Supreme Court of India

V. R. Krishna Iyer, J ; S. Murtaza Fazal Ali, J ; R. S. Sarkaria, J

Kale v. Deputy Director of Consolidation and Others

Civil Appeal No. 37 of 1968

21.01.1976

Registration Act, 1908, S. 17, 17(1)(b) – Family settlement – Estoppel – After having arrived at a family settlement and acting thereupon, the parties are estopped from challenging the same. Held, contention that no question of estoppel would arise in the instant case inasmuch as if the document was to be compulsorily registrable there can be no estoppel against the statute. In the first place in view of the fact that the family arrangement was oral and the mutation petition was merely filed before the Court of the Assistant Commissioner for information and for mutation in pursuance of the compromise, the document was not required to be registered, therefore, the principle that there is no estoppel against the statute does not apply to the present case. Assuming, however, that the said document was compulsorily registrable the Courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. [Para 38]

This principle has been established by several decisions of this Court as also of the Privy Council. In Kanhai Lal v. Brij Lal and Anr. the Privy Council applied the principle of estoppel to the facts of the case and observed as follows:-

“Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Ram Dei, against her own interests and those of her daughter, Kirpa, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordships’ opinion he is bound by it, and cannot now claim as a reversioner.

This Court in Dhiyan Singh v. Jugal Kishore and Anr. observed as follows:

“We do not think the fact that there was a voluntary compromise whereas here there was the imposed decision of an arbitrator makes any difference because we are not proceeding on the footing of the award but on the actions of the parties in accepting it when they need not have done so if the present contentions. are correct.

Even if the arbitrator was wholly wrong and even if the had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other an absolute estate in the properties they agreed to divide among themselves and did divide. That, in our opinion is a

representation of an existing fact or set of facts. Each would consequently be estopped as against the other and Brijlal in particular would have been estopped from denying the existence of facts which would give Mst. Mohan Dei an absolute interest in the suit property."[Para 39]

In view of our finding that the family settlement did not contravene any provision of the law but was a legally valid and binding settlement in accordance with the law, the view of Respondent No. 1 that it was against the provisions of the law was clearly wrong on a point of law and could not be sustained. Similarly the view of the High Court that the compromise required registration was also wrong in view of the clear fact that the mutation petition filed before the Assistant Commissioner did not embody the terms of the family arrangement but was merely in the nature of a memorandum meant for the information of the Court. The High Court further erred in law in not giving effect to the doctrine of estoppel which, is always applied whenever any party to the valid family settlement tries to assail it. The High Court further erred in not considering the fact that even if the family arrangement was not registered it could 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 and also for the purpose of applying the Rule of estoppel which flowed from the conduct of the parties who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement. [Para 44]

R.K. Garg. S.C. Agrawala, V.J. Francis, for the Appellant, B.D. Sharma, for the Respondent

Judgement

S. Murtaza Fazl Ali, J.

This is an appeal by special leave against the judgment of the Allahabad High Court dated May 17, 1966 by which the appeal against the decision of a Single Judge of the High Court rejecting the writ petition of the appellants had been dismissed. An application for granting a certificate for leave to appeal to this Court was made by the appellants before the High Court which was also dismissed by Order of the High Court dated August 7, 1967.

2. The case had a rather chequered career and the disputes between the parties were sometimes settled and sometimes reopened. In Order, however, to understand the point involved in the present appeal, it may be necessary to enter into the domain of the contending claims of the respective parties put forward before the Revenue Courts from time to time. To begin with the admitted position is that one Lachman the last propositor was the tenant and the tenure holder of the property in dispute which consists of 19.73 acres of land contained in Khatas Nos. 5 and 90 and 19.24 acres of land comprising Khatas Nos. 53 and 204. Lachman died in the year 1948 leaving behind three daughters, namely, Musamat Tikia, Musamat Har Pyari and Musamat Ram Pyari. Musamat Tikia was married during the lifetime of Lachman and the appellant No. 1 Kale is the son of Musamat Tikia. Thus it would appear that after the death of Lachman the family consisted of his two

