

# FAMILY ARRANGEMENTS IN INDIA: PRESERVING THE QUINTESSENTIAL SOCIAL UNIT OF THE INDIAN SOCIETY

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## Abstract

*It is said family is perhaps the most important thread of the social fabric of this country. The Hindu Society has existed from time immemorial and has even progressed in many aspects, but the basic social unit which holds this society together has not changed. Even today major business entrepreneurs live in a joint family and owe a major part of their success to this social unit. However, as the society has progressed the very existence of joint family has come under threat when there is no articulate demarcation with regards to ownership of a property. Joint family and disputes in the modern era have become an ordinary sight in the courts of law. In a developing country like India, where the law is no more at a nascent stage, but the public at large is unaware of alternate dispute resolutions, tend to enter into aggressive litigation which often witnesses exchange of accusations and words which shatter the peace and security of a family to a point of no return. It is in this background, this paper focuses on how property disputes, which are subject matter of most family related litigations can be avoid not only to preserve the sanctity of a family but also save time and hard earned money by avoiding litigation. Family arrangements or family settlements can be entered into not only to bring an end to a family dispute but also ensure equitable distribution of wealth among family members.*

**Key words:** Hindu Law, Family arrangement, Family dispute, Joint family, Registration,

## I. Introduction

Family disputes have been a ubiquitous part of a social unit called family. Although the concept of Joint family is a normal condition of the Hindu Society, it has always led to disputes and squabble among its member. The ancient system generally treated property acquired by family members as family property but as the society and concept of the recognition of the members of the family has evolved so has the concept of separate property and rules of inheritance. Family disputes have found their place in the courts of law since time immemorial from divorce petitions to partition suits, the subject matter of these suits may differ, however, they share one common aspect, that is, a dispute regarding the regulation or rights of an individual who forms a part of the social unit on which the very foundation of Hindu society is based, called Family. These cases always end up in leaving a bitter taste in the mouth of the litigant. The doctrine of family arrangement or otherwise also known as family settlement allows members of a family to arrive at a bona fide arrangement for the purpose to bring an end to the family dispute and preserve the relations and peace among the members of a family.

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Before we dwell into the concept of family arrangements and its condition precedents and effects, it is imperative that we understand the meaning of family as held by the Indian Judiciary. The Supreme Court in, *Ram Charan Das v. Girjanandini Devi & Ors.*<sup>2</sup>, held “The word 'family' in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute”. Almost a decade later, the Supreme Court, in *Kale & Ors. v. Director of Consolidation*<sup>3</sup>, laid down a precise definition including within its ambit not only legal heirs but also any person with any antecedent title, it observed “ the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successions so that future disputes are sealed forever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country.”

In simpler terms, in case of a family settlement, it is not *sine qua non* for a party receiving any material benefit out of a family settlement to be recognized by the law, making such a claim of share in the property. The one single objective such family arrangement or settlement is to bring an end to the dispute among the family members and to avoid any prolonged litigation which could have been avoided in the first place. The expectation of such a family settlement is to preserve the amity among family members and the sanctity of the relations which the family members share, even if the person claiming such a share is not a part of the immediate family.

## II. Essentials and advantages of a family arrangement

In Halsbury's Laws of England<sup>4</sup>, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

"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 rights 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 arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter most for the interest of families is, and has regard to considerations which in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements"

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<sup>2</sup> *Ram Charan Das v. Girjanandini Devi & Ors.* AIR 1966 SC 323

<sup>3</sup> *Kale & Ors. V. Director of Consolidation* 1976 AIR 807; 1976 SCR (2) 202

<sup>4</sup> Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216

To paraphrase what has been observed above, it is the object of a family arrangement to resolve disputes among the family members before the dispute is argued in the court of law. The courts also have a tendency to uphold family arrangements to promote harmony within a family. A family arrangement could be considered as a conciliatory method, which shields and prevents prolonged and occasionally even belligerent litigation.

In *Lala Khunni Lal v. Kunwar Gobind Krishna Narain*<sup>5</sup>, the Privy Council examined that it is the duty of the courts to uphold and give full effect to a family arrangement.

In *Sahu Madho Das and Ors v. Pandit Mukand Ram and Anr.*<sup>6</sup>, a bench comprising of Justice Vivian Bose, Justice Jagannadhadas and Justice BP Singh placing reliance on *Clifton v. Cockburn*<sup>7</sup> and *William v. William*<sup>8</sup>, the Apex Court held that a family arrangement can, as a matter of law, be implied from a long course of dealings between the parties. It was held that "...so strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement."

