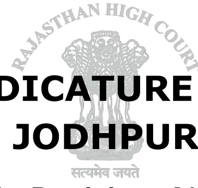

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 6969/2006

1. Leela Devi wife of Late Shri Chain Sukh Ji Bohra, aged 48 years.
2. Kalpesh Bohra s/o Late Shri Chain Sukh Ji Bohra, aged 25 years.
3. Apeksha Bohra daughter of Late Shri Chain Sukh Ji Bohra, aged 22 years.

All are b/c Bohra and residents of B-89, Shastri Nagar, District Bhilwara.

----Petitioner

Versus

1. Amar Chand s/o Shri Rajmal Ji Bohra, resident of Patch Area, Bhopalganj, Bhilwara.
2. The Additional District Judge (F.T.) No.2, Bhilwara

----Respondent

For Petitioner(s)	:	Dr. Sachin Acharya, Sr. Advocate, assisted by Mr. Samyak
For Respondent(s)	:	Mr. Arvind Samdariya Mr. J.R. Bhati

HON'BLE DR. JUSTICE NUPUR BHATI

Judgment

REPORTABLE

Reserved on 25/04/2023

Pronounced on 02/05/2023

(1) This writ petition under Article 226 & 227 of the Constitution of India has been filed by the petitioner aggrieved of the order dated 17.11.2006 passed by the learned trial court whereby the documents submitted by the respondent no.1 have been permitted to be taken on record. The petitioner-plaintiff filed a suit for partition and permanent injunction on 19.10.2005 before the learned District Judge, Bhilwara, which was subsequently trans-

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ferred to the court of Additional District Judge, Bhilwara. The prayer clause of the suit, is reproduced hereunder :-

"13– अतः सादर प्रार्थना है कि न्यायालय श्रीमान् द्वारा इस आशय की डिक्री बहक वादीगण विरूद्ध प्रतिवादी सादिर फरमाई जावे कि –

अ– कि वादपत्र की पैरा संख्या–1 में वर्णित जायदाद का 1/2 हिस्सा तल मंजिल से लेकर तृतीय मंजिल मय छत व आ. समानी हक तक वादीगण को Mets and Bonds के जरिये विभाजन करा भौतिक कब्जा दिलाया जावे।

ब– कि वादीगण को प्रतिवादी से वादपत्र के पैरा संख्या–01 में वर्णित जायदाद की तल मंजिल पर स्थित पूर्वी दिशा की दुकान का किराया जो प्रतिवादी द्वारा वसूला गया है उसका हिसाब एवं प्रतिवादी द्वारा संयुक्त जायदाद की ऊपर की सभी मंजिलों का उपयोग उपभोग किया जा रहा है उसकी राशि बतौर मिन्स प्रोफिट प्रतिवादी से दिलाया जावे। एवं हिसाब समझाया जाने की प्राथमिक डिक्री सादिर फरमाया जावे।

स– कि बजरिये डिक्री स्थाई निषेधाज्ञा बहक वादीगण विरूद्ध प्रतिवादी इस अमर की सादिर फरमायी जावे कि वादपत्र की चरण संख्या 1 में वर्णित संयुक्त भूखण्ड व उस पर निर्मित सुदा जायदाद को प्रतिवादी किसी भी प्रकार हस्तान्तर न स्वयं करे न अन्य के जरिये करावें एवं न किसी वितिय संस्था के यहॉ बंधक ही की जावे तथा साथ ही प्रकरण संख्या 20/03 व अनवान अमर चन्द द्वारा बनाम बाबुलाल बोहरा जो माननीय किराया अधिकरण जज साहब भीलवाड़ा की अदालत में लम्बित है, को किरायेदार बाबुलाल बोहरा से खाली न करावें साथ ही माननीय किराया अधिकरण जज साहब भीलवाड़ा को जरिये गारनिशी ऑर्डर से पाबन्द फरमाया जावे कि विवादित दुकान के खाली कराने का अवार्ड प्रमाण पत्र जारी नहीं फरमावे न प्रतिवादी दुकान किराये सुदा का कब्जा किरायेदार से प्राप्त करें।"