unmarried daughters Har Pyari and Ram Pyari and his married daughter”s son Kale. Under the U.P. Tenancy Act, 1939 which applied to the parties only unmarried daughters inherit the property. The first round of dispute appears to have arisen soon after the death of Lachman in the year 1949 when Panchayat Adalat of the village was asked to decide the dispute between Prem Pal nephew of Lachman and the appellant Kale regarding inheritance to the property left by Lachman. Har Pyari and Ram Pyari appear to have been parties to that dispute and the Panchayat Adalat after making local enquiries held that Har Pyari having been married had lost her right in the estate and Ram Pyari was also an heir so long as she was not married and after her marriage the legal heir to the property of Lachman would be the appellant Kale. In the year 1952 the U.P. Zamindari Abolition and Land Reforms Act, 1950 was made applicable to the tenure holders also. This Act was further amended on October 10, 1954 by Act 20 of 1954 by which, amongst the list of heirs enumerated under the statute, “unmarried daughters” was substituted by “daughter” only. According to the appellant in this Court as also in the High Court Ram Pyari respondent No. 5 was married on February 25, 1955 and thereafter the appellant filed a petition before the Naib Tahsildar, Hasanpur, for expunging the names of respondents 4 and 5 from the disputed Khatas because both of the daughters having been married ceased to have any interest in the property. It was therefore prayed that as the appellant was the sole heir to the estate of Lachman u/s 36 of the U.P. Tenancy Act, 1939, he alone should be mutated in respect of the property of Lachman. By Order dated December 5, 1955 the Naib Tahsildar, Hasanpur, accepted the contention of the appellant and expunged the names of respondents 4 and 5 from the Khatas in dispute and substituted the name of the appellant Kale. Soon thereafter on January 11, 1956, respondents 4 and 5, i.e., Musamat Har Pyari and Ram Pyari daughters of Lachman, filed an application before the Naib Tehsildar for setting aside his Order dated December 5, 1955 which had been passed behind their back and without their knowledge. While this application of respondents 4 and 5 was pending adjudication, the Revenue Court was informed that talk of compromise was going on between the parties which ultimately culminated in a compromise or a family arrangement under which the appellant Kale was allotted Khatas Nos. 5 and 90 whereas respondents 4 and 5 were allotted Khatas Nos. 53 and 204 as between them. A petition was filed on August 7, 1956 before the Revenue Court informing it that a compromise had been arrived at and in pursuance thereof the names of the parties may be mutated in respect of the Khatas which had been allotted to them. This petition was signed by both the parties and ultimately the Assistant Commissioner, I Class, passed an Order dated March 31, 1957 mutating the name of the appellant Kale in respect of Khatas Nos. 5 and 90 and the names of respondents 4 and 5 in respect of Khatas Nos. 53 and 204. Thereafter it is not disputed that the parties remained in possession of the properties allotted to them and paid land revenue to the Government. Thus it would appear that the dispute between the parties was finally settled and both the parties accepted the same and took benefit thereunder. This state of affairs continued until the year 1964 when proceedings for revision of the records u/s 8 of the U.P. Consolidation of Holdings Act, 1953 were started in the village Hasanpur where the properties were situated in the course of which respondents 4 and 5 were entered in Form C.H. 5 as persons claiming co-tenure holders to the extent of 2/3rd share with the appellant Kale who was entered in the said form as having l/3rd share in all the Khatas. In view of this sudden change of the entries which were obviously contrary to the mutation made in pursuance of the family arrangement entered into between the parties in

1956, the appellant Kale filed his objections before the Assistant Consolidation Officer for changing the entries in respect of those Khatas. As the Assistant Consolidation Officer found that the dispute was a complicated one he by his Order dated May 7, 1964 referred the matter to the Consolidation Officer. It might be mentioned here that when the proceedings for revision of the records were started, while the appellant filed his objections, respondents 4 and 5 seem to have kept quiet and filed no objections at all. In fact u/s 9(2) of the U.P. Consolidation of Holdings Act, 1953, the respondents could have filed their objections, if they were aggrieved by the entries made on the basis of the compromise. Sub-section (2) of Section 9 of the U.P. Consolidation of Holdings Act runs thus:

Any person to whom a notice under Sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication under Sub-section (1) as the case may be, file, before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished there from, or in the Statement of Principles, or the need for partition.

