executed almost two years later in which Sh. Subhash Chander Bajaj was paid a sum of Rs.6 lakhs. He submitted that the parties having completely resolved their disputes by entering into the Memorandum, the finding of the Ld. Arbitrator that the Memorandum is invalid is liable to be set aside. Ld. Counsel further relies on the fact that the Respondents are taking contradictory pleas throughout the litigation. In fact, initially the Respondents sought to challenge the Memorandum as having not been executed at all in the manner that was presented by the Petitioners. Once the Ld. Arbitrator recorded findings on this aspect, and the plea of the Respondents was proved to be false, they thereafter changed their stand in the present petition. He submitted that the conduct of the Respondents itself shows that their pleas are malafide. The Memorandum is a validly executed

document. He relies on the following judgments:

- ***Hari Shanker Singhania & Ors. v. Gaur Hari Singhania & Ors.*** AIR 2006 SC 2488;
- ***Madan Lal Kapur v. Subhash Kapur & Ors.*** 105 (2003) DLT 987;
- ***Amarjeet Lal Suri v. Moti Sagar Suri & Ors.*** 119 (2005) DLT 295

11. On the other hand, Ld. Counsel for the Respondents submits that in the Will dated 2nd May, 1983, Sh. Amar Nath Bajaj specifically mentioned property bearing no.1/57B, Kirti Nagar, however, the bequest in respect thereof as per the Will dated 2nd May, 1983, is as under:

“12. That rest of the properties not hereby settled and bequeathed shall remain the Joint Hindu Family property of my all sons and their family members and the Karta of the HUF will be my eldest son as per Hindu Law.

13. That besides the properties as bequeathed above whatever properties that I may die possessed of shall belong to the Joint Hindu Family of my sons, the Karta of which will be my eldest son as per Hindu Law”

12. Thus, the Kirti Nagar property, about which nothing specific was stated in the Will dated 2nd May, 1983, was to be equally divided. He further submitted that the deed of retirement related only to the firm M/s Jai Hind Timber Store and no other property. Thus, according to him, the Kirti Nagar property was never agreed to be given to the Petitioners and the recordal in the Memorandum to this effect is not as per the oral partition. Mr. Manish Vashisht, Ld. Counsel also relies on the recent judgment of the Supreme Court in ***Shyam Narayan Prasad v. Krishna Prasad & Ors*** (2018) 7 SCC 646 to argue that the Memorandum required registration as per the

Registration Act as it sought to create a partition in the Memorandum itself and it was not a mere recordal of the partition that had taken place. He submitted that various parties relinquished their shares in the Kirti Nagar property and such relinquishment would require registration.

13. The Respondents had also filed a Section 34 petition challenging the impugned award dated 27th March, 2009. The challenge in the said petition was to the findings of the Ld. Arbitrator that the retirement deed dated 1st April, 1997 was genuinely executed. It was also claimed that the Memorandum dated 30th July, 1997 was forged and fabricated. However, the said OMP being OMP 456/2009 has been dismissed as withdrawn today.

14. With the withdrawal of the said petition, it is clear that the Respondents do not challenge the execution, existence or the fact that the settlement had taken place. What is challenged is the legal validity of the Memorandum. A perusal of the Memorandum shows that it consists of the following two recitals:

“... WHEREAS Shri Amar Nath Bajaj together with his four sons above named constituted a joint family AND WHEREAS with the passage of time several immovable properties were acquired, movable assets were created and business undertakings were constituted and established under various names or in the name of one or more members of the family for the benefit of the whole family. Share holding in the business and the properties is in the name of the above mention persons, their family members or the H.U.F. of the above mentioned persons, as per circumstances found favourable/beneficial to the business/family at relevant times, without having regard to ratio of share of individual members in their family as per SCHEDULE – A hereto. HEREAS Shri Amar Nath Bajaj died on 30th January, 1987 and the family business and

properties continued to remain jointly between the above parties.

