

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
th
ON THE 5 OF APRIL, 2024
MISC. PETITION No. 847 of 2021**

BETWEEN:-

**HASU BAI D/O LATE SHRI BHAGWAN, AGED
ABOUT 69 YEARS, OCCUPATION: HOUSE
HOLD JETAPUR, KHARGONE (MADHYA
PRADESH)**

.....PETITIONER

(BY MS. SWATI SHARMA, ADVOCATE)

AND

- 1. LOTAN S/O LATE SHRI BHAGWAN MALI,
AGED ABOUT 84 YEARS, OCCUPATION:
AGRICULTURIST SUTAR GALI TALAB
CHOWK KHARGONE (MADHYA PRADESH)**
- 2. PRATAP S/O LT BHAGWAN MALI, AGED
ABOUT 74 YEARS, OCCUPATION: RETIRED
TEACHER KUNDA NAGAR BISTAN ROAD,
KHARGONE (MADHYA PRADESH)**
- 3. MADAN S/O LT BHAGWAN MALI, AGED
ABOUT 64 YEARS, OCCUPATION:
SERVICE NEAR GOVT. SCHOOL
NARMADA NAGAR, KHARGONE
(MADHYA PRADESH)**
- 4. SHANKAR S/O LT BHAGWAN MALI, AGED
ABOUT 54 YEARS,
OCCUPATION: AGRICULTURE
TALABCHOWK, KHARGONE (MADHYA
PRADESH)**
- 5. CHAMPA BAI W/O HEERALAL JI MALI,**

AGED ABOUT 54 YEARS, OCCUPATION:

**AGRICULTURE SUTARGALI TALAB
CHOWK, KHARGONE (MADHYA
PRADESH)**

- 6. JAGDISH S/O LT HEERALALJI MALI,
AGED ABOUT 40 YEARS, OCCUPATION:
AGRICULTURE SUTARGALI TALAB
CHOWK, KHARGONE (MADHYA
PRADESH)**
- 7. RADHESHYAM S/O HEERALAL JI MALI,
AGED ABOUT 32 YEARS, OCCUPATION:
AGRICULTURE SUTAR GALI TALAB
CHOWK KHARGONE (MADHYA
PRADESH)**
- 8. NARAYAN S/O HEERALALJI MALI, AGED
ABOUT 31 YEARS, OCCUPATION:
AGRICULTURE SUTAR GALI TALAB
CHOWK KHARGONE (MADHYA
PRADESH)**
- 9. LUMA BAI W/O BADRILAL MAALI, AGED
ABOUT 56 YEARS, OCCUPATION:
HOUSEHOLD HOUSE NO.30, ANAND
NAGAR NEAR HANUMAAN MANDIR
RAJENDRA NAGAR AREA INDORE
(MADHYA PRADESH)**
- 10. GYARSI BAI W/O LT BHAGWAAN MALI,
AGED ABOUT 59 YEARS, OCCUPATION:
HOUSE HOLD TALAB CHOWK, NEAR
SHIV MANDIR, KHARGONE (MADHYA
PRADESH)**
- 11. RAJENDA S/O PRATAP SING MALI, AGED
ABOUT 39 YEARS, OCCUPATION:
AGRICULTURE KUNDA NAGAR BISTAN
ROAD KHARGONE (MADHYA PRADESH)**
- 12. MAHENDRA S/O PRATAP SINGH MALI,
AGED ABOUT 44 YEARS, OCCUPATION:
AGRICULTURE KUNDA NAGAR BISTAN
ROAD, KHARGONE (MADHYA PRADESH)**