This is a very important circumstance which speaks volumes against the conduct of the respondent which will be referred to in detail in a later part of our judgment and seems to have been completely brushed aside by all the Courts.

3. The Consolidation Officer to whom the dispute was referred, by his Order dated July 27, 1964, framed a number of issues, and after trying the suit, removed the name of the appellant Kale from Khatas 5 and 90 and substituted the names of appellant No. 2 Musamat Tikia and those of respondents 4 and 5. We might also mention here that for the first tame respondents 4 and 5 raised a dispute before the Consolidation Officer denying that the appellant Kale was the grandson of Lachman. The Consolidation Officer framed an issue on this question and after taking evidence dearly found that the objection raised by respondents 4 and 5 was absolutely groundless and that the appellant Kale was undoubtedly the grandson of Lachman. The Consolidation Officer pointed out that even before the Panchayat Adalat as also in the mutation petition which was filed before the Naib Tahsildar respondents 4 and 5 never disputed that the appellant Kale was the grandson of Lachman being the son of his daughter Musamat Tikia who is appellant No. 2.

4. Thereafter the appellant and the respondents 4 and 5 filed an appeal before the Settlement Officer who by his Order dated November 28, 1964, restored the mutation made by the Naib Tahsilder on the basis of the compromise, namely the appellant was mutated in respect of Khatas Nos. 5 and 90 and respondents 4 and 5 in respect of Khatas Nos. 53 and 204.

5. Therafter respondents 4 5 and filed a revision petition before the Deputy Director of Consolidation who by his Order dated January 22, 1965, reversed the Order of the Settlement Officer and expugned the name of the appellant Kale from Khatas Nos. 5 and 90 and recorded the name of respondent No. 5 Musamat Ram Pyari in respect of these Khatas on the ground that she was the sole tenure holder in respect of those Khatas.

6. Thereafter the appellant Kale and his mother Musamat Tikia appellant No. 2 filed a writ

petition in the Allahabad High Court against the Order of the Deputy Director of Consolidation. The writ petition was heard in the first instance by a Single Judge who dismissed the petition upholding the Order of the Deputy Director of Consolidation. The appellant then filed a special appeal to the Division Bench of the Allahabad High Court which also affirmed the judgment of the Single Judge and dismissed the appeal-hence this appeal by special leave.

7. In support of the appeal Mr. Garg appearing for the appellants submitted two points of law before us. In the first place he argued that the grounds on which the Courts below have not given effect to the family arrangement arrived at between the parties in 1956 culminating in the mutation in 1957 are not legally sustainable. The High Court took an erroneous view of the law in rejecting the compromise on the ground that it was not registered. It was argued that an oral family arrangement had already taken place earlier and a petition before the Naib Tahsildar was merely for the information of the Court for the purpose of mutation of the names of the parties in pursuance of the compromise and, therefore no question of registration of the compromise in this case arose. Secondly it was contended that even if the compromise was unregistered it would undoubtedly operate as a clear estoppel against the respondents 4 and 5 who having taken benefit there under and having remained in possession of the lands for more than seven years cannot be allowed to revoke the comprosie.

