

Civil Revision No.4102 of 2018
Date of decision:07.12.2021

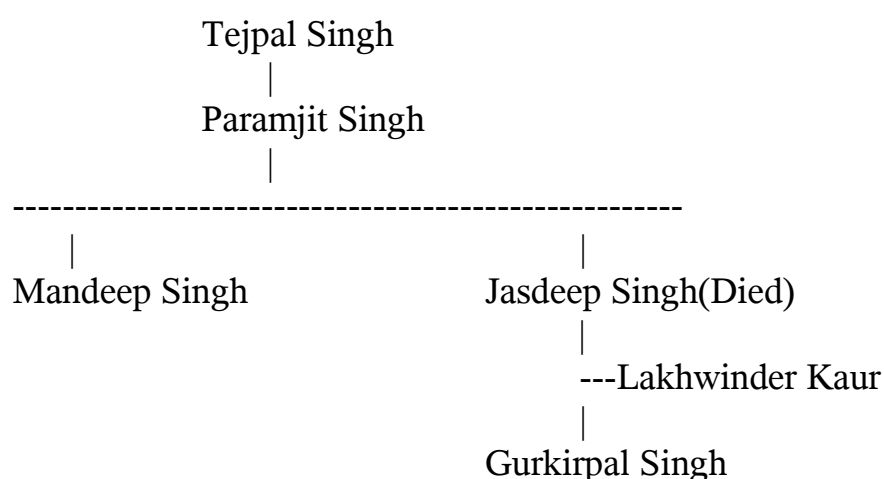
...Petitioner

...Respondents

**Mr. Bhupinder Ghai, Advocate,
for the respondents.**

ANIL KSHETARPAL, J (Oral)

It is unfortunate that the petitioner and respondents are litigating in the courts even after having settled their family dispute vide compromise dated 21.08.2009. At this stage, it will be appropriate to draw a pedigree table to understand the inter-se relationship between the parties:-



It is evident that the respondents are the widow and the minor son of the petitioner's pre-deceased son Jasdeep Singh. In the proceedings for grant of maintenance, the parties entered into a settlement on 21.08.2009, the terms whereof are extracted as under:-

“This compromise has been effected today on 21.8.2009 between Paramjit Singh son of Tejpal Singh son of Bhag Singh resident of Dalip Nagar, Arrey Mill Road, Mandi Gobhindgarh, Tehsil Amloh, Distt Fatehgarh Sahib, (Herein after referred to as party No. 1) and appellant in the present appeal well defendant in the as as Trial Court AND Lakhwinder Kaur daughter of Swaran Singh widow of Jasdeep Singh son of Paramjit Singh resident of Village- Mullanpur Kalan, Tehsil & Distt. Fatehgarh Sahib presently residing at Village Kahna, Tehsil & Distt- Kapurthala (Herein after referred to as the party No. 2) respondent in the present appeal and plaintiff in the Trial Court and Gurkirpal Singh minor son of Late Sh. Jasdeep Singh son of Sh. Paramjit Singh resident of Village Mullanpur kalan, Tehsil & Distt. Fatehgarh Sahib presently residing at Village Kahna, Tehsil & Distt-Kapurthalla (Herein after referred to as the party No. 3) respondent the and in present appeal plaintiff in the Trial Court. The terms and conditions of the compromise are as under:-

[1] That party No. who is appellant is admitting the claim of party No. 2 and 3 in and outside the scope of civil suit and appeal and is undertaking to transfer Three Acres of land in favour of party No. 3 Gurkirpal Singh and One Acre land in favour of party No. 2 Lakh winder Kaur out of his property which is actually in his name at present within a period of one month from today and party No. 1 Paramjit Singh will bear all the expense of transfer deed to be executed and registered in favour of party No. 2 & 3.

[2] That within the intervention of respectables without any pressure it has also been decided in between all the parties that the house and other constructed portion including all the agricultural and domestic Implements and Items which are at Village Mullanpur Kalan, Tehsil & Distt-Fatehgarh Sahib will be got transferred In favour of respondents who are plaintiffs in the Trial court and party No.1 Paramjit Singh will remain guardian as regarding the house implements and other items being transferred in the name of Gurkirpal Singh minor son of Jasdeep Singh during his life time but party No. 1 will not be competent to dispose, transfer alienate of any or property being transfer by Party No.1 through this compromise and will not be competent to use the property of minor in any manner rather minor Gurkirpal Singh will be treated to be owner in

possession of the agricultural land, house Implements and other items which will be transferred in his name by Party No.1 Paramjit Singh within period of one al month from today.

[3]. That party No.2 & 3 will not dispose of or alienate the property which is being transfer by Party No.1 Paramjit Singh in favour of p arty No.2 & 3 Lakhwinder Kaur and minor Gurkirpal Singh during the life time of Party No.1.

