

12th November, 2020

Memorandum of Settlement binding on Parties: Registration not mandatory

The Supreme Court in its recent judgment dated 31.07.2020 in the matter of *Ravinder Kaur Grewal & Ors. vs. Manjit Kaur & Ors.* held that a Memorandum of Settlement (for short “MoS”) entered between members of the family is not required to be registered. The MoS is a mere document i.e. it is an understanding to enter into binding relationship and/or agreement in the future. MoS is usually prepared as a record of what had been agreed upon so that there are no hazy notions about it in the future. The MoS does not create any right or extinguish any right in movable property as compared to a Family Agreement where the right and liabilities of the parties to the agreement are defined.

I Facts

- 1 The original suit was filed by Harbans Singh (for short “**Plaintiff**”) against his real brothers i.e. Mohan Singh and Sohan Singh (collectively referred as “**Defendants**”) for a declaration that he was the exclusive owner of land admeasuring 11 kanals 17 marlas comprising khasra Nos. 935/1 and 935/2 situated at Mohalla Road (for short “**Suit property**”)
- 2 Dispute arose between the brothers in the year 1970, regarding the suit property and through a family settlement it was decided that Harbans Singh i.e. the Plaintiff would be the owner of the suit property.
- 3 The Memorandum of Settlement was signed on 10.03.1988.
- 4 However, the defendants once again raised new issues to resile from the family arrangement and protested against the MoS.
- 5 As a result, the Suit for declaration was filed by the Plaintiff i.e. Harbans Singh claiming to be the owner of the property against the defendants.
- 6 The Trial Court vide its judgment dated 19.01.2000 partly decreed the suit in favour of the plaintiff for some part of the suit property (for short “**Trial Court Judgment**”)
- 7 The Plaintiff aggrieved by the decision of the Trial

Court exercised his First Right of Appeal before the District Judge, Sangrur.

- 8 The District Judge Sangrur set aside the decree of the Trial Court.
- 9 The First Appellate Court i.e. the District Court Sangur vide its judgment dated 29.11.2003 declared the Plaintiff to be the owner of the Suit property (for short “**Judgment of the First Appellate Court**”)
- 10 The Second Appeal was preferred by the legal heirs of the Defendants (for short “**Respondents**”) against the Legal heirs of the Plaintiff (for short “**Appellants**”) against the judgment of the First Appellate Court.
- 11 The High Court by its judgment dated 27.11.2007 set aside the decision of the First Appellate Court and opined that a document which created a right in favour of the plaintiff in an immovable property, in which there was no existing right would require registration, being the mandate of law and therefore the memorandum of settlement did not have legal value (for short “**High Court Judgment**”)
- 12 The Civil Appeal in the Supreme Court arose against the High Court Judgment.

II Issue

Whether the MoS dated 10.03.1988 executed between the Plaintiffs and the Defendants required registration?

III Decision of the Supreme Court

- 1 The Hon’ble Supreme Court held the Hon’ble Punjab & Haryana High Court had not dealt with the factual aspects adverted to by the first appellate Court to conclude that the document was only a memorandum of family settlement and not a document containing the terms and recitals of a family settlement.
- 2 A distinction should be made between a document containing the terms and recitals of a family arrangement and a mere memorandum prepared to record the agreement to enter into a formal agreement.
- 3 The Supreme Court noted that the High Court had not



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doubted the factual findings that there was not only univocal family arrangement between the parties, but it was even acted upon by them without any exception.

4 The relevant part of the judgment is as follows:

“The established facts and circumstances clearly establish that a family settlement was arrived at in 1970 and also acted upon by the concerned parties. That finding of fact recorded by the first appellate Court being unexceptionable, it must follow that the document Exhibit P6 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 concerned property.”

5 The Hon’ble Supreme Court concluded that the High Court had committed manifest error in interfering with and in particular reversing the well-considered decision of the First appellate Court, which had justly concluded that document dated 10.3.1988 executed between the parties was merely a memorandum of settlement, and it did not require registration.

III Analysis of the Supreme Court Judgment

1 Section 17 of the Registration Act, 1908 deals with those documents where registration is compulsory.

2 In the case of *Kale & Ors. vs. Deputy Director of Consolidation & Ors.* (1976)3SCC 119, the Supreme Court dealt with the essentials of a family settlement as follows:

- 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.
 - The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.
 - The family arrangement may be even oral in which case no registration is necessary.
 - It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing.
 - Here also, there should be differentiation between an agreement containing the rights and liabilities of a family arrangement and an understanding entered into 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 required to be compulsorily registered.
- 3 The Hon’ble Supreme Court relied on the above decision and clarified that the parties in the present case had already acted upon the Memorandum and the said memorandum had been prepared for record and therefore did not compulsorily require registration.
- 4 The Hon’ble Supreme Court has drawn a distinction between Memorandum of Family Settlement and a document containing the recitals of a family settlement. In an MoS, no new rights are created or extinguished.