8. Mr. Sharma learned Counsel appearing for the respondents raised the following contentions be fore us:

(1) that the appellants never pleaded any oral family arrangement;

(2) that the family arrangement relied upon by the appellants was not bona fide and was fraudulent as the consent of respondents 4 and 5 was obtained by fraud or undue influence;

(3) that the appellants themselves gave a complete go bye to the family arrangement in the case which they made out before the Revenue Courts and have merely taken advantage of a stray observation made by the Deputy Director of Consolidation;

(4) that the petition filed before the Naib Tahsildar embodied the terms and conditions of the compromise and as such was compulsorily registrable under the Registration Act, and being unregistered it was inadmissible in evidence;

(5) that at any rate the family arrangement was not proved by the appellants as a fact;

(6) that the doctrine of estoppel would not apply because the family arrangement being compulsorily registrable there can be no estoppel against the statute; and

(7) that the findings of the Revenue Courts being essentially findings of fact, this Court would not interfere, unless there was a sufficient error of law apparent on the face of the record.

9. Before dealing with the respective contentions put forward by the parties, we would like

to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. 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 for all in Order to buy peace or mind and bring about complete harmony and good will (sic) the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise “Kerr on Fraud” at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

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.

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. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why 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 successionis so that future disputes are sealed for ever 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. 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 under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury”s Laws of England, Vol. 17, Third Edition, at pp. 215-216, 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 is most for the interest of families, 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.

10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be educed 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 arrangements 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 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 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) (sic) (Section 17(1)(b)?) 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.

11. The principles indicated above have been clearly enunciated and adroitly adumbrated

in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss presently.

12. In Khunni Lal v. Gobind Krishna Narain (1911) 38 Ind App 87 the statement of law regarding the essentials of a valid settlement was fully approved of by their Lordships of the Privy Council. In this connection. the High Court made the following observations which were adopted by the Privy Council:

The learned judges say as follows:

The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognizing the right of the others as they had previously asserted it to the portion allotted to them respectively. It was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement, and we think that it is the duty of the Courts to uphold and give full effect to such an arrangement.

Their Lordships have no hesitation in adopting that view.

This decision was fully endorsed by a later decision of the Privy Council in Mt. Hiran Bibi v. Mt. Sohan Bibi, AIR 1914 PC 44.

13. In Sahu Madho Das v. Pandit Mukand Ram and another , **1955 PLRonline 0002 ,** [1955] 2 S.C.R. 22, this Court appears to have amplified the doctrine of validity of the family arrangement to the farthest possible extent, where Bose, J. speaking for the Court, observed as follows:

It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. But, in our opinion, the principle can be carried further and 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, and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present.

14. In DAS v. Girjanandini Devi & Ors. [1965] 3 S.C.R. 841 this Court observed as follows

Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. 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….The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having been passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.

15. In Tek Bahadur Bhujil v. Debi Singh Bhujil and others it was pointed out by this 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. This 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.

16. Similarly in Maturi Pullaiah and Anr. v. Maturi Narasimham and ors. A.I.R. 1966 S.C. 1836 it was held that even if there was no conflict of legal claims but the settlement was a bona fide one it could be sustained by the Court. Similarly it was also held that even the disputes based upon ignorance of the parties as to their lights were sufficient to sustain the family arrangement. In this connection this Court observed as follows:

It will be seen from the said passage that a family arrangement resolves family disputes, and that even disputes based upon ignorance of parties as to their rights may afford a sufficient ground to sustain it.

X X X X X

Briefly stated, though conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, 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.

17. In Krishna Biharilal v. Gulabchand 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 this Court in Ram Charan Das v. Girjanandini Devi and ors. -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-See Ramcharan Das”s case.

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.

18. In a recent decision of this Court in S. Shanmugam Pillai and others v. K. Shanmugam Pillai & others the entire case law was discussed and this Court observed as follows:

If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The Courts generally lean in favour of family arrangements.

X X X X X

Now turning to the plea of family arrangement, as observed by this Court in Sahu Madho Das and others v Pandit Mukand Ram and Another [1955] 2 SCR 22 the Courts lean strongly 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. As observed in that case the family arrangement can as a matter of law be inferred from long course of dealings between the parties.