WHEREAS the settlement contained herein is entered into between persons mentioned above, for the good and benefit and on behalf of themselves as well as their respective family members including the H.U.F's managed/handle by above mentioned persons and the parties have amicably decided to settle and adjust their holdings/governance amongst themselves after detailed and due deliberations in form and manner describe in SCHEDULE – B hereto. To give effect to the same, it is agreed to enter into this SETTLEMENT.”

15. None of the parties are aggrieved by any portions of the award in respect of any of the properties and assets except in respect of the Kirti Nagar property. The Kirti Nagar property is mentioned in Schedule A and the relevant entry in the Schedule A is set out herein below:

*“PARTICULARS OF PROPERTY/BUSINESS
PRESENT STATUS OF OWNERSHIP”*

...

*9. Shop-cum-Godown at I/57B,
Kirti Nagar, New Delhi*

*Sh. Amar Nath
Bajaj (Individual) -
Pending Clearance
from D.D.A.
Affidavits,
INDENMENTY
BOND AND
UNDERTAKINGS”*

16. In Schedule B, the Kirti Nagar property falls in the name of group no.1, i.e., Sh. Inderjit Bajaj. The same reads as under:

*“SH. INDERJIT BAJAJ (PARTY NO.1)
1. House property No.1514-B, Chandrawal Road,
Subzi Mandi, Delhi – 110007.*

2. $1/4^{th}$ Undivided Share of Agriculture Land with Farm House at Village Holambi Kalan, Delhi.
3. $1/2$ Share in business of Partnership Firm M/s. Jain Hind Timber Stores, Clock Tower, Subzi Mandi, Delhi.
4. Full Share in I/57B, Kirti Nagar, WHS, New Delhi (Subject to that All subsequent expenses/payments to D.D.A. to be borned by all the four parties in equal proportion)
5. $1/2$ Share in Tenancy Right of Godown at 1514, 1514(B), 1514 – C and 6926 at Chandrawal Road, Delhi.”

17. Despite this, as per the award, the Ld. Arbitrator holds that the Kirti Nagar property is to be partitioned amongst the family members equally and does not recognise that it has fallen in the share of Sh. Inderjit Bajaj.

18. What is interesting is that the Ld. Arbitrator has come to the conclusion that the Memorandum incorporates various terms which were already contained in the Will and in the retirement deed. On this, there is no dispute. However, insofar as the Kirti Nagar property is concerned, since the same was not bequeathed to any one specifically in the Will and was not subject matter of the retirement deed, the Ld. Arbitrator holds that for the first time, the Memorandum sought to vest the same to Sh. Inderjit Bajaj. Thus, the remaining heirs of Sh. Amar Nath Bajaj relinquished their shares in the Kirti Nagar property and since this relinquishment was happening for the first time, the Memorandum required registration.

19. The Memorandum of family settlement and the recitals thereto clearly record the fact that the parties have amicably settled and adjusted their holdings/governance amongst themselves after **“detailed and due deliberations”** as described in Schedule B. The Memorandum also records that it is **“to give effect to the same”** that the Memorandum is being entered

into. The signatures of all the parties on these documents is not disputed. The Schedules and contents thereof are not disputed. Any challenge raised to this document has also been withdrawn. The Ld. Arbitrator also comes to the conclusion that the arguments of the Respondents that it was signed on blank papers is also not made out. Thus, the question is - Did the Memorandum require registration?

20. The Ld. Arbitrator has recorded an important fact i.e., that there was a Will, there was a retirement deed and the parties are in occupation and possession of their respective properties as per the said two documents. The relevant portion of the award is extracted herein below:

“35.....It is admitted fact that the properties have been allotted as per the will are in possession of the brothers to whom such properties have been allotted”