(2) The defendant respondent no.1 filed a written statement to the suit, wherein it was submitted that on account of a family set-

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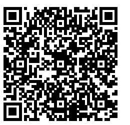

tlement arrived between the family members, the property in- dispute came into ownership and possession of the answering defendant. The petitioner-plaintiff filed an affidavit on 26.07.2006. The cross-examination on affidavit was started and during the same, the respondent no.1 defendant submitted a family settlement dated 06.09.1977. The petitioner-plaintiff took an objection upon the filing of the family settlement alleging that the same was not a family settlement but a partition-deed. It was further contended that since the document in-question being a partition-deed was neither properly stamped nor registered, therefore, cannot be on record to be adduced as evidence. It was further contended that the document in-question was not a family settlement but a partition-deed because the contents of it clearly shows the transfer of land from one person to the other and the other person getting right, title and interest in such property and, therefore, the document cannot be said to be a family settlement but a sale-deed. It has also been contended that the property in-dispute is a self acquired property and not a joint family property and, thus, in such circumstances the property in-dispute could be transferred only by way of a partition-deed and not by any other mode.

(3) The learned trial court after hearing the parties and on considering various clauses of the document, vide order dated 17.11.2006 arrived at a conclusion that the document in-question being a family settlement does not require registration and, thus, can be taken into evidence. The petitioner being aggrieved of the order dated 17.11.2006 preferred present writ petition.

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(4) It is submitted by learned counsel for the petitioner that the trial court committed grave error of law in coming to the conclusion that the document since being a family settlement does not require registration and, therefore, the same was admissible in evidence; it was submitted that the nature of the document is such that it clearly reflects that it is a partition-deed and not a family settlement as certain properties were transferred in favour of the parties to the writ petition and in consequence to that certain rights were transferred or created first time in favour of the parties to the petition. He further submitted that where any document confers upon a person certain rights or the rights are transferred or created for the first time, then in such a case that document cannot be said to be a family settlement but has to be treated as partition-deed, therefore, registration of such document is mandatory. He also submitted that in order to treat a document as a family settlements the parties are required first to enter into an oral agreement, which could be later on reduced into writing and in the present case there was no oral agreement between the parties. Learned counsel places reliance upon Section 17(1)(b) of the Registration Act, 1908 and the same is reproduced hereunder :

> "**17. Documents of which registration is compulsory.**—(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—
> (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any

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right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;"

(5) Counsel for the petitioner submits that bare perusal of the aforementioned Section of the Act of 1908 clearly reveals that if a document creates right in favour of the parties, then the same requires registration and without being registered such a document cannot be taken into evidence. Learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble the Apex Court in the case of **Sita Ram Bhama Vs. Ramvatar Bhama [(2018) 15 SCC 130],** relevant paragraph of which reads as follows :-

"10. The only question which needs to be considered in the present case is as to whether document dated 09.09.1994 could have been accepted by the trial court in evidence or trial court has rightly held the said document inadmissible. The plaintiff claimed the document dated 09.09.1994 as memorandum of family settlement. Plaintiff's case is that earlier partition took place in the life time of the father of the parties on 25.10.1992 which was recorded as memorandum of family settlement on 09.09.1994. There are more than one reasons due to which we are of the view that the document dated 09.09.1994 was not mere memorandum of family settlement rather a family settlement itself. Firstly, on 25.10.1992, the father of the parties was himself owner of both, the residence and shop being self acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a Will, so that father could have made Will in favour of his two sons, plaintiff and defendant. Neither the plaintiff nor defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10.09.1993. After his death plaintiff, defendant and their mother as well as sisters become the legal heirs under Hindu Succession Act, 1955 inheriting the property being a class I heir. The document dated 09.09.1994 divided the entire property between plaintiff

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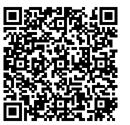

and defendant which document is also claimed to be signed by their mother as well as the sisters. In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, courts below are right in their conclusion that there being relinquishment, the document dated 09.09.1994 was compulsorily registrable under Section 17 of the Registration Act.

11. Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled by this Court. It is sufficient to refer to the judgment of this Court in Kale and others vs. Deputy Director of Consolidation and others, (1976) 3 SCC 119. The propositions with regard to family settlement, its registration were laid down by this Court in paragraphs 10 and 11.

12. We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated 09.09.1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and order of trial court allowing the application under Order XII Rule 3 CPC and the reasons given by the trial court in allowing the application of the defendant holding the document as inadmissible cannot be faulted. "

Learned counsel for the petitioner has further placed reliance upon the judgment of this Court (Jaipur Bench) in the case of **Jagdish Prasad & Ors. Vs. Parshu Ram & Ors. [RLW 2013 (1) Raj. 151],** relevant paragraph reads as follows :-

*"**6.**From the submissions made by the learned counsels for the parties, it appears that the moot question that arises for determination before this court is, as to whether the document i.e. the alleged deed of partition dated 6.11.93 exhibited as Ex.2 by the trial court was admissible in evidence in view of Section 49 of the Indian Registration Act,1908 and in view of Section 35 of the Stamp Act of 1899 (as adapted in Rajasthan at the relevant time) or in view of Section 39 of the Act of 1998.*

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__7.__ In order to appreciate the rival contentions raised by the learned counsel for the parties, it would be beneficial to reproduce the relevant provisions of the Indian Registration Act of 1998 as well as of the Act of 1899 (which are also pari materia with the provisions contained in the Act of 1988).

__8.__ Section 17 of the Registration Act deals with the documents which require compulsory registration and as per Section 17(1)(b), any non-testamentary instruments which purport or operate to create, declare, assign,limit or extinguish, whether in present or in future,any right,title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, is required to be compulsorily registered. The said relevant part of Section 17(1)(b) is reproduced as under:-

> *"17. Documents of which registration is compulsory.-- (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-*
>
> *(a) Instruments of gift of immovable property;*
>
> *(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property."*

__9.__ The effect of non-registration of document required to be registered, is contained in Section 49 of the Registration Act, which reads as under:-

> *49. Effect of non-registration of documents required to be registered.- No document required by section 17[or by any provision of the Transfer of Property Act, 1882(4 of 1882)],to be registered shall- (a) affect any immovable property comprised therein, or*
>
> *(b) confer any power to adopt, or (c)be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.*
>
> *Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882(4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under*

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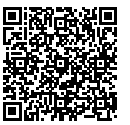

Chapter II of the Specific Relief Act, 1877(3 of 1877)or as evidence of any collateral transaction not required to be effected by registered instrument.

10. *So far as the relevant provisions contained in the Stamp Act are concerned, Section 2(14) of the Act of 1899 (Section 2 (xix) of the Act of 1998) reads as under :-*

"2(14) "instrument" includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished, or recorded."

11. *Section 2(15) of the Act of 1899 (Section 2(xx) of the Act of 1988) defines "instrument of partition" as under:-*

"2(15) "instrument of partition" means any instrument whereby co-owners of any property divide, or agree to divide such property in severalty, and includes,--

(i)a final order for effecting a partition passed by any revenue authority or any Civil Court.

(ii)an award by an arbitrator directing a partition, and

(iii)when any partition is effected without executing any such instrument, any instrument or instruments signed by the coowners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners."