In Maturi Pullaiah and Another v. Maturi Narasimham and Others- AIR 1966 SC 1836 this 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 would be sufficient. 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 agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the Courts would more readily give assent to such an agreement than to avoid it.

19. Thus it would appear from a review of the decisions analysed above 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 a matter has been settled, it should not be allowed to be re-opened by the parties to the agreement on frivolous or untenable grounds.

20. A Full Bench of the Allahabad High Court in Ramgopal v. Tulshi Ram and another has also taken the view that a family arrangement could be oral and if it is followed by a petition in Court containing a reference to the arrangement and if the purpose was merely to inform the Court regarding the arrangement, no registration was necessary. In this connection the full bench adumbrated the following propositions in answering the reference:

We would, therefore return the reference with a statement of the following general propositions:

With reference to the first question:

(1) A family arrangement can be made orally.

(2) If made orally, there being no document, no question of registration arises.

With reference to the second question:

(3) If though it could have been made orally, it was in fact reduced to the form of a “document” registration (when the value is Rs. 100 and upwards) is necessary.

(4) Whether the terms have been “reduced to the form of a document” is a question of fact in each case to be determined upon a consideration of the nature and phraseology of the writing and the circumstances in which and the purpose with which it was written.

(5) If the terms were not “reduced to the form of a document”, registration was not necessary (even though the value is Rs. 100 or upwards); and, while the writing cannot be used as a piece of evidence for what it may be worth, e.g. as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct.

(6) If the terms were “reduced to the form of a document” and, though the value was Rs. 100 or upwards, it was not registered, the absence of registration makes the. document inadmissible in evidence and is fatal to proof of the arrangement embodied in the document.

21. Similarly in Sitala Baksh Singh and others v. Jang Bahadur Singh and other AIR 1933 347 (Oudh) it was held that where a Revenue Court merely gave effect to the compromise, the Order of the Revenue Court did not require registration. In this connection the following observations were made:

In view of this statement in Para. 5 of the plaint it is hardly open to the plaintiffs now to urge that Ex. 1, the compromise, required registration when they themselves admit that it

was embodied in an Order of the Revenue Court and that it was given effect to by the Revenue Court Ordering mutation in accordance with the terms of the compromise.

x x x

We hold that as the Revenue Court by its proceedings gave effect to this compromise, the proceedings and Order of the Revenue Court did not require registration.

Similarly in a later decision of the same Court in Mst. Kalawati v. Sri Krlshna Prasad and others AIR 1944 49 (Oudh) it was observed as follows:

Applying this meaning to the facts of the present case, it seems to us that the Order of the mutation Court merely stated the fact of the compromise having been arrived at between the parties and did not amount to a declaration of will. The Order itself did not cause a change of legal relation to the property and therefore it did not declare any right in the property.

22. The same view was taken in Bakhtawar v. Sunder Lal and others where Lindsay, J. speaking for the Division Bench observed as follows:

It is reasonable to assume that there was a bona fide dispute between the parties which was eventually composed, each party recognizing an antecedent title in the other. In this view of the circumstances I am of opinion that there was no necessity to have this petition registered. It does not in my opinion purport to create, assign, limit, extinguish or declare within the meaning of these expressions as used in Section 17(1)(b) of the Registration Act. It is merely a recital of fact by which the Court is informed that the parties have come to an arrangement.

23. Similarly the Patna High Court in Awadh Narain Singh and others v. Narain Mishra and others AIR 1962 Patna 400 pointed out that a compromise petition not embodying any terms of agreement but merely conveying information to the Court that family arrangement had already been arrived at between the parties did not require registration and can be looked into for ascertaining the terms of family arrangement. This is what actually seems to have happened in the present case when the mutation petition was made before the Assistant Commissioner.

24. This 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. We shall deal with this point a little later when we consider the arguments of the respondents on the question of the estoppel. In the light of the decisions indicated above, we shall now try to apply the principles laid down by this Court and the other Courts to the facts of the present case.

