

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

RSA-1972-2016 (O&M)
Date of decision: 10.03.2025

RAMA RAI

..Appellant

Versus

ANUPAM KAPOOR AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Bhardwaj, Advocate
Ms. Priyadarshini Dewan, Advocate
Mr. Himanshu Singhal, Advocate for the appellant.

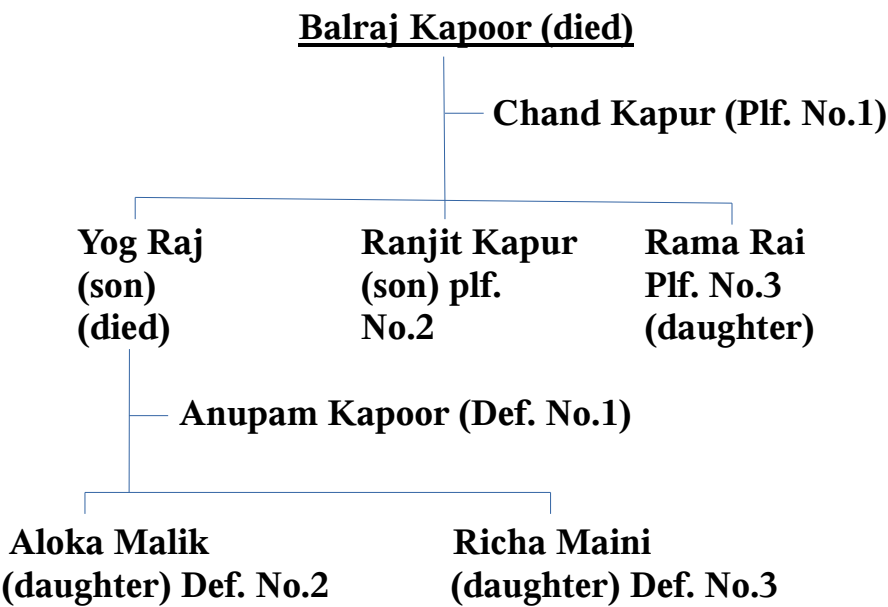
Mr. K.S. Dadwal, Advocate
Ms. Neha Jain, Advocate for respondent No.1.

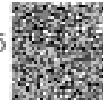
Mr. Anil Shukla, Advocate for respondent No.2.

ANIL KSHETARPAL, J(Oral)

I. Brief facts of the case:-

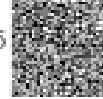
1. The plaintiff assails the correctness of First Appellate Court's judgment, which in turn has reversed the judgment and decree passed by the trial Court.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief and a family tree, are required to be noticed.





3. Smt. Rama Rai is married daughter of Sh. Balraj Kapoor. She filed a suit for grant of decree of declaration claiming herself to be the owner in possession of the suit property i.e. plot No.A-2461, Green Field Colony, Faridabad against two defendants in the suit. Defendant No.1 is the colonizer, whereas, defendant No.2. Smt. Anupam Kapoor is widow of Sh. Yograj Kapoor. It is claimed by the plaintiff that the property was allotted to her father Sh. Balraj Kapoor, who died on 26.12.1984.

4. In a family settlement executed between the heirs of Sh. Balraj Kapoor namely Smt. Chand Kapoor (widow), Sh. Yograj Kapoor & Sh. Ranjit Kapoor (two sons) and Smt. Rama Rai, the suit property was relinquished in her favour on 18.06.1985 (Ex.P-13). Sh. Yograj Kapoor died on 17.11.1996. Subsequently, again an oral settlement was arrived at on 28.02.1997, acknowledging the settlement dated 18.06.1985, which was followed by a memorandum of partition dated 31.05.1997 (Ex.P-5). With respect to other properties left behind by Sh. Balraj Kapoor, other heirs of Sh. Balraj Kapoor filed Civil Suit No.35/17.01.1998 against the legal representatives of Sh. Yograj Kapoor, which was dismissed on 25.02.2006, however, memorandum of family settlement dated 31.05.1997 was proved. The defendants denied the family settlement and claimed that previous suit was dismissed on 25.02.2006. In order to prove her case, the plaintiff produced the various documents including relinquishment/family settlement dated 18.06.1985 and memorandum of partition dated 31.05.1997. In order to prove these two documents, she herself appeared as PW-1 and examined Sh. Ranjit Kapoor, her brother as PW-3. The trial Court decreed the plaintiff's suit after recording findings of fact that the family settlements dated 18.06.1985 and 31.05.1997 are proved.