12. *Section 3 of both the Stamp Acts mandates that the instruments mentioned therein shall be chargeable with the duty of the amount indicated in the Schedule annexed to the respective Acts. As per Entry No. 45 of the Schedule to the Act of 1899 (and as per Entry No. 42 of the Schedule to the Act of 1998), the partition instrument as defined under the Act, is chargeable to the duty as mentioned therein.*

13. *Further, as per Section 35 of the Act of 1899 (Section 39 of the Act of 1998), no instrument chargeable with the duty under the Act, could be admitted in evidence for any purpose, by any person having by law or consent of parties, authority to receive evidence, or could be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped, subject to the proviso. In the proviso to the said section, it has been provided interalia that such instrument shall, subject to all just exceptions, be admitted in evidence on the payment of duty, and under the circumstances mentioned therein.*

14. *In the light of abovestated provisions, let us examine the facts of this case. The copies of relevant pleadings of the parties , of the ordersheets, of the deposition of the respondent-plaintiff, and of the document in question have been produced on record of the petition. So far as the document in question is concerned, from the bare reading of the same, it appears that it was a deed of partition executed on 6.11.93. In the pleading as well as in the evidence, the respondent-plaintiff has de-*

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scribed the said document as the partition deed. Of course, the petitioners-defendants have challenged the very genuineness of the said document, however it will be a matter of evidence to be appreciated by the trial court at the time of final hearing of the suit. In any case, even if it is assumed that such a document was executed by the parties, it appears that by executing the said deed, the partition of the immovable properties of HUF was made, creating rights of the respective parties therein. It is not the case of the respondent-plaintiff either in plaint or in his evidence that the said document was merely a memorandum prepared after the family settlement which had already taken place earlier, and reduced into writing on 6.11.93. Since the document dated 6.11.93 itself created the rights in the immovable properties of the value of Rs. 100/- and upwards, in favour of the concerned parties partitioning the properties, it was a deed of partition requiring registration under Section 17 (1)(b) of the Registration Act and was also an instrument chargeable to stamp duty as contemplated in Section 3 read with Schedule to the Act of 1899.

***15**. In this regard, it may be further noted that as per the proviso to Section 49 of the Registration Act, an unregistered document effecting immovable property and required by the said Act to be registered, may be received as evidence of any collateral transaction. However, the instrument chargeable with the stamp duty under Section 3 but not duly stamped would not be admissible in evidence for any purpose under Section 35 of the Act of 1899 (Section 39 of the Act of 1998), unless the requisite duty is paid. Therefore, the court finds substance in the argument made by the learned counsel Mr. G.P. Sharma for the respondent plaintiff that in the instant case, the document in question though required to be compulsorily registered under Section 17 of the Registration Act, would be admissible in evidence for collateral purpose, in view of the proviso to Section 49 of the said Act, the suit of the respondent-plaintiff being for the declaration and possession of one half share in the suit property and for permanent injunction, on the basis of the document in question. However, the question is, whether such a document which was not duly stamped could be made admissible in evidence in view of Section 35 of the Act of 1899 and (Section 39 of the Act of 1998), which otherwise clearly prohibits the admissibility of instrument chargeable with the duty but not duly stamped, for any purpose.*

***16.** Various High Courts have considered the issue and held interalia that the bar against the admissibility of an instrument which is chargeable with the stamp duty but not stamped, is absolute, whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of the proviso to Section 35 of the Act of 1899 are complied with. Beneficial reference of the judgments of the Andhra Pradesh High Court in case of Sanjeeva Reddi Vs. Johanputra Reddi (AIR 1972 AP 373) and in case of T. Bhaskar Rao Vs. T. Gabriel (AIR 1981 AP 175); of Allahabad*

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High Court in case of Firm Chuni Lal Tukki Mal Vs. Firm Mukat Lal Ram Chandra (AIR 1968 All 164) and of Orissa High Court in case of Chandra Sekhar Misra Vs. Gobinda Chandra Das (AIR 1966 Ori 18), be made in this regard. The said judgments have also been considered by the Apex Court in case of Avinash Kumar Chauhan Vs. Vijay Krishna Mishra ((2009) 2 SCC 532), which clinches the issue. In the said judgment it has been held by the Apex Court as under :-