25. It would be seen that when the name of the appellant No. 1 Kale was mutated in respect of the Khatas by the Naib Tahsildar by his Order dated December 5, 1955 which is mentioned at p. 4 of the Paper Book respondents 4 and 5 filed an application for setting

aside that Order on the ground that they had no knowledge of the proceedings. Subsequently a compromise was entered into between the parties a reference to which was made in the compromise petition filed before the Revenue Court on August 7, 1956. A perusal of this compromise petition which appears at pp. 15 to 18 of the Paper Book would clearly show two things-(1) that the petition clearly and explicitly mentioned that a compromise had already been made earlier; and (2) that after the allotment of the Khatas to the respective parties the parties shall be permanent owners thereof. The opening words of the petition may be extracted thus:

It is submitted that in the above suit a compromise has been made mutually between the parties.

It would appear from the Order of the Assistant Commissioner, 1st Class, being Annexure 4 in Writ Petition before the High Court, appearing at page 19 of the Paper Book that the parties sought adjournment from the Court on the ground that a compromise was being made. In this connection the Assistant Commissioner, Ist Class, observed as follows:

On 11th January 1956 Mst. Har Piari and Ram Piari gave an application for restoration in the Court of Naib Tahsildar on the ground that they were not informed of the case and they were aggrieved of his Order passed on 5th December 1955. On this application he summoned the parties and an objection was filed against the restoration application. The parties sought adjournment on the ground that a compromise was being made.

The parties filed compromise before the Naib Tahsildar according to which two lists were drawn, one of these is to be entered in the name of Kale and the other in the name of Har Piari and Ram Piari.

This shows that even before the petition was filed before the Assistant Commissioner informing him that a compromise was being made, the parties had a clear compromise or a family arrangement in contemplation for which purpose an adjournment was taken. These facts coupled together unmistakably show that the compromise or family arrangement must have taken place orally before the petition was filed before the Assistant Commissioner for mutation of the names of the parties in pursuance of the compromise. The facts of the present case are therefore clearly covered by the authorities of this Court and the other High Courts which laid down that 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 binding on the parties. The Deputy Director of Consolidation respondent No. 1 as also the High Court were, therefore, wrong in taking the view that in absence of registration the family arrangement could not be sustained. We might mention here that in taking this view, the High Court of Allahabad completely overlooked its own previous decisions on this point which were definitely binding on it. This, therefore, disposes of the first contention of the learned Counsel for the respondents that as the family arrangement having been reduced into the form of a document which was presented before the Assistant Commissioner was unregistered it is not admissible and should be excluded from consideration.

26. It was then contended by the respondents that the family arrangement was not bona fide for two reasons:

(1) that it sought to give property to the appellant No. 1 Kale who was not a legal heir to the estate of Lachman, because in view of the U.P. Land Reforms (Amendment) Act 20 of 1954 Mst. Ram Piari even after being married could retain the property, and so long as she was there the appellant had no right; and

(2) that the family arrangement was brought about by fraud or undue influence.