[3] That Party No. 1 has also got the matter compromised that he will not pay any remaining arrears in favour of party No. 2 & 3 on the basis of civil suit under appeal and party No. 2 & 3 will be entitled to all the past arrears and maintenance but in future p arty No. 2 & 3 will not be entitled to claim any further maintenance from party No.1 Paramjit Singh. 14] That Party No. 1 has already transferred the property in favour of his other son namely Mandeep Singh which is situated at Mandi Gobindgarh and is birth not less then 2 Crores Rupees and Mandeep Singh will not be entitled from any property and will not initiate any proceedings regarding the property in question because the property which have been transferred in favour of Mandeep Singh was self-acquired property of Party No. 1 Paramjit Singh and has been transferred in favour of Mandeep Singh without taking any consideration.

[6] That Party No. has compromised that remaining property of Village Mullanpur which is moveable and immovable property will be got transferred in favour of Party No. 3 after the death of Party No. 1 and Mandeep Singh will not be entitled to any share from the property situated at village Mullanpur Kalan, Tehsil & Distt. Fatehgarh Sahib and after the death of Party No. 1 Party No. 2 will be the guardian of Party No. minor TIS GurkirpaI Singh till he attains the age of majority.

[7] That Party No. 2 is effecting the compromise on her behalf and on behalf of party No. 3 as party No. 3 is minor and party No. 2 has no adverse interest against the said minor. Affidavit, to this effect is attached herewith.

[8] That in case party No. 1 Paramjit Singh refuses to transfer the property in favour of party No. 2 &

3 as mentioned above then party No. 2 & 3 will be entitled to become In of the owner possession - property mentioned in this compromise by approaching the civil and revenue authorities.

[9] That Party No. 2 & 3 will reside in the house situated at Village Mullanpur which Is being transferred in favour of Party No. 2 & 3 and will serve party No. 1 in the old age from today during his life time.

[10] That a copy of this compromise be placed on record of the Court for getting the needful done.

[11] That the present compromise has been made by the parties with their own free Will and. without any coercion or undue influence from any quarter.”

Pursuant to the aforesaid settlement, the statements of the parties were recorded by the court on 01.09.2009 and the litigation was disposed of in terms of the settlement. The respondents allege that the petitioner has failed to honour the settlement and therefore, filed an execution petition. The petitioner's objection petition has been dismissed by the Executing Court as well as by the Appellate Court.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the petitioner contends that since the compromise deed is with respect to the property which is not included in the suit property, therefore, it required compulsorily registration in view of Section 17(2)(vi) of the Indian Registration Act, 1908. He further contends that in view of Section 52 of the Indian Contract Act, 1872, the respondents were required to comply with Clause 9 of the settlement and since they have failed, therefore, the settlement being in the nature of a reciprocal agreement, the petitioner is not required to honour the agreement.

Per contra, the learned Counsel representing the respondents contends that the respondents made all efforts to honour the agreement and in fact, respondent no.1 went to village Mullanpur to reside there but the petitioner himself was not residing in the said village. It has been contended that both the courts have examined the matter at length and found that the petitioner does not reside in the village. He further contends that the said settlement being in the nature of family settlement does not require registration as the petitioner has only recognized the pre-existing rights of the respondents, they being his widowed daughter-in-law and grand son.

After having heard the learned counsels for the parties at length, this Bench is of the considered view that there is no substance in the present revision petition. From a careful reading of the settlement arrived at, it is evident that such settlement is in the nature of a family settlement which is entered in order to resolve the dispute/differences between the family members. The respondents are members of the same family and are not strangers. It is admitted in the settlement itself that petitioner no.1 has already given the share of Sh. Mandeep Singh, the other son. It has also been provided that Sh. Mandeep Singh has no right, title or interest in the remaining property.

Keeping in view the aforesaid facts, the parties have admitted that the respondents have a pre-existing right. In such circumstances, the settlement does not require registration. Section 17(2)(vi) would have been applicable if the parties were not members of a single joint family. Section 17(2) of the Registration Act, 1908, is applicable only if Section 17(1)(b) or (c) are applicable. The resolution of disputes through family settlement has

been honoured by the courts as a special arrangement in order to resolve the dispute. Sometimes, the court applies the rule of estoppel to honour such settlements and on other occasions, the Courts have been devising other possible ways to uphold such settlements. In **Kale and others vs. Deputy Director of Consolidation and others, (1976) 3 SCC 119**, the court held that after having arrived at a family settlement and acting thereupon, the parties are estopped from challenging the same. The relevant discussion is in para 38, 39 and 42, which is extracted as under:-

*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 and Anr.**(3) 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.