> *"17. Parliament has, in Section 35 of the Act, advisedly used the words "for any purpose whatsoever". Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not invoking the aforementioned provisions." It has been further held therein that:- "22. We have noticed hereto before that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act. 23. The contention of learned counsel for the appellant that the document was admissible for collateral purpose, in our opinion, is not correct.*
>
> *24. ....*
>
> *25. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.*
>
> *26. The view we have taken finds support from the decision of the Privy Council in Ram Rattan v. Parmananad, [AIR 1946 PC 51] wherein it was held :- "That the words `for any purpose' in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms." The said decision has been followed in a large number of decisions by the said Court."*

17. *The ratio laid down in the above case squarely applies to the facts of this case. In view of the above stated settled legal position, there remains no shadow of doubt*

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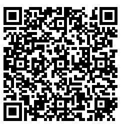

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that the instrument which was chargeable with stamp duty, if not duly stamped could not be made admissible in the evidence for any purpose in view of Section 35 of the Act of 1899, (Section 39 of the Act of 1988) unless the requirements of the proviso to the said Section were complied with, though such a document might be admissible in evidence for collateral purposes in view of the proviso to Section 49 of the Registration Act. Since the document in question, being an instrument of partition as contemplated in Section 2(14) of the Act of 1899, was chargeable to stamp duty, and since no such stamp duty as required under the said Act was paid, the said document was not admissible in evidence for any purpose in view of Section 35 of the Act of 1899 (Section 39 of the Act of 1998) unless the requisite stamp duty was paid by the party concerned. In that view of the matter the trial court has committed an error of law apparent on the face of record, in disregarding the provisions of the Stamp Act and in admitting the said document in evidence, though objected by the petitioners defendants. The judgment in case of Hafeeza Bibi & Ors. Vs. Shaikh Farid AIR 2011 SC 1695 relied upon by the learned counsel Mr. Sharma also does not apply to the facts of the present case inasmuch as in the said case the admissibility of the document which was a gift deed was considered by the Apex Court in the light of the principles of Mohammedan Law. Such is not the case here."

Learned counsel for the petitioner has also placed reliance upon the judgment of this Court in the case **Mahendra Singh Vs. Dhirender Singh [MANU/RH/1264/2014],** relevant paras whereof reads as follows :-

> *"3. An application was filed by defendant No. 2-Gopal, inter alia, raising objection that the document was not properly stamped and registered and, therefore, the same cannot be admitted in evidence and the same be ordered to be deleted from the evidence affidavit and be ordered to be put in Part-D.*
>
> *4. A reply was filed by the plaintiff alleging that the application has been filed for prolonging the litigation; the document was not a deed of partition but was family arrangement; the parties had took possession of their respective shares as per agreement even before execution of the document, whereafter their father, as a memorandum of oral agreement, executed the same as family arrangement, registration whereof was not necessary; the nature of the document cannot*

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be determined at this stage and the same could only be determined after the evidence was over.

5. The trial court after hearing the parties and on considering various clauses of the document, came to the conclusion that it cannot be said that the document was family arrangement only and/or the same was memorandum of settlement and, therefore, it cannot be said that no stamp duty was leviable; if the document was a partition deed, the same should bear stamp according to law and the same was unstamped and in view of the provisions of Section 39 of the Stamp Act, the insufficiently stamped document is not admissible in evidence for any purpose and, therefore, the document was inadmissible in evidence; the trial court further came to the conclusion that in terms of Section 17(1)(b) of the Registration Act, the registration of the document was also necessary and under Section 49 of the Registration Act also the document was inadmissible.

7. I have heard learned counsel for the petitioner and have perused the copy of the document, which has been placed on record of this writ petition by learned counsel for the petitioner.

