

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3079 of 2024 (O&M)

Reserved on: 17.01.2025

Date of Order:20.01.2025

Kartar Chand Verma (Deceased) through LRs

.Appellant

Versus

Veena Verma and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Bali, Sr. Advocate, with
Mr. Abhishek Sharma, Advocate
Mr. Gagandeep Singh, Advocate
for the appellant.

Mr. Gaurav Chopra, Sr. Advocate, with
Ms. Gauri C. Kaushal, Advocate
for the respondents.

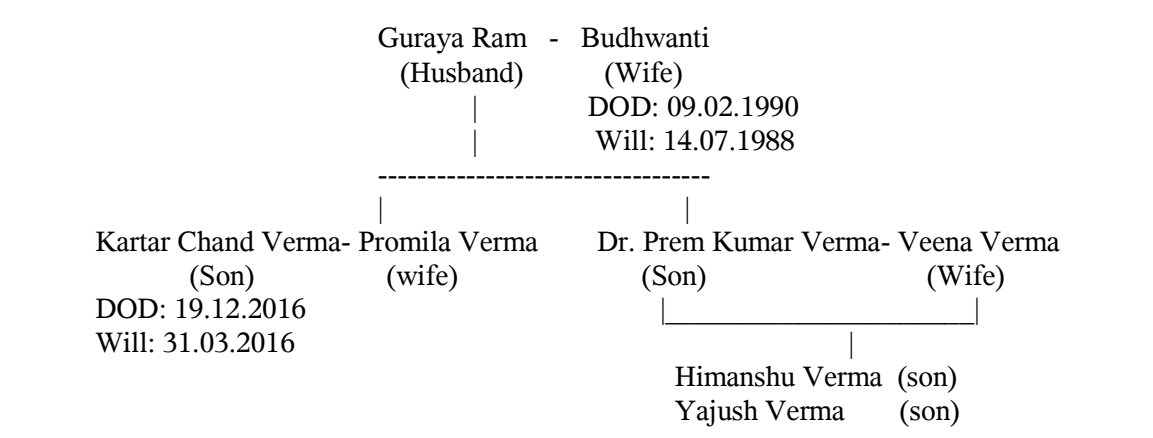
ANIL KSHETARPAL, JUDGE (Oral)

1. FACTUAL BACKGROUND:

1.1 In this Regular Second Appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the Courts below while dismissing his suit for grant of decree of declaration to the effect that he is co-owner and in joint possession of half share in 1/6th share of land measuring 1 bigha and 16 biswas (1875 Sq. Yds.) and for grant of further declaration that the decree suffered by Smt. Veena Verma in favour of her two sons on 05.02.2015 is illegal, null and void and not binding upon the plaintiff's right with a consequential relief of permanent injunction.

1.2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

1.3. The family tree of the parties is drawn as under:-



1.4. On 11.05.1988, by virtue of three sale deeds, Smt. Budhwanti and Smt. Veena Verma purchased 1/6th share of land measuring 1 bigha and 16 biswas in the following manner:-

“-Sale deed no.1135 sold by Pukhraj to Budhwanti,
-Sale deed no.1144 sold by Kapil Kumar to Veena Verma,
-Sale deed no.1145 sold by Om Parkash to Veena Verma and Budhwanti.”

1.5. Smt. Budhwanti died on 09.02.1990 and on the basis of her bequest dated 14.07.1988, Sh. Kartar Chand Verma, the plaintiff became owner of the same. On 29.03.1997, settlement deed was executed between the parties, wherein it was recorded as under:-

“6. That the above settlement has been arrived at mutually vide which Ist party becomes owner of 2/3rd portion of ground floor (Southern side) together with absolute ownership of building on Ist & IInd floors and on other further floors to be constructed later on by her. The IInd party will have only 1/3rd share in the ground floor on (Norther side) with right of passage as stated above to the back yard and right to fix a door towards

back side.”

1.6. Subsequently, the parties executed two lease deeds on 31.03.1997 and 23.04.2004, with respect to ground floor of the premises. In the aforesaid lease deeds, it was clearly recorded that Sh. Kartar Chand Verma has 1/3rd share in the ground floor on Northern side, whereas Smt. Veena Verma is the owner of 2/3rd share.

