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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 23rd March, 2022

\+ **EX.P. 26/2019**

HIMANI WALIA ..... Decree Holder

Through: Dr. Chandra Shekhar, Advocate
(M: 9650073888)

versus

HEMANT WALIA & ORS..... Judgement Debtors

Through: Mr. Anuj Garg, Advocate for JD-2
(M: 9999696345)
Mr. Arun K. Sharma, Advocate for JD-3.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

EX.APPL.(OS) 338/2022

2. The present application has been filed on behalf of the Applicant/Decree-Holder-Ms. Himani Walia seeking waiver of payment of stamp duty in respect of the assets inherited by the various parties from the estate of Late Sh. S.S. Walia and his sister Dr. Urmila Walia. Further, the Applicant seeks cancellation of the notice dated 14th February, 2022 received from the Registry of the High Court of Delhi, as also notice dated 3rd March 2022 received from the Office of the Assistant Collector (Kalkaji), New Delhi.

3. The suit seeking partition and other reliefs, being ***CS (OS) No. 442/2018***, was filed before this Court by the legal heirs of Late Sh. S.S. Walia who had passed away on 10th December, 2017. The deceased had a large number of moveable and immovable assets which included the business of a petrol station, export business, various immovable properties

in prime localities in Delhi and Noida, fixed deposit receipts and bank accounts, paintings, antiques, artworks, shares in various companies and vehicles, etc. During the pendency of the suit itself, the three children and the wife of the deceased with the assistance of their Counsels had arrived at a settlement. Thereafter, the terms of settlement were incorporated into the 'Memorandum of Family Settlement and Arrangement' dated 16th October, 2018.

4. Thus, the settlement which was agreed upon by the parties had merely been put into writing in the said 'Memorandum of Family Settlement and Arrangement' dated 16th October, 2018. The said family settlement was approved and a decree in terms thereof was passed by this Court, vide order dated 16th October, 2018. The relevant portion of the said the family settlement and order, which clearly reflect that the parties had orally agreed to partition and the manner thereof, are set out below:

> ***'Memorandum of Family Settlement and Arrangement' dated 16th October, 2018:***
>
> ***"AND WHEREAS** for the sake of records and to serve as an aid memoir, the parties hereto have decided to execute these presents to reduce the decisions taken by them with regard to the inter se distribution and allocation of the property and assets in writing."*
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> ***Order dated 16th October, 2018:***
>
> *"3. She has thereafter travelled to India along with her child and has been staying here since then. The parties, along with the assistance of their counsels have arrived at a settlement which is recorded in the 'Memorandum of family settlement and agreement dated 16th October, 2018 (hereinafter 'Memorandum')"*

5. It appears that in order to prepare the decree sheet, the Registry of this

Court has directed furnishing of valuation reports of the assets for the purpose of calculating the stamp duty. Thus, the present application has been filed by the Applicant seeking waiver of payment of stamp duty and cancellation of the notices.

6. It is submitted by ld. Counsel for the parties that similar notices have been received by all the other legal heirs as well. In addition, various Collector's offices have already issued notices in respect of the stamp duty payable.

7. It must be noted here that the legal heirs of the deceased persons became part owners of the assets belonging to the two deceased individuals i.e., Mr. S.S. Walia and Dr. Urmila Walia, immediately upon their demise. The said assets were not transferred to the legal heirs, but have been inherited by them upon the demise of Mr. S.S. Walia and Dr. Urmila Walia. The *'Memorandum of Family Settlement and Arrangement'* dated 16th October, 2018, is merely a recordal of the oral agreement as to the mode and manner of partition. Therefore, it is in the nature of a family settlement which was arrived at between the parties. The partition had been agreed upon between the parties by way of oral agreement with the intervention of their counsels. The memorandum of settlement does not itself partition the properties, but only records the same as an aid of memory.