21. Admittedly, the Kirti Nagar property is in possession of the Petitioners. Sh. Inderjit Bajaj, in his evidence, specifically stated that shop no.1/57B, Kirti Nagar was purchased by his father from DDA and his son – Sh. Sandeep Bajaj was doing business from this property under the name of Bajaj Plywood and Timber. This fact is thus not in dispute. The Memorandum therefore predominantly recorded settlement arrived at between the parties over the years based on the Will, retirement deed and other agreements. The fact that the Kirti Nagar property is not specifically mentioned in a document i.e. the Will or the retirement deed does not mean that there was no settlement thereof prior to the Memorandum. The said property was self-acquired property of Sh. Amar Nath Bajaj. It was not bequeathed in favour of any party in the Will dated 2nd May, 1983. He passed away on 30th January, 1987. However, no other member of the family

have stated or pleaded that his property was used by anyone else or was in possession of any of the family members, except that of Sh. Inderjit Bajaj. Further the document dated 6th April, 1999 under which the Respondents received a further amount of Rs.6 lakhs pursuant to Memorandum of family settlement also shows that there was a finality attached to the said Memorandum and it was accepted by all the parties. The said document dated 6th April, 1999 is set out herein below:

“Today on 6-4-1999, Sh. Subhash Bajaj, Sh. Baldev Bajaj, Sh. Tilak Bhasin and Sh. Pritpal Singh have got together and discussed in detail the Family settlement arrived at by Bajaj Family and with the agreement of all, it has been decided that Sh. Inder Bajaj and Sh. Rajinder Bajaj will give Rs. 6 lacs to Sh. Subhash Bajaj which will be shared by them in ratio of Rs. 3 Lacs each. After this Sh. Subhash Bajaj, Baldev Bajaj, Inder Bajaj and Rajinder Bajaj shall have no dispute between them. No brother shall raise demand of any kind and shall not quarrel. It has been further agreed that the family settlement arrived at between them shall prevail and be acceptable to all and each one deal with properties falling in his share as his individual property. Each brother shall facilitate help in mutating the property and no one shall object to the same. Secondly Inder Bajaj shall not back out from giving Subhash partnership in Rana Pratap Singh.”

22. In the light of the above facts, there was no occasion for the Ld. Arbitrator to arrive at a finding that the Memorandum was unfair to Sh. Subhash Chander Bajaj who was in fact the person who had received a further sum of Rs.6 lakhs pursuant to the said Memorandum.

23. The Memorandum, as held by the Ld. Arbitrator also, is not happily

worded but the acceptance and implementation thereof by the members of the family is not in dispute. The Memorandum having been signed by all concerned is evidence of the family settlement including the contents of the Will and the retirement deed and holding the same to be invalid would result in creating a disturbance among family members. It is the settled law that family settlements are meant to be honoured and not to be easily tinkered with. If family settlements are allowed to be challenged after they are duly executed and accepted by parties, it would result in enormous disquiet being created within the family.

24. Three of the brothers who had entered into this settlement have already expired and their legal heirs are currently fighting the present litigation. The Memorandum has to be used as a corroborative piece of evidence inasmuch as the same has been reiterated even on 6th April, 1999. All parties have gained in some form or the other by the execution of the Memorandum. The said process ought not to be reversed.

25. In ***Kale & Ors. v. Deputy Director of Consolidation & Ors. (1976) 3 SCC 119***, the Supreme Court held as under:

“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.”

38. Rebutting the arguments of the learned counsel for the appellant, Mr Sharma for the respondents contended that no question of estoppel would arise in the instant case inasmuch as if the document was to be compulsorily registrable there can be no estoppel against the statute. In the first place in view of the fact that the family arrangement was oral and the mutation petition was merely filed before the Court of the

*Assistant Commissioner for information and for mutation in pursuance of the compromise, the document was not required to be registered, therefore, the principle that there is no estoppel against the statute does not apply to the present case. Assuming, however, that the said document was compulsorily registrable the courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. This principle has been established by several decisions of this Court as also of the Privy Council. In *Kanhai Lal v. Brij Lal* [AIR 1918 PC 70 : LR 45 IA 118, 124 : ILR 40 All 487] the Privy Council applied the principle of estoppel to the facts of the case and observed as follows:*

“Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Ram Dei, against her own interests and those of her daughter, Kirpa, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordships' opinion he is bound by it, and cannot now claim as a reversioner.”