*39. This Court in **Dhiyan Singh and Anr. v. Jugal Kishore***

and Anr. (1) observed as follows:

"We do not think the fact that there was a voluntary compromise whereas here there was the imposed decision of an arbitrator makes any difference because we are not proceeding on the footing of the award but on the actions of the parties in accepting it when they need not have done so if the present contentions. are correct.

Even if the arbitrator was wholly wrong and even if the had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other an absolute estate in the properties they agreed to divide among themselves and did divide. That, in our opinion is a representation of an existing fact or set of facts. Each would consequently be estopped as against the other and Brijlal in particular would have been estopped from denying the existence of facts which would give Mst. Mohan Dei an absolute interest in the suit property."

In view of the principle enunciated in the aforesaid case it is obvious that respondents 4 & 5 would be estopped from denying the existence of the family arrangement or from questioning its validity.

42. *Finally in a recent decision of this Court in S.Shanmugam Pillai case (supra) after an exhaustive consideration of the authorities on the subject, it was observed as follows:*

"Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

As observed by this Court in T. V. R. Subbu Chetty's Family Charities' case (supra), that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."

In these circumstances there can be no doubt that even if the family settlement was not registered it would operate

as a complete estoppel against respondents 4 & 5. Respondent No. 1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases. The learned counsel for the respondents placed reliance- upon a number of authorities in Rachcha v. Mt. Mendha, Chief Controlling 6 Revenue Authority v. Smt. Satyawati Sood and others and some other authorities, which, in our opinion have no bearing on the issues to be decided in this case and it is therefore not necessary for us to refer to the same.”

Still further, in **Roshan Singh and others vs. Zile Singh and others, AIR 1988 SC, page 881, (2018)14 SCC 814**, the court held that a family settlement reduced into writing is a memorandum of family settlement and therefore, the courts would lean in favour of upholding the family settlement. The relevant discussion is in paragraphs 15 and 16 of the SCC report, which is extracted as under:-

“15. This view was adopted by the Privy Council in subsequent decisions and the High Courts in India. To the same effect is the decision of this Court in Sahu Madho Das & Ors. v. Pandit Mukand Ram & Anr., [1955] 2 SCR 22. The true principle that emerges can be stated thus: If the arrangement of compromise is one under which a person having an absolute title to the property transfers his title in some of the items thereof to the others, the formalities prescribed by law have to be complied with, since the transferees derive their respective title through the transferor. If, on the other hand, the parties set up competing titles and the differences are resolved by the compromise, there is no question of one deriving title from the other, and therefore the arrangement does not fall within the mischief of Section 17 read with Section 49 of the Registration Act as no interest in property is created or declared by the document for the first time. As pointed out by this Court in Sahu Madho Das' case, it is assumed that the title had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.

16. In the present case, admittedly there was a partition by metes and bounds of the agricultural lands effected in the year 1955 and the shares allotted to the two branches

were separately mutated in the revenue records. There was thus a disruption of joint status. All that remained was the partition of the ancestral residential house called rihaishi, the smaller house called baithak and ghers/ghetwars. The document Exh.P-12 does not effect a partition but merely records the nature of the arrangement arrived at as regards the division of the remaining property. A mere agreement to divide does not require registration. But if the writing itself effects a division, it must be registered. (See [Rajangam Ayyar v. Rajangam Ayyar, LR \(1923\) 69 IA 123](#) and [Nani Bai v. Gita Bai, AIR \(1958\) SC 706](#). It is well-settled that the document though unregistered can however be looked into for the limited purpose of establishing a severance in status, though that severance would ultimately affect the nature of the possession held by the members of the separated family as co-tenants. The document Exh. P-12 can be used for the limited and collateral purpose of showing that the subsequent division of the properties allotted was in pursuance of the original intention to divide. In any view, the document Exh. P-12 was a mere list of properties allotted to the shares of the parties.”

There is yet another recent judgment of the Hon'ble Supreme Court in **Thulasidhara and another vs. Narayanappa and others, (2019) 6 SCC 409**. In this judgment, the Hon'ble Supreme Court held that the alleged agreement of family settlement is only a list of joint properties which were partitioned and hence, did not require registration.

Keeping in view the aforesaid facts, there is no substance in the first argument of the learned counsel representing the petitioner.

As regards the second argument, it may be noted that Section 52 of the Indian Contract Act, 1872, is not applicable in the facts and circumstances of the present case. The Clause 9 of the settlement is not a condition precedent for the petitioner to perform his part of the agreement. Moreover, both the courts have already held that it is the petitioner who himself is not residing in the village and therefore, the respondents are not obliged to reside in the said village.

Keeping in view the aforesaid facts, no ground to interfere, with the orders passed by the courts below, is made out, while exercising jurisdiction under Article 227 of the Constitution of India.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

07th December , 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No