In *Maturi Pullaiah v. Maturi Narasimham*<sup>9</sup>, the Apex Court held that "although conflict of legal claims in praesenti or in future is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims, will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it."

Further in *Krishna Biharilal v. Gulabchand*<sup>10</sup>, the Supreme Court reiterated the approach of courts to lean strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all. This approach was again re-emphasised in *S. Shanmugam Pillai v. K. Shanmugam Pillai*<sup>11</sup> where it was declared that this Court will be reluctant to disturb a family arrangement.

In *Kale and Ors. v. Deputy Director of Consolidation and Ors.*<sup>12</sup>, VR Krishna Iyer, RS Sarkaria & S Murtaza Fazal Ali, JJ, as their lordships were then, examined the effect and value of family arrangements entered into between the parties with a view to resolving disputes for all. This Court observed that "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

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<sup>5</sup> *Lala Khunni Lal v. Kunwar Gobind Krishna Narain*<sup>5</sup> (1911)13BOMLR427

<sup>6</sup> *Sahu Madho Das and Ors v. Pandit Mukand Ram and Anr.* AIR1955SC481

<sup>7</sup> *Clifton v. Cockburn* (1834) 3 My &K 76

<sup>8</sup> *William v. William* (1866) LR 2Ch 29

<sup>9</sup> *Maturi Pullaiah v. Maturi Narasimham* AIR 1966 SC 1836

<sup>10</sup> *Krishna Biharilal v. Gulabchand* AIR 1971 SC 1041

<sup>11</sup> *S. Shanmugam Pillai v. K. Shanmugam Pillai* 1973 (1) SCR 570

<sup>12</sup> *supra*

disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and therefore, of the entire country, is the prime need of the hour. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement.

The valuable treatise “Kerr on Fraud” at p.364 explains the position of law, "the principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.

In *K.K. Modi v. K.N. Modi and Ors.*<sup>13</sup>, it was held that the true intent and purport of the arbitration agreement must be examined. Further the court examined that “a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family.”

By the virtue of such settlement or agreement the family property is divided equally among the family members, this is done to either maintain or buy the peace required to live in harmony. As held by the Supreme Court in a plethora of cases, it's not necessary that such an arrangement is to be drawn among co-heirs only, any person with any sort of antecedent title can be a party to the arrangement. Family arrangements in essence are treated differently than contracts per se. The whole objective and motive of the judiciary is not only to prevent unnecessary litigation but their utmost priority is to bring stability in the society.

We shall now look at the conditions precedent required for a family arrangement:

- Existence of a family dispute or claim is of the essence for a family arrangement. These disputes could be regarding anything which affects the rights of a family member or of the family as a whole. It could also be between a family and a person claiming any antecedent title. These disputes usually revolve around property, equitable distribution of property or even recognition of an individual's right. Disputes such as these destroy the peace and promote behaviour which is never regarded as benefiting for the family. The law has always been in favour of preserving family relations and avoid prolonged

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<sup>13</sup> *K.K. Modi v. KN Modi and Ors.* 1998 (1) SCR 601

litigation in family disputes which tends to have an irreversible effect on the family relations.

- The family arrangement or settlement should be for a bona fide purpose and should not be induced by fraud, coercion or undue influence. In other words, there should be a bona fide intention to settle the dispute.
- It should benefit the family and help maintain harmony and peace.
- It could either be written or even oral. It may very well be implied from a long course of negotiations. However, while dealing with such negotiations, it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied or can easily be implied.
- The members who may be parties to the family arrangement must have some antecedent title, claim or interest or 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.
- 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.

Advantages of a Family Arrangement:

- A family arrangement which satisfies the essentials helps promote amity and harmony among the family members.
- Ensures equitable distribution rather than arbitrary allotment of share in the property.
- It cannot be treated as a gift under the provisions of the Transfer of Property Act, 1882.
- It is not conveyance as the parties have pre-existing rights in the property.
- Prolonged and aggressive litigation is avoided altogether.

### III. Registration of a family arrangement

A family arrangement can be arrived at either orally or it can be reduced down in writing. Section 17 of the Registration Act, 1908 provides for documents which have to be registered compulsorily. It is a well settled position of law that if a family arrangement is reduced into writing for the parties to use it as an evidence during future disputes, it has to be registered and if not, the court or the appropriate authority may impound such a document. The language of the document has to be looked at if the family settlement contains declarations of parties' rights and then it has to be duly registered and stamped. However, if the document is in the form of a memorandum, that is, it merely records what had been agreed earlier by the

parties, then it would only be a memorandum of family settlement and would not fall under the mischief of Section 17(2) of the Registration Act, 1908.