13. **RAJESH S/O CHANDRA SHEKHAR BADOLEI, AGED ABOUT 46 YEARS, OCCUPATION: BUSINESS NUTAN NAGAR COLONY PURAAN SETH KI CHAAL, KHARGONE (MADHYA PRADESH)**
14. **DEEPAK S/O KAILASH CHANDRA KANOONGO, AGED ABOUT 45 YEARS, OCCUPATION: ADVOCATE NEW NUTAAN NAGAR COLONY KHARGONE (MADHYA PRADESH)**
15. **STATE OF M.P. THROUGH COLLECTOR KHARGONE (MADHYA PRADESH)**
16. **KAMLESH S/O SHREEKRISHNA MAHAJAN, AGED ABOUT 52 YEARS, OCCUPATION: AGRICULTURE RADHAWALLABH MARKET, KHARGONE (MADHYA PRADESH)**
17. **MOHAN S/O LOTAN SINGH MALI, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURE SUTAR GALI TALAB CHOWK KHARGONE (MADHYA PRADESH)**
18. **ANEESH KHA S/O SHEIKH KHA MUSALMAAN IN FRONT OF GAUSHALABEHIND SHEETLA MATA MANDIR KHARGONE (MADHYA PRADESH)**
19. **JAVED KHA S/O JAMEEL KHA KHASHASWAADI TALAI MARG, KHARGONE (MADHYA PRADESH)**
20. **NARGIS KHA W/O AMEEN KHA, AGED ABOUT 38 YEARS, OCCUPATION: HOUSE HOLD TEKDI MOHALLA, KHARGONE (MADHYA PRADESH)**
21. **SHAHRUKH S/O NAIEEM KHA, AGED ABOUT 29 YEARS, OCCUPATION: BUSINESS MALIPATH MARG (MALI MOHALLA) KHARGONE (MADHYA PRADESH)**

22. FARUKH S/O JAMEEL KHA MUSALMAAN,
AGED ABOUT 27 YEARS, OCCUPATION:
BUSINESS MALIPATH MARG, (MALI
MOHALLA), KHARGOONE (MADHYA
PRADESH)
23. IRFAAN S/O JAMEEL KHA MUSALMAAN,
AGED ABOUT 23 YEARS, OCCUPATION:
BUSINESS MALIPATH MARG (MALI
MOHALLA) KHARGONE (MADHYA
PRADESH)

.....RESPONDENTS

***(BY SHRI ROHIT KUMAR MANGAL, ADVOCATE FOR THE
RESPONDENTS NO. 2,3,11 & 12)***

.....
*This petition coming on for admission this day, the court passed
the following:*

ORDER

1] This petition has been filed by the petitioner/Plaintiff under Article 227 of the Constitution of India, against the order dated 17.2.2021, passed by the IIIrd Civil Judge Class-I, Khargone, West Nimard (M.P.) in Civil Suit No.11-A/2017 whereby, during the recording of the defendants' evidence the petitioner's/plaintiff's objection regarding admissibility of a document has been rejected, as the contention of the respondents/defendants has been accepted that it is a memorandum of partition and not a deed of partition which requires registration and stamp duty, as contended by the plaintiff.

2] In brief, the facts of the case are that a civil suit was filed by the petitioner/plaintiff for partition against the respondents/defendants, who are her brothers, nephews, and the subsequent purchasers of the property.

3] In the aforesaid suit, the case is at the stage of recording of evidence of the respondents/defendants, and on 17.2.2021, when the respondents'/defendants' witness was being examined, at that time, a document dated 29.4.1991 was sought to be exhibited by the defendants claiming the same to be a memorandum of partition amongst the brothers of the plaintiff. The plaintiff has taken exception to the aforesaid document, and it was submitted that it is not merely a memorandum of partition but, is a deed of partition which can be ascertained from its recitals only. However, learned Judge of the trial Court holding the same to be a memorandum of a partition has rejected the objection. Hence, this petition.

4] Ms. Swati Sharma, learned counsel for the petitioner/plaintiff has vehemently argued that the document is purely a deed of partition and is not a mere memorandum of the partition, for the reasons that it also refers the future rights and liabilities of the parties. Thus, it is submitted that the impugned order be set aside, and the document be held to be a deed of partition which cannot be exhibited.

5] It is also submitted that since there was no stay on the proceedings of the trial court the document has already been exhibited and the matter is already kept for final arguments.

6] On the other hand, Shri Rohit Mangal, learned counsel for the respondents No.2,3,11 and 12 has opposed the prayer and it is submitted that no interference is called for as a bare perusal of the aforesaid document clearly reveals that it is only a memorandum of

partition which is not required to be registered and not a deed of partition which requires registration.

7] Shri Mangal has drawn attention of this Court to the recitals of the document in which, it is clearly stated that it is a family arrangement of pre-existing rights and has been written by the father of the plaintiff acknowledging the pre-existing rights of his sons in the property and no new rights have been created. Counsel has submitted that the property was a joint family property which was purchased from the income of the joint family only.