1.7. On 08.04.2002, Ex.D10, plaintiff, who is a retired Chief Engineer, wrote a letter acknowledging that he is the owner of 1/3rd share of the ground floor, whereas Smt. Veena Verma is the owner of remaining 2/3rd share. The communication was sent while offering the property for lease.

1.8. However, subsequently, the plaintiff filed the suit, as already noticed.

2. **ARGUMENTS ADDUCED:**

2.1. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the photocopy of the record which was produced by the learned counsels, correctness whereof is not disputed.

2.2. The learned counsel representing the appellant has made the following submissions:-

- (1) the settlement dated 29.03.1997, is unregistered and is a result of fraud and the Deed of partition of the property required registration.
- (2) on 30.04.1997, a suit was filed against Municipal Corporation wherein it was recited that Sh. Kartar Chand Verma and Smt. Veena Verma are owner to the extent of half share each

2.3. Per contra, the learned counsel representing the respondents submits that the family settlement has already been acted upon and it is a memorandum of family settlement which does not require registration.

3. ANALYSIS AND DISCUSSION

3.1. This court has considered the submissions and has analyzed and evaluated the arguments of the learned counsel representing the parties.

3.2. On careful reading of para 4 of the settlement deed executed on 29.03.1997, it becomes evident that the parties had previously constructed the property while contributing the amount. Smt. Veena Verma contributed Rs.3,00,000/-, whereas Sh. Kartar Chand Verma contributed Rs.1,25,000/-. It is in that context that para 6 has been written, wherein it has been agreed that Smt. Veena Verma would be owner of 2/3rd portion of the ground floor (Southern side) together with absolute ownership of building on Ist & IInd floors, whereas Sh. Kartar Chand Verma will only have 1/3rd share on the ground floor on (Norther side) with right of passage as stated above to the back yard. As already noticed, that the family settlement has acted upon and there was no dispute between the parties till the suit was filed on 21.07.2010.

3.3. With regard to the first submission of the appellant's counsel, who also relies upon the judgment passed by the Supreme Court in **Sita Ram Bhama vs. Ramavtar Bhama**, (Civil Appeal No.3171 of 2018 (Arising out of SLP(C) No.11067 of 2017), decided on 23.03.2018), it may be noticed that the Supreme Court has been leaning in favour of upholding the family settlement for the last more than 70 years. A three Judge Bench in **Kale and others vs. Deputy Director of Consolidation and others, (1976) 3 SCC 119**, after discussing in detail the previous decisions 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 [s. 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 'It 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.”

3.4. It is evident that the Supreme Court laid down six tests. If these tests are applied, it becomes evident that the memorandum of family settlement and subsequent documents fulfill the aforesaid requirement. In **Kale's case (supra)**, the Supreme Court also held that rule of estoppel can be applied to debar the party who wants to resile from the settlement. In **Ravinder Kaur Garewal and another vs. Majit Kaur and others, (2020) 9 SCC 706**, the aforesaid view was reiterated and it was held that such document does not require registration and if due to any legal formal defect, it is found that such document requires registration then rule of estoppel can be invoked to hold the document.

3.5. The judgment in **Sita Ram Bhama's case(supra)** is in the different context. The application under Order VII Rule 11 CPC was allowed by the trial court while rejecting the plaint. The plaintiff thereafter filed a fresh suit for grant of possession and permanent injunction in which the document dated 09.09.1994, evidencing family settlement was filed which was objected to. The trial court held that document is not admissible in evidence which was upheld by the High Court. The Supreme Court held that the document could be considered for collateral purpose and the

plaintiff was granted opportunity to make good the deficiency in affixing the stamp duty. Hence, the aforesaid judgment does not help the appellant.

3.6. Similarly, the second argument of the appellant's counsel lacks substance because there is no estoppel against the defendant on filing a joint suit wherein it was asserted that the parties are owners to the extent of equal share. It has not been shown by the appellant that he changed his position on account of the aforesaid assertions. Moreover, the appellant does not dispute his signatures on two lease deeds as well as letter Ex.D10, wherein it is acknowledged that his share is 1/3rd whereas 2/3rd belongs to the defendants in the ground floor.

4. **DECISION**

4.1. For the foregoing discussion, finding no merit, the appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

20th January, 2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No