8. A bare look at the document reveals that the same bears signatures of father Inder Singh and the four brothers; further, the document starts with the narration that "the executants agree regarding the partition of the property as under" and whereafter exhaustive details have been indicated in the document regarding partition of the property, which includes a house at Chandpole Chowk and another house at Ratanada, Jodhpur.

9. Besides the above, the document also provides and restricts the right of transfer, inasmuch as, the same provides for pre-emptory right of brothers; the document also contains a sketch indicating the partition of the property; nowhere in the document there is any reference to any past transaction and that the said transaction was being reduced to writing, rather the language of the document seeks to partition in present by way of said document.

10. 'Instrument of partition' has been defined under Section 2(xx) of the Stamp Act, which reads as under:-

"(xx) "instrument of partition" means any instrument whereby co-owners of any property divide, or agree to divide such property in severalty, and includes,-

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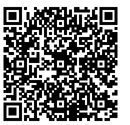

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(i) a final order for effecting a partition passed by any revenue authority or any Civil Court,

(ii) an award by an arbitrator directing a partition, and

(iii) when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners;"

11. A bare look at the said definition clearly reveals that the same not only includes any instrument whereby co-owners of any property divide or agree to divide such property in severalty but also, inter alia, includes any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners.

12. In view of the above definition of instrument of partition, irrespective of the fact as to whether the document in question pertains to effect the partition and/or records the agreement between the parties, in either of the circumstance, the document was liable for payment of stamp duty as envisaged by the Stamp Act.

13. Further, from the fact that by the said document right of the executants to deal with their share of the property has been restricted, in view of the provisions of Section 17(1)(b) of the Registration Act, which provides that non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, to or in immovable property is compulsorily registrable, the document executed by the plaintiff is also compulsorily registrable.

14. In view of the above, the trial court was justified in coming to the conclusion that the document was inadmissible in evidence under Section 39 of the Stamp Act and Section 49 of the Registration Act.

15. Consequently, there is no substance in the writ petition and the same is, therefore, dismissed. The stay petition is also dismissed. No order as to costs."

(6) Learned counsel for the respondent no.1-defendant has submitted that the suit had been filed regarding partition of only one property, which is situated at plot No.13, Cotton Factory Area,

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Bhilwara whereas the document in dispute mentions about many other properties, however, the petitioner plaintiff has picked and chosen only one out of it. Learned counsel for the respondent also submitted that the property in-question was purchased back on 02.04.1971 in the joint names of Amarchand and Chain Sukh. He also submitted that on one hand the petitioner-plaintiff has alleged that the property in-question is a joint property in the co-ownership of late Shri Chain Sukh Bohra and the respondent and on the other hand in the writ petition, the petitioner has alleged the property in-question to be a self- acquired property and has thus tried to mislead the court and, therefore, on this count alone the writ petition deserves to be dismissed with exemplary cost. He also submitted that by way of the document in-question, no new rights/ title have been created or transferred in favour of the parties to the lis because both the brothers had pre-existing right and title in the properties as the property was purchased way back on 02.04.1971 in the joint names of Amarchand and Chain Sukh, which has been duly admitted by the petitioner in the plaint. He also submitted that the two documents were written on 06.07.1977 in Bahi after the oral partition was made between the parties and the Bahi is nothing but two separate lists of the properties showing the details of the property which was duly received by each brother. He emphasized upon the first para of the document in dispute which has been placed as Annex.4 alongwith the writ petition "*Tatha apne jo hissa adha meri panti ka mujhe diya vo neche anusar hey*". He drew the attention of the Court to the cross-examination of the plaintiff, which has been placed on

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record as Annex.R/1, in which the plaintiff has categorically stated that "*mere shadi honey ke bad paitrik sampati gaon Bemali ka bantwara ho gaya tha. Es bantwara mee meri pati Amarchand va Rajmal Ji teno shareek they. Likhe padhi par dashkat ka mene dhyan nahi diya. Likha padhi karie to thee. Likha padhi Bahi me huye the. Bahi mere pas honi chaiya, deekhu gee*."