8. The issue of registration of family settlements is no longer *res integra.* If an understanding has been arrived at between the parties previously, and it is only written down in a document after the settlement has been arrived at, the same would not require registration. This is the settled position of law as is clear from ***Kale & Ors. v. Deputy Director of Consolidation & Ors. [3 (1976) 3 SCC 119].*** Taking into account the decision in ***Kale (supra),*** the

Supreme Court in a subsequent judgment in ***Sita Ram Bhama v. Ramvatar Bhama [AIR 2018 SC 3057]*** has settled this position of law by holding as under:

> *"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 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 Ors. v. Deputy Director of Consolidation and Ors. MANU/SC/0529/1976 : (1976) 3 SCC 119.*** *The propositions with regard to family settlement, its registration were laid down by this Court in paragraphs 10 and 11:*

> *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 Section 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 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.

11. The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss presently.

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 Code of Civil Procedure and the reasons given by the trial court in allowing the application of the Defendant holding the document as inadmissible cannot be faulted."

9. The Division Bench of this Court has held in ***Nitin Jain v. Anuj Jain & Anr. [ILR (2007) II DELHI 271]*** that a memorandum recording an oral family settlement which has already taken place is not an instrument dividing or agreeing to divide property and is therefore, not required to be stamped. The relevant observations from the said judgment have been extracted below:

"6. A Partition Deed is an instrument of partition and has been defined in Section 2(15) of the Stamp Act. The said investment is chargeable to duty as per Schedule 1. Article 45 of the Stamp Act. Stamp duty payable on an instrument of partition is @ 1% of the value of the property. A decree of partition passed by a Court is also an instrument of partition as defined in Section 2(15) of the Stamp Act, which reads 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 also a final order for effecting a partition passed by any revenue-authority or any Civil Court and an award by an arbitrator directing a partition."*

7. However, Courts have recognised oral partitions in cases of joint families. An oral partition is not an instrument of partition as contemplated under Section 2(15) of the Stamp Act. Therefore, as it is not an instrument. on an oral partition no stamp duty is payable.

8. The Courts have recognised that it is legally permissible to arrive at an oral family settlement dividing/partitioning the properties and thereafter record a memorandum in writing whereby the existing joint owners for the sake of prostriety record that the property has been already partitioned or divided. The memorandum does not by itself partition the properties but only records for information what has already been done by oral partition. The memorandum itself does not create or extinguish any rights. A record of oral partition in writing is created. The writing records a pre existing right and does. not by itself partition the properties for the first time. As the memorandum only records oral partition which has already taken place but does not in praesenti create any right, it cannot be treated as an instrument creating B partition. [Refer. Tek Bahadur Bhujil v. Debi Singh Bhujil and others reported in AIR 1966 SC 292), Bakhtawar Singh v. Gurdev Singh reported in (1996) 9 SCC 370, Kale v. Dy. Director of

Consolidation reported in (1976) 3 SCC 119, Roshan Singh v. Zile Singh reported in AIR 1988 SC 881 and Bachan Singh v. Kartar Singh and others reported in 2001 (10) JT (SC) 64.]

9. In view of the legal position explained above. it follows that a decree of partition is an instrument of partition and therefore is required to be stamped under Schedule I of Article 45 r/w Section 2(15) of the Stamp Act. However, an oral family settlement dividing or partitioning the property is not D required to be stamped. Similarly, a memorandum recording an oral family settlement which has already taken place is not an instrument dividing or agreeing to divide property and is therefore not required to be stamped."

10. Thus, it is clear that family settlements are not required to be compulsorily registered, and stamp duty is not required to be compulsorily paid in respect of the same, when the settlement has been arrived at initially as an oral partition and is thereafter put into writing for the purpose of information. Considering the said position, it is clarified that there is no requirement of valuation of the suit properties in the present case. The payment of stamp duty by the legal heirs of Late Sh. S.S. Walia and Dr. Urmila Walia shall stand waived. Notices issued by the various authorities shall also stand cancelled and withdrawn, without any further orders.

11. Decree sheet be drawn by the Registry, within a period of eight weeks, and compliance be reported. Accordingly, ***EX.APPL.(OS) 338/2022*** is disposed of, in the above terms.

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12. List on 9th May, 2022, the date already fixed.

PRATHIBA M. SINGH
JUDGE

MARCH 23, 2022/*aman/ad*
(corrected & released on 28th March, 2022)