The wordings used or employed, facts and circumstances are the deciding factors when subject matter of the dispute is whether such a document had to be registered or not. Each document has to be perused by the court of law to decide whether or not the document is required to be registered and stamped. So what is the consequence when a family arrangement which was required to be registered and stamped was not registered or stamped otherwise? The legal effect of this, is that, the parties cannot rely upon the document to prove their case. It will not be admissible as evidence. Whether the party can use it for collateral purpose depends on facts and circumstance of each case.

The courts have clearly distinguished between a family arrangement and a memorandum of family arrangement. Where it is settled that a family arrangement needs to be duly registered and stamped, it is also a well settled law that a memorandum of family settlement 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, 1908 and is, therefore, not compulsorily registrable. Hence, any decree drawn by the court recognizing an oral partition between the members of the family which had taken place earlier and concretised in a memorandum of family settlement does not require execution on a stamp paper or require compulsory registration.

In *Tek Bahadur Bhujil v. Debi Singh Bhujil*<sup>14</sup> and others it was pointed out by the Supreme Court that a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. It was also held that a document which was no more than a memorandum of what had been agreed, to did not require registration. The Court had observed thus "Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess."

The same view was reiterated in *Maturi Pulliah and Anr. v. Maturi Narasimhan and Ors.*<sup>15</sup>, wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time in favour of the parties mentioned therein. In case where no such interest is created, the document would be valid, despite it being non-

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<sup>14</sup> Tek Bahadur Bhujil v. Debi Singh Bhujil, AIR 1966 SC 292

<sup>15</sup> Supra

registered and will not be hit by Section 17 of the Act. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction.

In India, this mode of transfer is recognized by the Supreme Court in *Sahoo Madhab Das vs. Mukand Ram*<sup>16</sup> According to this decision, the dispute need not be a present dispute; even the threat of it to erupt imminently is also considered a good cause for such settlement. What would be the test of existence of a dispute would depend on the circumstances of each individual case. No strait jacket formula was possible. There must be some circumstances indicating some forms of controversy threatening the family unity. Another test may be that whether the settlement really removes the cause of discord and makes the family more secure and happier.

In *Krishna Biharilal v. Gulabchand*<sup>17</sup> and others it was pointed out that the word 'family' had a very wide connotation and could not be confined only to a group of persons who were recognised by law as having a right of succession or claiming to have a share. The Court then observed: "To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all , belong to one family. As observed by the Supreme Court in *Ram Charan Das v. Girjanandini Devi and ors*<sup>18</sup>. The word "family" in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement. The courts lean strongly in favour of family arrangements to bring about harmony in a family and do Justice to its various members and avoid in anticipation future disputes which might ruin them all.

#### IV. Conclusion

Thus, it would appear from a review of the decisions (supra), that the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties, the matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds.

Especially in the decision of *Ram Charan Das*<sup>19</sup>, where the court has adopted a very board view with regards to who can be a party to a family arrangement and the same has been adopted by the Apex Court in the *Kale* case.

It also appears that the Court considers it in the same light as conciliatory proceeding which promotes peace and amity, protects property and security of a family and if such a settlement has been arrived by the parties wilfully, it should not be reopened on frivolous or any other

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<sup>16</sup> *Sahoo Madhab Das vs. Mukand Ram*, 1955 AIR 481:1955 SCR (2) 22

<sup>17</sup> *Supra*

<sup>18</sup> *Supra*

<sup>19</sup> *Supra*

untenable ground which could potentially hamper the peace of the family. The courts have held family arrangements to be binding, even if the family arrangement was oral. The Court has also clearly laid down that a family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same.

A memorandum of family settlement which is merely a recital or in simpler terms just records the terms on which the oral family arrangement was arrived at by the parties, it still can be inspected by the court to determine the true nature of the document, such a document should not be made to circumvent stamp duty. The title of the document does not determine its true nature.

Oral partition or family arrangement is an extremely valuable power whereby the peace, happiness and welfare of a family are secured and litigation is avoided. It is specifically helpful in the case of illiterate members of a family or who have no means to bear expenditure of legal process/advice etc.