

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.395 of 2021(O&M)
Date of Order: 16.07.2021

Gian Chand

..Appellant

Versus

Bhagwant Rai

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate, and
Mr. Arun Jindal, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts. The parties shall be referred to as per their status in the suit.

The plaintiff-appellant assails the correctness of the judgment and decree passed by the learned first appellate court, resulting in dismissal of his suit for exclusive possession by way of partition of the house property. The plaintiff and the defendant are brothers.

Some facts are required to be noticed.

The plaintiff-appellant claiming to be the joint owner of the property to the extent of equal share in House No.B-IV/730, located in Krishna Colony measuring 0-7.1/3 marlas has sought a partition decree. The plaintiff and defendant purchased the property vide a sale deed dated 21.07.1980.

On the other hand, defendant-Bhagwant Rai, the brother of the plaintiff admits that the property in dispute was purchased jointly.

However, he purchased another plot measuring 3 marlas situated near Kuka Samarak, Ajit Nagar, vide a sale deed dated 06.08.1986. In order to maintain peace and harmony in the family, a family settlement took place and the property in dispute came to the share of the defendant, whereas the property situated in Ajit Nagar came to the share of the plaintiff. It was also agreed that the defendant would pay a sum of Rs.15,000/- to the plaintiff which was duly paid in two instalments, respectively, on 03.12.1986 and 03.01.1987. The defendant is owner of the suit property to the exclusion of the plaintiff, whereas the plaintiff is owner of the house at Ajit Nagar to the exclusion of the defendant.

The plaintiff filed a replication reiterating the stand taken in the plaint.

The learned trial Court on appreciation of the pleadings, framed the following issues:-

- “1. Whether the plaintiff is entitled for the exclusive possession of ½ share in the suit house bearing No.B-IV/730 by way of partition as prayed for ?OPP*
- 2. Whether the defendant is sole owner of dispute house on the basis of agreement dated 03.12.1986?OPD*
- 3. Whether the present suit of the plaintiff is barred under Order 2 Rule 2 CPC?OPD*
- 4. Whether the present suit is bad for non joinder and mis-joinder of necessary parties?OPD*
- 5. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the Court?OPD*
- 6. Relief.”*

The plaintiff in order to prove his case appeared as PW2 and also examined Mahinder Kumar as PW1, who is a bank official. Apart from producing certain other documents, a copy of the registered sale deed dated 21.07.1980 was also produced.

On the other hand, defendant examined as many as 11

witnesses including himself. He proved the writing dated 03.12.1986 by examining Kewal Krishan as DW1 (the scribe) and Sh. Ashok Kumar son of Prem Chand as DW3 (who identified the signatures of his father as a marginal witness on an agreement dated 03.12.1986). The defendant also examined RV Vasist, Hand Writing and Finger Print Expert as DW2, who opined that the plaintiff appended his signatures on the agreement dated 03.12.1986.

The learned trial court on appreciation of evidence, held that the family settlement dated 03.12.1986 being an unregistered document is not admissible in evidence. Thus, the suit filed by the plaintiff was decreed.

The defendant filed an appeal which has been accepted by the first appellate court while returning a finding that the family settlement does not require registration. It has also been found that the plaintiff has admitted his signatures on Ex.D1, the deed of family settlement. That after 1990, the families have been residing separately and the family of Gian Chand-plaintiff/appellant is residing in the property situated at Ajit Nagar which was purchased by the defendant-Bhagwant Rai. Such findings have been arrived at on the basis of ration card, voter card and other documents, whereas it has been found that the family of Bhagwant Rai-defendant resides in the property in dispute i.e Krishan Colony, exclusively. Thus, it has been held that the family settlement has not only been proved but also has been acted upon.

Heard learned counsel for the appellant at length and with his able assistance perused the paper book.

The learned counsel for the appellant contends that in the absence of registration, the alleged family settlement was not admissible in

evidence and therefore, the first appellate court has erred in reversing the judgment. He further submits that the un-amended replication could not be looked into. He, in support of his argument, relies upon the following judgments:-

1. ***Ravinder Kaur and others vs. Jagmohan Singh and others (RSA No.4131 of 2001, decided on 04.08.2004)***
2. ***Mukhtiar Singh vs. Balwinder Singh (RSA No.2528 of 2007, decided on 16.01.2009)***

This Bench has considered the submissions and now proceeds to analyze the same.

At the outset, it must be noticed that the learned counsel does not dispute the correctness of the finding of fact arrived at by the first appellate court with regard to the proof of family settlement and that it was duly acted upon. He also does not question the correctness of the finding of the court that both the families are residing separately, since 1990.

The observations of law made in paragraph 26 of the judgment in **Maturi Pullaiah And Anr. Vs Maturi Narasimham And Ors. AIR 1966 SC 1836** reflects the view of the Court which is extracted as under:-

26. Briefly stated, though conflict of legal claims in present or in future if generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide 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.

The admissibility of the family settlement has been the subject matter of debate. The courts have always held that once the dispute

between the parties is settled by way of a family settlement, the courts should be loath to disturb the same. In **Kale and others vs. Deputy Director of Consolidation and others, (1976)3 SCC 119**, the Hon'ble Supreme Court held that if the alleged family settled is reduced into writing and is in the form of a memorandum, then the same does not require registration.

With regard to a family settlement, the court held that the parties are estopped from disputing the same. In that judgment, the Court propounded that the party after having taken the benefit of the alleged family settlement is estopped from questioning 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 & 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 that 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.

It is, thus, apparent that the Supreme Court, consistently, held that even if a document is not admissible in evidence due to lack of registration, the courts would lean in favour of upholding the same. In this case, as noticed, the family settlement stands proved. It is also proved that it has been acted upon since 1990. The question is whether the court should disturb the same on a technical ground. The answer to the aforesaid question has to be in negative.

As regards the judgments relied upon by the learned counsel representing the appellant, it may be noticed that those judgments are of learned Single Bench of the High Court. In accordance with the consistent view of the Supreme Court, the judgments relied upon by learned counsel

for the appellant cannot be preferred. Still further, in both the judgments relied upon by learned counsel representing the appellant, the attention of the Court was not drawn to the applicability of the Rule of Estoppel.

It is not the case of the plaintiff that such distribution is inequitable. Still further, the receipt dated 03.01.1985 acknowledges a past transaction. Such a document does not require registration.

The last argument of the learned counsel representing the appellant is with regard to an un-amended replication relied upon by the first appellate court. It may be noted that the un-amended pleadings remain a part of the court file and can be looked into by the court. After the amendment of the pleadings, the un-amended pleadings can be seen by the court.

Still further, the plaintiff himself has pleaded in the un-amended replication that the property at Ajit Nagar was also purchased from the joint funds, although, in the name of defendant. The defendant, while appearing in evidence, has admitted that in a family settlement the house at Ajit Nagar has come to the share of the plaintiff.

Keeping in view the aforesaid facts, this bench does not find it appropriate to interfere with the findings of fact arrived at by the first appellate court.

Hence, the appeal is dismissed.

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

16th July, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No