**II. Reasons recorded by the First Appellate Court:-**

5. The First Appellate Court has reversed the judgment of the trial Court on the following grounds:-

- i. The memorandum of family settlement dated 31.05.1997 is not registered. It is a deed of partition, hence, it required registration.
- ii. The plaintiff did not seek permission to lead secondary evidence.
- iii. The plaintiff has not sought rectification of instrument dated 31.05.1997 because there is an error that instead of plot No.370, it should be plot No.270.

6. It may be noted here that Sh. Balraj Kapoor was owner of only one property in District Faridabad i.e. the suit property namely plot No.A-2461 (old No.K-270).

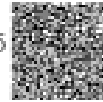
III. Arguments put forth by learned counsel for the parties:-

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

8. Learned counsel representing the respondent No.1 submits that the plaintiff did not seek permission to lead secondary evidence and instrument dated 31.05.1997 requires compulsory registration as per Section 17 of the Registration Act, 1908, as it amounts to transfer of the immovable property worth more than Rs.100/-.

IV. Analysis and Discussion:-

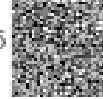
9. This Court has considered the submissions of learned counsel for the parties.



10. The First Appellate Court while passing the judgment has committed multiple significant errors. The plaintiff while appearing in evidence produced the original exhibited documents Ex.P-1 to Ex.P32. During the course of cross-examination, the original documents Ex.P-1 to Ex.P-32 were produced and the said documents were examined by the Court and thereafter were returned. Hence, the First Appellate Court was incorrect in observing that original documents were not produced in evidence. Moreover, the Evidence Act, 1872, classifies evidences into primary evidence and secondary evidence. The aforementioned act does not lay down any provision that mandates filing an application seeking permission from Court to lead secondary evidence. Once, the evidence has been led, the Court is required to examine whether the document is primary or secondary evidence, and also its admissibility as per the law. In this case, original documents were brought by the plaintiff, examined by the Court and returned after verifying the correctness of photocopies, hence, for all intents and purposes, the originals were produced on record.

11. Secondly, the First Appellate Court has erred in overlooking the statement of PW-2 Sh. Sanjeev Sharma, Senior Manager, Urban Development Company Pvt. Ltd., the colonizer. He made statement that Sh. Balraj Kapoor was allotted only one plot in Green Field Colony, which was earlier numbered as K-270, which was changed to A-2461. Hence, the rectification of document was not required. In any case, the Court could have ordered rectification, if required.

12. This Court in **Regular Second Appeal No.395 of 2021, titled as Gian Chand Vs. Bhagwant Rai, decided on 16.07.2021**, has examined the aspect of compulsory registration in detail.



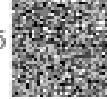
13. The Three Judge Bench of the Supreme Court in **Kale and others Vs. Deputy Director of Consolidation and others, 1976 AIR (SC)**

807, held that if the alleged family settlement is reduced into writing and is in the form of a memorandum, then the same does not require registration.

14. 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 portion has been discussed in para 38, 39 and 42, which is reproduced below:-

*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.

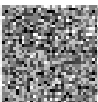
Even if the arbitrator was wholly wrong and even if the had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other an absolute estate in the properties they agreed to divide among themselves 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.”

15. 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 the aforementioned 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.

16. The Apex Court while interpreting the law with respect to compulsory registration has laid down 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 by invoking rule of estoppel.

V. Decision:-

17. In view of the aforesaid reasoning which need not be discussed in detail, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

18. With these observations, the appeal is allowed.

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

March 10th, 2025

(ANIL KSHETARPAL)
JUDGE

Ayub

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