

INFORMATION MEMORANDUM:

Supreme Court holds that even if the family settlement was not registered it would operate as a complete estoppel.

Ravinder Kaur Grewal & Ors vs. Manjit Kaur & Ors.

Supreme Court of India, Civil appeal no.7764/2014

Decided on 31st July, 2020

A family arrangement is binding on the parties and operates as an estoppel. It preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same.

Harbans Singh along with Mohan Singh and Sohan Singh (two brothers) owned some properties. In the year 1970 a settlement was arrived at between the brothers vide which Harbans Singh got exclusive possession of khasra no.935/1/1/2 (5-18) and khasra no.935/1/1/1 (5-19) (**suit property**). Harbans Singh continued the ownership and possession of the suit property. The two brothers continued to exist on the revenue record as owners to the extent of half share. Plot in Prem Basti belonging to Harbans Singh was given to Sohan Singh. Plot purchased by Harbans Singh in the name of his son Vikramjit Singh was given to Mohan Singh and his wife which he later sold. Harbans Singh constructed a Samadhi of his wife and one service station

with boundary wall in the suit property. Structures were erected by him in his capacity as owner of the suit property. These structures were never disputed by the two brothers.

A memorandum of family settlement dated 10.03.1988 was executed by the parties incorporating the above terms.

Later, the two brothers claimed rights in suit property. Harbans Singh filed a suit for declaration praying that he is the owner and in possession of suit property. During the pendency of suit Harbans Singh expired and his legal heirs were substituted.

Decree by Trial Court:

The Trial Court partly decreed half rights in favour of two brothers as their names were recorded in revenue records. Unhappy with the 50% decree in favour of two brothers, the heirs of Harbans Singh filed first appeal before First Appellate Court.

Decision by Appellate Court:

The First Appellate Court ruled Harbans Singh as exclusive owner of the entire suit property along with constructions thereon. It observed that there was unequivocal family arrangement between the parties in 1970 which was acted upon. Even in the recital of the memorandum of family settlement it was agreed that Harbans Singh was the owner and in possession of the suit property. Harbans Singh had constructed 16 shops and service station on the suit property which proved that Harbans Singh was considered as owner in possession of the suit property.

The Appellate Court held that the memorandum was not required to be registered. The parties to the documents had acted upon the terms of the said settlement to the prejudice of the other party. It was not

open to two brothers to resile from the arrangement. Thus, the two brothers were estopped from disowning the agreement already reached, acted upon and so recorded in the memorandum of family settlement.

Aggrieved by the decision, the two brothers preferred a second appeal before the High Court of Punjab.

Verdict of Punjab High Court:

The High Court set aside the decision of the First Appellate Court and restored the trial court decree. It held that the memorandum of family settlement created a right in favour of Harbans Singh in the suit property wherein he had no pre-existing right and hence required registration.

It held that the ownership of the two brothers was reflected in the revenue record. Memorandum of family settlement transferring title to Harbans Singh required registration.

HC relied on the decision of the Supreme Court in the case of *Hari Chand (dead) through LRs vs. Dharampal Singh Baba*¹, to hold that family settlement required a pre-existing lawful right over the property.

¹ 2007 (4) Herald (SC) 3028

Issue before Supreme Court:

Whether the memorandum of family settlement was required to be registered on the ground that interest in immovable property worth more than Rs.100/- was transferred in favour of Harbans Singh?

Key Principles:

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.

Verdict of Supreme Court:

The Supreme Court set aside the decision of the High Court. It held that document of family settlement was merely a memorandum of a family settlement and required no registration.

The apex court relied on the decision of *Kale & ors. Vs. Deputy Director of Consolidation & Ors*² to observe that courts lean in favour of

upholding a family arrangement instead of disturbing the same on technical or trivial grounds.

The court observed that 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 either for the purpose of record or for information of the court for making necessary mutation.

SC held that the suit property was held by Harbans Singh by way of antecedent title. Hence there was no need to register the Memorandum of family settlement.

Acelegal Analysis:

It is a trite law that where the settlement deed itself does not create any rights but merely declares and recognises past rights, it is not required to be registered. In the case of *Bhoop Singh vs. Ram Singh Major and Ors*³ the apex court has laid down that it is the duty of the court to determine whether there were pre-existing rights or whether new rights are created through settlement.

² 1976 3 SCC 119

³ AIR 1996 SC 196

In this case the apex court has observed that the suit property was already in possession of Harbans Singh and he had made construction on it. The two brothers had not disputed the possession or construction thereon. Thus, it was too late in the day to say that the suit land was transferred through an unregistered memorandum of family settlement.

The Supreme Court has proceeded on the ground of equity rather than adapting a pedantic approach. Sanctity has been provided to the decisions of the members of a family to settle their differences and arrive at an arrangement.

If such family settlement is executed by the members of the family and the same is admitted and acknowledged, then it is not necessary that the said arrangement or document should be registered.

Even if the family arrangement suffers from a legal lacuna or a defect, yet the rule of estoppel is applied to shut out plea of defect. A party to settlement having himself enjoyed some material benefits from said arrangement cannot seek to unsettle and revoke such family arrangement

Acelegal

Email: bharat@acelegal.net

Telephone: 022-27812781 / 82

Website: www.acelegal.net.in

Mumbai: D-201, 2nd Floor, Vashi Station Complex, Navi Mumbai – 400 703

Delhi: B-27, Front Block, Sagar Apartments, 6-Tilak Marg, New Delhi – 110 001.

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