8] In support of his submissions, that the document is only a memorandum of partition merely acknowledging the pre-existing rights of the parties which is not required to be registered and stamped as the possession has already been obtained by the respective parties, Shri Mangal has relied upon the decision rendered by the Supreme Court in the case of *Phool Patti and another vs. Ram Singh (Dead) through legal representatives and another* reported as (2015) 3 SCC 164 which provides that if a settlement has been created in favour of a person who is having pre-existing rights in respect of the property in question, the same need not be compulsorily registered, and has also held that in case of a gift or the settlement deed executed in favour of the persons having pre-existing rights over the property, the document is not required to be compulsorily registered.

9] Shri Mangal has also relied upon the other decisions in which also similar observations have been made by the Supreme Court.

10] In view of the same, shri Mangal has submitted that the impugned order needs no interference, as the learned Judge of the trial court has rightly observed that it is only a memorandum of partition which does not require compulsory registration, and not a deed of partition which requires compulsory registration.

11] Heard the learned counsel for the parties and also perused the record.

12] Before this court proceeds to appreciate the revival submissions, it is necessary to reflect upon the memorandum of partition and the deed of partition. In the case of ***Phool Patti*** (supra), the Supreme Court has held in para 29 which read as under:-

“29. The terms of the family settlement are not on record. As mentioned above, the family settlement could relate to the ancestral as well as self-acquired property of Bhagwana or only the ancestral property. It appears that it related only to the ancestral property and not the self-acquired property (hence the reference to a hibba). The decree relating to 32 kanals of land did not require compulsory registration, as mentioned above. However, the self-acquired property of Bhagwana that is 20 kanals, therefore, in view of the law laid down in *Bhoop Singh [Bhoop Singh v. Ram Singh Major, (1995) 5 SCC 709]* the gift of 20 kanals of land by Bhagwana in favour of Ram Singh, notwithstanding the decree in the first suit, requires compulsory registration since it created, for the first time, right, title or interest in immovable property of a value greater than Rs 100 in favour of Ram Singh.

13] Similarly, in the case of ***Padma vs. Sobhana & others*** {Civil Appeal No. 6997 OF 2016 - Arising out of Special Leave Petition (Civil) No. 33197/2012}, the Hon'ble Supreme Court has held as under:-

“6. Exhibit B-1 document reads as follows:

“I have today received from you the sum of Rs.6,075/- being the amount due to me as my share in the family of my birth and as consideration, etc. for the assignment deed we are this day executing in favour of Lakshmikutty Amma, W/o Chellappan Nair, Plavida House and registering at the Sub Registrar Office, Perumbavoor. I agree that I shall not hereafter have any right in the property of my family of birth and that when you demand, I shall execute a release deed concerning my share.”

7. As the entire case of the parties revolve around the purport and effect of the said document (Exhibit B-1), we have read and considered the contents of Exhibit B-1 as extracted above. A plain reading thereof would go to show that on receipt of the sum of Rs.6,075/- which the plaintiff acknowledges to be her share in the family property she had signed the assignment deed in favour of Lakshmikutty Amma and further had agreed that she shall not have any rights in the property of the family. Reading the said document in the aforesaid light, it appears to us that the document (Exhibit B-1) is in the nature of a family settlement acknowledging the fact that the second plaintiff (respondent No.1 herein) has ceased to have any further interest in the family property. If that be so, Exhibit B-1 would not require any registration as no title has been transferred on the basis of the said document which merely acknowledges the respective rights of the parties to the family property. Accordingly and on the conclusion that we have reached, the order of the High Court will have to be set aside which we hereby do and the decree of the dismissal of the suit passed by the learned trial Court and the First Appellate Court is restored.”

(emphasize supplied)

14] In the case of ***Ravinder Kaur Grewal and others vs. Manjit Kaur and others*** reported as (2020) 9 SCC 706, the Hon’ble Supreme Court has held in paras 26 & 30, which read as under :

26. In para 10 of the said decision, the Court has delineated the contours of essentials of a family settlement as follows: (*Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC pp. 126-27)*

“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 [Ed.: The words between two asterisks have been emphasized in original as well.] under the document [Ed.: The words between two asterisks have been emphasized in original as well.] 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.”

