

## **Analysis of Supreme Court Decision in case of Ravinder Grewal V. Manjit Kaur**

### **1. Facts of the case**

The judgement of the Hon'ble Supreme Court in Ravinder Grewal & V. Manjit Kaur, emanates as an appeal against the judgement of the High Court of Punjab and Haryana (hereinafter referred to as the "**High Court**") in R.S.A. No. 946/2004. The appeal had been filed by Mr. Ravindra Kaur Grewal and others (hereinafter referred to as the "**Appellants**"), however, the suit was originally filed by the predecessor of the Appellants, Mr. Harbans Singh (hereinafter referred to as the "**Original Plaintiff**") against his brothers, Mr. Mohan Singh and Mr. Sohan Singh (hereinafter referred to as the "**Original Defendants**") for a declaration that he would be the sole owner of the land admeasuring 11 kanals 17 marlas comprising khasra nos. 935/1 and 935/2, situated at Mohalla Road and also certain other properties (hereinafter referred to as the "**Disputed Property**").

It was the claim of the Original Plaintiff that a family settlement had been entered into, through which his ownership and possession over the Disputed Property was accepted, with the names of the Original Defendants remaining in the revenue records for half share of the Disputed Properties in light of a close relationship between the two parties. However, due to disputes arising time and again between the Original Plaintiff and the Original Defendants, a memorandum of settlement was entered into on March 10, 1988 in order to formalise the earlier settlement. Despite this, the issues between the parties continued to persist causing the Original Plaintiff to file a suit for declaration of a decree establishing his ownership and possession over the Disputed Property. Unfortunately, during the pendency of the suit, the Original Plaintiff expired and the Appellants were brought on record as legal heirs. Ultimately, the trial court partly decreed the suit by decreeing the Appellants to be owners in possession of khasra no. 935/2 and to the extent of half share in khasra no. 935/1 of the total Disputed Property.

Aggrieved by the decree, the Appellants filed an appeal to the District court, Sangrur, wherein the appeal was allowed. The decree of the trial court was modified to declare the Appellants as the owners of the Disputed Property along with construction upon it. A second appeal was filed by Manjit Kaur & Ors. (hereinafter referred to as the "**Respondents**"), who were the legal representatives of the Original Defendants, before the High Court in R.S.A. No. 946/2004. The second appeal was decided in favour of the Respondents, with the High Court setting aside the decree passed by the lower appellate court and holding that the memorandum of settlement, in order to be legally enforceable, would require registration since it creates a right against an immovable property. Thus, leading to the present appeal.

### **2. Submissions by the parties**

The Appellants contended that the lower court had upheld that the memorandum of settlement was executed, only after taking into consideration all the evidence. It was also submitted that the lower court had rightly held that the document, being only a memorandum of settlement and not a

document containing terms and recitals of the family settlement made thereunder and therefore, no registration is mandated. Another submission of the Appellants was that they were in possession of the Disputed Property and that the parties had acted upon the Memorandum of Settlement by selling a property purchased by the Original Plaintiff in the name of his son, Vikramjit Singh which was given to the Original Defendants, who thereafter sold it to one Surjit Kaur. Thus, the parties having acted upon the terms of the said settlement to the prejudice of the other party, it was not open to them to resile from the said arrangement and they were estopped from disowning the arrangement. Reliance was placed upon the aforementioned judgement of the Supreme Court in *Kale (supra)*

As against this, the Respondents argued that the decision of the High Court was correct in its reasoning that the Memorandum of Settlement being a recital of the terms of the family settlement, it was to be registered. Thus, the document would be inadmissible as evidence. It was contended by the Respondents that there was as a matter of fact no pre-existing title in favour of the original Plaintiff and also that no Joint Hindu Family arrangement was entered into, negating the question of partition. Without prejudice to the above, the validity of the Memorandum was disputed since it was the submission of the Respondents that the signature of the Original Defendants was forged.