(7) Learned counsel for the respondent has placed reliance upon the judgment passed by Co-ordinate Bench of this Court in **Geeta Devi Vs. State of Rajasthan** [SBCWP No.620/2020, decided on 28.03.2023], relevant para whereof reads as follows :-

> *"29. By misleading the Court, the petitioner has procured interim order and continued in services for more than three years and illegally burdened the public exchequer.*
> *30. The petitioner shall pay a cost of 50,000/- to the ₹ respondent Municipal Board, Bilara. The Board shall be free to recover the same from the petitioner's deducted/deposited amount in accordance with law. The amount so recovered will be utilised by the Board for construction/renovation of some Public Toilet for females."*

Learned counsel for the respondent has placed reliance upon the judgment of Hon'ble Apex Court in **Kale Vs. Deputy Director of Consolidation [AIR 1976 SC 807]**, relevant para whereof reads as follows :

"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;*

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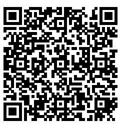

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence:

(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 pre pared after the family arrangement had already been made either for the purpose of the record or for in formation 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 9 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.

46. In these circumstances, therefore, the appeal is allowed, the judgment of the High Court is set aside and by a writ of certiorari the order of Respondent No. 1 dated January 22, 1965 is hereby quashed. The order of the Settlement officer dated November 28, 1964 which actually gave effect to the compromise is hereby restored and the Revenue authorities are directed to attest the mutation in the names of the appellant and respondents 4 & 5 in accordance with the family arrangement entered into between the parties referred to in this case. In the peculiar circumstances of the case there will be no order as to costs. "

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Counsel for the respondent has also placed reliance upon the judgments of Hon'ble Apex Court in **Ravindra Kumar Grewal & Ors. Vs. Manjjir Kaur & Ors. [AIR 2020(6) SCW 3799]; Roshan Singh & Ors. Vs. Zile Singh & Ors. [AIR 1988 SC 881] and Lakshmi Ammal & Ors. Vs. Chakravarthi & Ors. [AIR 1999 SC 3363].**

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(8) Heard learned counsel for the parties and perused the material available on record.

(9) A bare look at the document reveals it to be a family agreement, as mentioned on the top of it *"dastavej babat pariwarik samjhoto bahak Chainsukh" and "dastavej babat pariwarik samjhoto bahak Amarchand"*.

(10) This is an admitted position that the petitioner-plaintiff in her cross-examination has very specifically stated that a partition of the ancestral property took place after her marriage and in the partition the petitioner's husband Amarchand and Rajmal Ji all were a part of it. She further stated that writing was done in the Bahi in regard to the partition and also admitted that the Bahi was lying with her. Besides the above, the document provides the details of the properties (the property which was in co-ownership and purchased in the joint name of the respondent and late Shri Chainsukh Bohra), which had been distributed amongst the parties. The petitioner-plaintiff has unequivocally admitted in the cross-examination after her marriage the partition of the property took place, which goes to show that the partition of the property in-dispute took place much earlier to writing down of the details of the property in the Bahi.

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(11) Instrument of partition has been defined under Section 2(xx) of the Rajasthan Stamp Act, 1998, which reads as under :-

> *(XX) Instrument of partition" means any instrument whereby co-owners of any property divide, or agree to divide such property in severalty, and includes-*
> *(i) a final order for effecting a partition passed by any revenue authority or any civil court,*
> *(ii) an award by an arbitrator directing a partition, and*
> *(iii) when any partition is effected without executing any such instrument, any instruments or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners;*