(emphasis supplied)

XXXXXXXXXX

30. A priori, we have no hesitation in affirming the conclusion reached by the first appellate court that the document Ext. P-6 was nothing but a memorandum of a family settlement. The established facts and circumstances clearly establish that a family settlement was arrived at in 1970 and also acted upon by the parties concerned. That finding of fact recorded by the first appellate court being unexceptionable, it must follow that the document, Ext. P-6 was merely a memorandum of a family settlement so arrived at. Resultantly, it was not required to be registered and in any case, keeping in mind the settled legal position, the contesting defendants were estopped from resiling from the stated arrangement in the subject memorandum, which had recorded the settlement terms arrived at in the past and even acted upon relating to all the existing or future disputes qua the subject property amongst the (signatories) family members despite absence of antecedent title to the property concerned.”

(emphasis supplied)

15] So far as the recital in the disputed documents are concerned, the relevant excerpts of the same read as under:-

“ मेरा व लड़कों का अभी तक संयुक्त परिवार रहा है व संयुक्त परिवार की निम्नलिखित अचल संपत्ति जो संयुक्त परिवार की होकर संयुक्त परिवार की कमाई से क्रय की गयी।

XXXXXXXXXXXXXXXXXX

(4) मोहल्ला सुतार गली वा.नं. 23, खरगोन, न.पा. एरिया खरगोन, तह. खरगोन का मकान जो बंधा हुआ होकर उसमें मैं व मेरे सभी लड़के व किरायेदार निवास करते हैं।

(5) काजीपुरा खरगोन का खला।

उपरोक्त अचल संपत्ति पैकी कृषिभूमि जो लोटन तथा प्रताप के नाम से क्रय की गई है, यह संयुक्त परिवार की कमाई से क्रय की गई है व इसमें संयुक्त परिवार के सभी सदस्यों का समान हक्क व स्वत्व है।

(6) उपरोक्त वर्णित अचल संपत्ति कृषिभूमियों का मैं निम्न मुजब पारिवारिक व्यवस्था की दृष्टि से अपने लड़कों में विभाजित करता हूं व जो उनके कब्जे में दे दी है।

XXXXXXXXXXXXXXXXXX

(13) शामलाती कर्ज रूपया 15,000/- पंद्रह हजार का है, यह कर्ज अदा करने की जवाबदारी मेरे निम्न लड़कों की निम्न मुजब रहेगी।

रूपया 7,000/- सात हजार शंकर देगा

रूपये 4,000/- चार हजार मदन देवेगा।

रूपया 4,000/- चार हजार प्रताप देवेगा।

कुल 15,000/- पन्द्रह हजार रूपया।

उपरोक्त कर्ज रूपया 15,000/- पंद्रह हजार की अदायगी के लिये मेरे पुत्र लोटन व मृत पुत्र बट्टी के वारिसों की रहेगी, मेरी व मेरी पत्नि की कोई जवाबदारी नहीं रहेगी।

XXXXXXXXXXXXXXXXXX

इस लेख के द्वारा मेरे पुत्रों को हिस्से में दी गयी संपत्ति का कब्जा भी उनको दे दिया गया है और कब्जे बाबद् कोई विवाद नहीं रहा है।

अब इस लेख के आधार पर मेरे प्रत्येक पुत्र को यह अधिकार है कि वह अपना स्वयं का खर्च करके अपना पृथक नाम लागू करा लेवे व भूमि के खसरा नंबर, रकबा, लगान अलग से कायम करवाकर ऋण पुस्तिका बना लेंगे एवम् इस कार्यवाही में एक-दूसरे को एक-दूसरे की उपस्थिति की, बयान देने की जरूरत हुई तो सहयोग करेंगे व मैं भी सहयोग करूंगा।”

16] A perusal of the aforesaid family arrangement clearly reveals that Bhagwan s/o Chatru, who is the father of the plaintiff and her brothers, who are the defendants, had acknowledged that the properties belong to the joint family property, which has been procured through the joint family income only. In such circumstances, when liabilities of the family have also been distributed as provided in the aforesaid arrangement, it is difficult to hold that the properties were not the joint family properties, and the document in question, a partition deed. Thus, the document sought to be proved was merely a family arrangement, which can be termed to be a memorandum of partition, and was not required to be compulsorily registered.

17] In view of the same, this Court finds that the learned Judge of

the trial court has committed no illegality or jurisdictional error in holding that the document dated 29.4.1991 is not a deed of a partition but, only a family arrangement.

18] In view of the same, the petition being devoid of merit is hereby *dismissed*.

(SUBODH ABHYANKAR)
J U D G E

moni