### **3. Decision of the Supreme Court of India**

The judgement rendered by the Hon'ble Supreme Court has been summarised as below,

#### **a. Adverse possession under the Limitation Act, 1963**

Prior to the appeal being heard, the question of law was referred to a larger three-member bench on whether any action for adverse possession would be maintainable under Article 65 of the Limitation Act, 1963 for declaration of possession and grant of permanent injunction against the defendants from interfering with such possession. Adverse possession is a hostile possession by clearly asserting hostile title in denial of title of the true owner. It was held by the larger bench that the word 'title' as used under Article 65 would include title acquired by way of adverse possession. Thus, under Article 65, a suit based on title for recovery of possession is maintainable by the Respondents only within 12 years from the date of start of the adverse possession. Article 65 of the Limitation Act, 1963 only restricts the right of an owner to recover possession before the period of limitation fixed for extinction of his rights expires. Once the right has been extinguished, another person acquires prescriptive rights which cannot be defeated by re-entry by the owner or subsequent acknowledgement of his rights. Thus, the question was answered in favour of the Appellants vide judgement dated August 07, 2019.<sup>1</sup> The same was not discussed in the judgement under the present appeal, since the trial Court had found that the possession of the Original Plaintiff was only permissive possession.

#### **b. Registration of Memorandum of Settlement**

The High Court did not doubt the basic factual position established by the trial court that the Jamabandi for the year 1984-1985 of the Disputed Property had revealed that khasra No.935/1/1/1 was owned by the Original Defendants, whereas khasra No. 935/1/1/2 (518) showed the Original Plaintiff as the owner. However, it was admitted that the Original Plaintiff was in possession of the

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<sup>1</sup> (2019) 8 SCC 729.

Disputed Properties with the consent of the original Defendants. The transactions, pursuant to this, as mentioned hereinabove were taken into consideration and it was concluded by the High Court that an unequivocal family arrangement had been entered into and subsequently acted upon. Therefore, it was held by the first appellate court that a family arrangement had been executed as was also testified by Harinder Kaur, the wife of one of the Original Defendants.

While considering the decisions pronounced by all the lower appellate courts, the Hon'ble Supreme Court held the judgement of the High Court inadequate in as much as the High Court in exercise of its appellate jurisdiction had failed to undertake proper analysis and scrutiny of the judgment of the first appellate Court in the right perspective, leading to overturning of a well-reasoned order by the first appellate court in a casual manner. The Hon'ble Supreme Court further went on to hold that it was well settled that a family arrangement being entered into for the purpose of settling and resolving conflicting claims or disputed titles over familial property, once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, the same must be enforced if honestly made. The Hon'ble Supreme Court heavily relied upon the jurisdictional court's judgement in *Kale (supra)* to conclude that a family arrangement should be considered legal instead of invalidating the same on technical grounds and further that the Memorandum of Settlement, which is prepared after a family arrangement has been entered into and solely exists for the purpose of the record or for information of the court for making necessary mutation, did not have to compulsorily be registered under Section 17 of the Indian Registration Act, 1908.

Lastly, the decisions relied upon by the High Court in the matters of *Bhoop Singh V. Ram Singh Major & Ors.*<sup>2</sup>, as well as *Som Dev & Ors. V. Rati Ram & Anr.*<sup>3</sup>, would not alter the ratio decided by the first appellate court since they dealt with the issue of compulsory registration of a decree or order of Court under sub-clause (vi) of section 17(2) of the Registration Act, 1908 as applicable then. However, the appeal in *Ravinder Grewal & V. Manjit Kaur* would attract clause (v) of section 17(2) of the Registration, 1908 Act.

c. Principle of Estoppel

The Hon'ble Supreme Court reiterated its reliance upon the judgement passed in *Kale (supra)* on the principle of a family arrangement operating as an estoppel to preclude the family members who had benefitted from the arrangement to later challenge the validity of the same. It was held that even in the event a family arrangement has not been registered, it would not prejudice its binding nature upon the members of the family and would continue to act as an estoppel to prevent members from revoking the family arrangement.

Thus, the question of whether registration of family arrangement is compulsory was answered in favour of the Appellants and the Original Plaintiff by allowing the appeal.

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<sup>2</sup> (1995) 5 SCC 709.

<sup>3</sup> (2006) 10 SCC 788.