(12) A bare look at the said definition clearly reveals that since the parties to the document in-dispute have been allotted a particular property by the other party to the family arrangement by relinquishing his claim in favour of such a donee and, thus, in such a case the party in whose favour the relinquishment has been made would be assumed to have an antecedent title. The Hon'ble Apex Court in the case of **Kale & Ors. Vs. Deputy Director of Consolidation & Ors.,** vide judgment dated 21.1.1976 held that "the family settlement did not contravene any provision of law but was a legally and binding settlement in accordance with the law. Similarly the view of the High Court that the compromise required registration was also wrong in view of the clear fact that the mutation petition filed before the Assistant Commissioner did not embody the terms of this family arrangement but was merely in the nature of a memorandum meant for the information of the court. The High Court further erred in not considering the fact that even if

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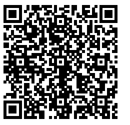

the family arrangement was not registered, it could be used for a collateral purpose, namely, for the purpose, of showing the nature and character of possession of the parties in pursuance of the family settlement and also for the purpose of applying the Rule of estoppel which flowed from the conduct of the parties, who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement."

(13) In another reportable judgment of Hon`ble Apex Court in the case of **Korukonda Chalapathi Rao & Anr. Vs. Korukonda Annapurna Sampath Kumar** (Civil Appeal No.6141 of 2021, decided on 01.10.2021, it has been held as under :-

> *36. No doubt, when there has been a partition, then, there may be no scope for invoking the concept of antecedent right as such, which is inapposite after a disruption in the joint family status and what is more an outright partition by metes and bounds. In this regard, it is to be noticed that the appellants and the respondents, admittedly, partitioned their joint family properties. This is clear from the Khararunama 15 AIR 2001 Madras 135 wherein it is stated that they have divided the joint family properties. The properties, which are mentioned in the Khararunama, became the separate properties of the respondent.*
>
> *37. Resultantly, the Appeal is allowed. The impugned Judgment is set aside subject to the observations as contained in this Judgment. There will be no Order as to costs."*

(14) In the instant case, the petitioner-plaintiff has given challenge only to one property situated at Plot No.30, Cotton Factory, Bhilwara whereas the document in-question mentions various other properties as well. The petitioner-plaintiff has chosen to enjoy the rest of the property which has been by way of family ar-

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rangement given away in his favour and the same was reduced in writing in a Bahi and has now questioned the document (Bahi) to be not a valid document for the purpose of treating as an evidence as the same is not registered.

(15) This Court finds that the document in-question since being a family arrangement is not required to be registered and, thus, is admissible in evidence. It is also apparent from the bare perusal of the record and material available that the petitioner's husband and respondent had accepted each others right in the property and also accepted wilfully the manner in which their father had given the property between these two brothers. It is apparent that after both the brothers accepted the property wilfully given to them by their father-Rajmal Ji, the details of the property were mentioned in the document in-dispute. Also bare perusal of the document ravels that there is no creation/ relinquishment of the rights for the properties as in order to settle the dispute between the parties a family agreement was entered between the parties and both the brothers namely Amarchand and Chain Sukh happily accepted the same.

(16) From the precedent law cited Kale (supra), this Court finds that the condition of family settlement applies in this case. It is an admitted position that an oral arrangement between the family members was entered into a Bahi with the title "Dastavej Baabat Pariwarik Samjhota". The parties have antecedent title/claim & interest in the property, which is acknowledged in this settlement. The entry in Bahi was proceeded by an oral arrangement. The family arrangement is voluntary. The arrangement has apparently

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been arrived at between the members of a family descending from a common ancestor and are near relatives who were looking forward to sink their differences, settle and resolve their disputes to enjoy complete harmony and goodwill in the family. The Bahi entry was to protect the family unity and solidarity while equitably dividing the family property. This Court finds that the equitable principles like family settlement ought to be relied upon in resolving such disputes and cannot be subjected to rigors of technicalities in law.

(17) In view of the above discussion we are in full agreement with the view taken by the learned trial court as the learned trial court was justified in coming to the conclusion that the document in dispute dated 06.09.1977 was admissible in evidence. No case for interference is made out. The writ petition being devoid of merit is dismissed. No order as to costs.

(DR.NUPUR BHATI),J

14- Sanjay

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