219 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2213-2014 (O&M)
Date of decision : 20.02.2025

Smt. Shavinder Kaur and others **...Appellants**

Vs.

Gurdeep Singh (deceased) through his Lrs and another **...Respondents**

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Chopra, Sr. Advocate with
Ms. Darika Sikka, Advocate
for the appellants.

Mr. G. S. Nagra, Advocate
Mr. P.S. Chahal, Advocate
for the respondents.

***

ANIL KSHETARPAL, J. (Oral)

1. The defendants assail the correctness of the First Appellate Court's judgment which in turn has reversed the judgment of the trial Court.

2. On 01.03.2006, the plaintiffs (respondents herein) filed the suit for declaration to the effect that the land measuring 107 kanals 06 marlas is in joint ownership and possession of the parties and the alleged family partition dated 02.07.1991 is illegal, null and void.

3. The defendants contested the suit on the basis of deed of partition on 02.07.1991. The trial Court dismissed the plaintiffs suit while observing that the family partition dated 02.07.1991 has already been acted upon.

4. The First Appellate Court has reversed the trial Court's decree on

the following two grounds:-

1. The deed of family partition is in the praesenti, hence, required mandatory registration.
2. As per family partition, the parties were to get their khewats separated from revenue authorities but no steps were taken in this direction.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

6. It would be noticed here that the plaintiff after giving his deposition in examination-in-chief and after having been partially cross-examined did not come into the witness box to complete his cross-examination. The plaintiffs examined PW2-Tarsem Singh and PW3-Balkar Singh. Both these witnesses of the plaintiffs admitted that there was a family partition and the same have been acted upon. The relevant extract of their statements are extracted as under:-

> *"It is correct that on 02.07.1991 a writing for family partition took place between the plaintiff and defedt. It is correct that the plaintiff and defdt. started to their own land separately by virtue of the partition dated 02.07.1991."*

7. In ***'Kala and others vs. Deputy Director of Cosolidation and others', 1976 AIR (SC) 807***, a celebrated judgment of the Hon'ble Supreme Court, it was held that unregistered family partition will be honoured by the Court by invoking the doctrine of estoppel if the family partition has been acted upon. In ***'Gian Chand vs. Bhagwant Rai'***, in **RSA-395-2021**, decided on

16.07.2021, this Court examined the aforesaid aspect in the following manner:-

"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 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."*

8. Furthermore, in ***Roshan Singh and others vs. Zile Singh and others, (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 judgment, 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."*

9. 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.

10. It is, thus, apparent that the Supreme Court has 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, execution of the family settlement by all the family members 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.

11. It is evident from the depositions of two witnesses examined by the plaintiff that the execution of the family partition is not only admitted but

also acted upon. It has also come on record that the defendants were given the inferior quality land, which was *banjar kadim*. The defendants with their hard work have made it cultivable. This appears to be the reason for the plaintiffs to file the suit.

12. Hence, the first reason assigned by the First Appellate Court is erroneous.

13. With regards to the second reason, it would be noticed that the Punjab Land Revenue Act, 1887 does not lay down the mandatory affirmation of mutual partition in the revenue record. It has been laid down in ***'Ajmer Singh vs. Dharam Singh', 2006(1) PLJ 442*** that failure of the parties to seek affirmation of private partition from the Revenue Authorities, if otherwise proved on record, would not adversely impact the admissibility of the document.

14. Learned counsel representing the respondents submits that it is recorded in the deed of partition that the parties will appear before the Revenue Officer and get their respective share separated. He submits that the family partition was subject to the aforesaid condition.

15. This Court has considered the submissions made by the learned counsel representing the parties and pursued the deed of family partition, which has been produced by learned counsel representing the respondents. It is evident that the parties divided the property by metes and bounds. The property which fell to the share of plaintiffs has been identified by rectangle and khasra numbers. The remaining property fell to the share of the defendants. It is recorded in the deed of partition that the parties have taken possession in

accordance with the deed of partition. It is not provided that failure to seek affirmation by the Revenue Officer would nullify the agreement for family partition. It is specifically stated that the party who will back out from the agreement shall be liable to pay damages of Rs. 50,000/-. The aforesaid fact shows that the family partition was final.

16. Moreover, the plaintiff has failed to justify his failure to come forward to face remaining cross-examination. Hence, adverse inference is required to be drawn against him.

17. Consequently, the appeal is allowed. The judgment of the First Appellate Court is set aside and that of the trial Court is restored.

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

(ANIL KSHETARPAL)
JUDGE

20.02.2025
neeraj

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No