26. Recently, in ***Subraya M.N. v. Vittala M.N. and Ors.***(2016) 8 SCC 705 the above view has been reiterated as under:

“16. Even though recitals in Ext. D-22 are to the effect of relinquishment of right in Items 1 and 2, Ext. D-22 could be taken as family arrangements/settlements. There is no provision of law requiring family settlements to be reduced to writing and registered, though when reduced to writing the question of

registration may arise. Binding family arrangements dealing with immovable property worth more than rupees hundred can be made orally and when so made, no question of registration arises. If, however, it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it required registration and without registration it is inadmissible; but the said family arrangement can be used as corroborative piece of evidence for showing or explaining the conduct of the parties. In the present case, Ext. D-22 panchayat resolution reduced into writing, though not registered can be used as a piece of evidence explaining the settlement arrived at and the conduct of the parties in receiving the money from the defendant in lieu of relinquishing their interest in Items 1 and 2”

27. The Respondents have relied upon ***Shyam Narayan Prasad v. Krishna Prasad & Ors. (supra)*** to argue that since the document is not registered, it cannot be relied upon. The facts in the said case involved an agreement dated 30th January, 1990 which was executed by one of the parties in collusion with his brother. Since the same was a collusive document, the Supreme Court held that the document which sought to relinquish shares of the others required to be registered. In ***Sita Ram Bhama v. Ramavtar Bhama [SLP(C) 11067/2017 decision dated 23rd March, 2018]*** recently the Supreme Court held that a Memorandum of family settlement was inadmissible as it was not registered. In the said case, the Supreme Court rejected the condition that the settlement dated 9th September, 1994 was based on an earlier partition deed dated 25th October, 1992. Since, the father was alive on 25th October, 1992, the said document could not be construed to be a Will. Neither of the parties to the Memorandum dated 9th

September, 1994 had any rights on 25th October, 1992, when the settlement or partition purportedly took place. In this background, the Supreme Court came to the conclusion that the document dated 9th September, 1994 had to be considered as a relinquishment deed and required registration. The facts of these cases are clearly distinguishable.

28. In the present case, on the other hand, after the Will dated 2nd May, 1983, the father of the parties passed away on 30th January, 1987. The deed of retirement is dated 1st April, 1997. This shows that after the death of the father, there were various discussions and deliberations between the parties pursuant to which the partition was executed within the family members. The Memorandum itself records that the parties have “*amicably decided*” “*after detail and due deliberations*”. Thus, the partition of the family assets did not take place on one day. It was a continuing process after the demise of the father. The TIN number (Sales tax registration) allotted in respect of the Kirti Nagar property in favour of M/s. Bajaj Plywood & Timber, run by the son of Sh. Inderjit Bajaj, is of 1986. Thus, the family of Sh. Inderjit Bajaj was in occupation of this property even during the father’s lifetime. Until 2000, no partition of this property was sought, though it was in the exclusive possession of the family of Sh. Inderjit Bajaj. All these facts go to prove that the Memorandum was merely a recordal of various settlements/partitions effective between the parties over a long duration, based on the wishes of the father and thereafter based on a settlement arrived at between the parties including the Will and the deed of retirement. The family settlement thus clearly did not require registration. It was merely recording the settlement already arrived at and the partition which had already taken place between the parties.

29. The Ld. Arbitrator's finding that it required registration is thus clearly erroneous and is not sustainable. The award is accordingly set aside to the extent that it holds the Memorandum of family settlement dated 30th July, 1997 as being invalid. The remaining portion of this award is not under challenge. It is held that all the parties shall be bound by the Memorandum of family settlement dated 30th July, 1997.

30. OMP is allowed in the above terms.

PRATHIBA M. SINGH
JUDGE

DECEMBER 18, 2018

Rahul