

Analysis of Family Arrangement or Settlement

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Connotation of Family:

In the context of family arrangement or settlement, the word 'family' is quite flexible. Therefore, it is imperative to understand the term 'family' first. It may be understood in proper sagacity in the case of a family settlement, as constituting a group of persons who are recognized in law as having a right of succession or having a claim to a share in the property in dispute. But every party taking benefit under a family settlement need not necessarily be shown to have under the law, a claim to share in the property. All that is necessary is that the parties should be related to one another in some way and have a possible claim or a semblance of a claim on some ground, as, say, affection. Thus, it is not confined only to people having legal title to the property.

The Supreme Court in *Ram Charan v. Girja Nandini*, observed "the word 'family' is not to be understood in a narrow sense of being a group of persons whom the law recognizes as having a right of succession or having a claim to a share in the disputed property." A family is not the one which is normally understood for purposes of Hindu Law but it would include wide range of persons who belong to one family in its comprehensive sense. Even the parties to family settlement need not belong to the same family. If the dispute which is settled is one between near relations, then the settlement of such disputes can be considered as a family arrangement (Refer: *Ram Charan Das vs. Girija Nandini Devi* – AIR 1966 SC 323). It is enough if the parties are in relations. Even collaterals having a remote common ancestor may join in an arrangement and can have relinquished or altered even their interest in expectancy. In this connection, reference may be made to *Krishna Biharilal vs. Gulab Chand & Ors.* [1971] AIR 1971 SC 1041.

To consider a settlement as a family arrangement, the family is not to be taken in its rigid connotation in common parlance.

Interpretation of Family Settlement:

It is often found that between members of the family claims and counter-claims are made against one another in respect of properties held by the members of the family and claims of ownership, maintenance, etc. are canvassed. With a view to avoid protracted litigation and exposure to public gaze of private family disputes, very often the family members try to bring about an amicable settlement of the family differences by invoking the assistance of a well-wisher of the family and arrive at a settlement of their mutual rights and obligations. Such family settlements may result in transfer of properties or recognition of the rights of some members of the family in various properties in dispute or may create limited rights in respect of such properties in favour of various members of the family.

Family Settlement is an understanding for the dissection of the family property by way of compromise to elude family squabble or litigation. The arrangement results in dividing family property. It becomes an agreement among the members of a family to share equitably whatever they obtained. It is an agreement

between co-heirs dividing the property amongst them to conduce to the family serenity. It quite often emerges as an agreement between the heirs and the person supposed to be entitled under a lost will.

Halsbury's Laws of England, Volume 18, Fourth Edition, deals with this subject at length. Para 301 defines a family arrangement as follows: -

“A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed right or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour”.

“The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term family agreement is applied”.

Requisites for family settlement:

The requirements of a valid family settlement are:

- (a) existing or future disputes or differences between the members of the family in respect of their rights on the properties.
- (b) existing of claims or semblance of a claim of the various members of the family on such properties and,
- (c) resolving of the said claims by family settlement arrived at between the members of the family including the guardians of minors involved.

Thus, prior to the settlement there should be some evidence of claims or counter claims or differences or disputes between the members of the family on this issue which will justify a family arrangement taking place. The best evidence of this would be litigation in court or exchange of legal notices between parties, and adjudication through arbitrator. But this is not absolutely essential - Pulliah v. Narsimham AIR 1966 SC 1836. Though, conflict of legal claims in present or in future is generally a condition for the validity of a family arrangement, it is not necessary so. Even bonafide disputes, present or possible, which may not involve legal claims, will suffice.

It is not necessary that the claim should be a legal and valid claim in order that there should be a valid family settlement, but nonetheless, there should be some differences or disputes in order that it should amount to a valid family settlement. A particular instance of family settlement is found in a decision of the Supreme Court in CWT Vs. Vijayaba, 117 ITR 734(SC) where there did not appear to be any legal claim of the son against the Maharani, but even then a promise by her to pay certain amount to the son was held to be a valid liability created by her by way of a family settlement which was binding on the parties concerned.

The existence of the dispute or a threatened dispute between the members of the family is considered to be a precondition for a valid family settlement and such disputes and the consequent giving up of claims and counter-claims between the various members of the family constitutes good and valid consideration between the parties for enforcement of the rights and obligations created by such a family settlement. The family settlement, therefore, is not founded on existing rights or liabilities but rather on existing claims and disputes between the parties which are amicably resolved.

Family Settlement vis a vis transfer of Property:

Family arrangement being a modification and alteration of title among parties having antecedent rights and interest does not result in any kind of transfer. It is analogous to allocation of properties under a partition of

a HUF and hence no conveyance is de rigueur. A family arrangement is not treated as a conveyance. It is only in the nature of allocation, distribution, re-distribution or recognition of pre-existing rights. This is like re-alignment of rights. In the process, some of the pre-existing rights of one or more members may even be extinguished by their consent. So long as it meets the other requirements of a valid family arrangement, this is also recognized. The matter to be considered is the recognition of a claim or a right and not the transfer of the same even though there could be relinquishment by one or more members or acknowledgement of rights of others by one or more members.

A reference may be usefully made to the decision of the Supreme Court in the case of Ramcharandas V/s. Girjanandinidevi, AIR 1966 SC 323 wherein it has been observed:

“Such family settlement between the members of the family bonafide to put an end to the dispute amongst themselves is not a transfer. It is also not a creation of an interest. In a family settlement, each party takes a share in the property by virtue of independent title which is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have under the law claim to share in property. All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection”.

Even, family arrangements are not considered as ‘transfer’ under the Income Tax Act, 1961 and there is no liability to capital gain u/s 2(47) of the Act. Therefore, even though properties and assets are settled among the family members, it is not subject to taxation under capital gains in respect of profits derived by the members who are parties to the arrangement. Reliance can be place upon CIT vs. AL Ramanathan (2000) 245 ITR 494, Smt. Vijaya Raje Scindia vs. ITO (ITA No. 2780(Bom./89) dated 17-12-1993, H.H MoharaniManekuraje Pawan vs. ITO (15 ITD 545 (Indore), Mohd. Haroon Japanwala vs. ITO (22 ITD 61) Delhi, DCIT, Spl. Rg. 46 vs. Smt Vaishali K. Shah (ITA No. 7074/Mum/96 A.Y 1992-93).

Registration of Family Settlement:

A distinction should be made between the 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 circumstances, the memorandum itself does not create or extinguish any rights in immovable properties and for that reason does not fall within the mischief of Section 17(2) of the Registration Act and is, hence, not compulsorily registrable. So a document which was no more than a memorandum of what had been agreed to did not require registration. Hence a document which is in the nature of a memorandum of an earlier family arrangement and which is filed before the court for its information for mutation of names is not compulsorily registrable and therefore can be used in evidence of the family arrangement and is final and is binding on the parties.

Even if a family arrangement that required registration was not registered, it would operate as a complete estoppel against the parties who have taken advantage of the family arrangement. In the case of Kale Vs. Dy. Director of Consolidation AIR 1976 SC 807 (1976) 3 SCC 119, held that a family arrangement being binding on the parties to the arrangement clearly operates as an estoppels to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. In the same case, it has also been held that a family arrangement, which was registrable but not registered can 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. Thus, though the family arrangement is not registered yet it has evidentiary value.

Depending on the wordings employed, facts and circumstances and other factors, it may or may not required be stamped and registered.

Conclusion:

By virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. As a result of the family arrangement, disputes are avoided in the family, the honour of the family is safeguarded, or various obligations, morally binding on a family, are provided for, or family property is continued in the family. The intention of the arrangement is to shield the family from long drawn litigation or perpetual strives which mark the unity and solidarity of the family.

Since the consideration for a family arrangement is partly value and partly love and affection, the pecuniary worth of the consideration is not regarded too closely. The consideration for a family settlement is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst the relations and after that consideration has been passed by each of the disputants, the settlement consisting of recognition of the right asserted by each other cannot be impeached. The court held that the consideration for the family settlement being compromise between parties even to a previous suit would be a family settlement.

Such a family settlement is not only in relation to the title of the property but also in relation to the use and possession thereof. Obligations regarding maintenance are to be found under the general law and specifically, under the Hindu Adoption and Maintenance Act, 1956 and if any settlement takes place in this connection, it will be for a valid and valuable consideration. Any property can be allotted to a female in lieu of her right of maintenance, marriage or to discharge any other obligation. [CGT vs. N. Jothi Kumar (1986) 157 ITR 785 (Madras), State of Kerala vs. K.P Gopal (1987) – 166 ITR 111(Kerala), Basant Kumar Aditya Vikram Birla vs. CGT - (1982) 137 ITR 72(Calcutta), Satpal Bansal vs. CIT (1986) 162 ITR 582 (P & H F), B.T Ravindra Nath Puja vs. CIT (1989) 179 ITR 243(Karnataka), GurammaPharatan Deshmukh vs. MalappaChambasappa – AIR 1964 SC 510, CGT vs. B.S Appa Rao (2001) 248 ITR 103(SC), Mandali Singhal vs. Ravi Singhal – AIR 1999 Delhi 156].

Further, it may also be noted that in the case of non Hindus also family settlements can be arrived at between the members of the family. The concept of family arrangement is applicable to all the communities in which there is a common unit, common mass and the practice of joint living.

A family settlement is treated differently from any other formal commercial settlement as such a settlement in the eyes of the law ensures peace and goodwill among the family members. Such family settlements, bona fide and without fraud, meet with the approval of the courts. Such settlements are governed by a special equity principle, as decided by the Supreme Court.

If a family settlement or a family arrangement is found to be bondafide, voluntary, without coercion, under influence, misrepresentation and stands acted upon, it deserves to be upheld and accepted by the courts, even if it involves release or relinquishment or surrender of disposition, assignment, or transfer. [Smt. Vidyawati Devi Rathi vs. C.G.T (1988) 169 ITR 708 CIT vs. A Indiramma (1986) 160 ITR 829

(Karnataka), K.Venugopal vs. CIT (2001) 248 ITR 251 (Mad), CGT vs. D. Nagrathinam (2004) 266 ITR 342 (Madras)].

In short, the family settlement is a conciliatory and a pacific mean of division of property and settlement would be of properties co-owned by the specified family members having common interest in the said property.

References :

- (i) Ram Charan Das v. Girja Nandini Devi, AIR 1966 SC 323
- (ii) Halsbury's Laws of England, Volume 18
- (iii) Pulliah v. Narsimham AIR 1966 SC 1836
- (iv) Krishna Biharilal vs. Gulab Chand & Ors. [1971] AIR 1971 SC 1041
- (v) India Law Journal, 2007
- (vi) www.itatonline.org