27. As regards the first point it appears to us to be wholly untenable able in law. From the principles enunciated by us and the case law discussed above, it is absolutely clear that the word ”family” cannot be construed in a narrow sense so as to confine the parties to the family arrangement only to persons who have a legal title to the property. Even so it cannot be disputed that the appellant Kale being the grandson of Lachman and therefore a reversioner at the time when the talks for compromise took place was undoubtedly a prospective heir and also a member of the family. Since respondents 4 and 5 relinquished their claims in favour of the appellant Kale in respect of Khatas 5 and 90 the appellant, according to the authorities mentioned above, would be deemed to have antecedent title which was acknowledged by respondents 4 and 5. Apart from this there is one more important consideration which clearly shows that the family arrangement was undoubtedly a bona fide settlement of disputes. Under the family arrangement as referred to in the mutation petition the respondents 4 and 5 were given absolute and permanent rights in the lands in dispute. In 1955 when the compromise is alleged to have taken place the Hindu Succession Act, 1956, was not passed and respondents 4 and 5 would have only a limited interest even if they had got the entire property which, would ultimately pass to the appellant Kale after their death. The respondents 4 and 5 thought that it would be a good bargain if by dividing the properties equally they could retain part of the properties as absolute owners. At that time they did not know that the Hindu Succession Act would be passed a few months later. Finally the compromise sought to divide the properties between the children of Lachman, namely, his two daughters and his daughter”s son the appellant Kale in equal shares and was, therefore, both fair and equitable. In fact if respondents 4 and 5 would have got all the lands the total area of which would be somewhere about 39 acres they might have to give away a substantial portion in view of the ceiling law. We have, therefore to see the circumstances prevailing not after the Order of the Assistant Commissioner was passed on the mutation petition but at the time when the parties sat down together to iron out their differences. Having regard to the circumstances indicated above, we cannot conceive of a more just and equitable division of the properties than what appears to have been done by the family arrangement. In these circumstances, .therefore, it cannot be said that the family settlement was not bona fide. Moreover respondents 4 and 5 had at no stage raised the issue before the Revenue Courts or even before the High Court that the settlement was not bona fide. The High Court as also respondent No. 1 have both proceeded on the footing that the compromise was against the statutory provisions of law or that it was not registered although it should have been registered under the Registration Act.

28. There is yet one more intrinsic circumstance which shows that the compromise was an. absolutely bona fide transaction. It would appear that at the time of the compromise respondent 5 Ram Pyari was faced with a situation when her marriage in 1955 was not so far proved. If she was absolutely certain that her marriage had taken place in 1955 she would not have agreed to the terms at all. On the other hand if she thought that she might not be able to prove that her marriage took place in 1955 and if it was shown that she had married before 1955 then she would be completely disinherited and would get nothing at all with the result that the appellant Kale would get the entire property. On the other hand the appellant must have similarly thought that a bird in hand is worth two in the bush. So long as Ram Pyari was alive he would not be able to enjoy the property and would have to wait till her death. It was, therefore, better to take half of the property immediately as a permanent tenure holder and give the half to the daughters of Lachman, namely, Har Pyari and Ram Pyari. Thus under the terms of the compromise both the parties got substantial benefits and it was on the whole a very fair and equitable bargain. In these circumstances, therefore, the parties struck a just balance and a fair and beneficial settlement which put an end to their disputes.

29. Coming to the second plank of attack against the family settlement that it was brought about by duress or undue influence or fraud, there is not an iota of evidence or a whisper of an allegation by respondents 4 and 5 either in the Revenue Courts or in the High Court. Even before respondent No. 1, where respondents 4 and 5 were the petitioners they never questioned the compromise on the ground that it was fraudulent on a point of fact. It is well settled that allegations of! fraud or undue influence must first clearly be pleaded and then proved by clear and cogent evidence. There was neither pleading nor proof of this fact by respondents 4 and 5. Moreover, it may be mentioned that even in their objections before the Assistant Commissioner for setting aside the previous mutation made in favour of the appellant Kale the only ground taken by the respondents 4 and 5 was that the Order was passed without their knowledge. Lastly the petition filed before the Assistant Commissioner for mutating the lands in pursuance of the compromise was signed by both the parties who were major and who knew the consequences thereof. In these circumstances, therefore, the argument of the learned Counsel for the respondents that the compromise was fraudulent appears to be a pure after-thought and is not at all justified by any evidence. This contention must therefore be overruled.

30. It was also suggested by Mr. Sharma that before the Revenue Courts the appellant Kale tried to show by producing a false Kutumb Register that respondent No. 5 Ram Pyari was married before 1955 so that being a married daughter she may be deprived of her inheritance and the Revenue Courts found that this register was not proved to be genuine. This, however, does not amount to a plea of fraud but is a matter of evidence. On the other hand even the respondents 4 and 5 had taken the stand before the Revenue Courts when they filed their joint written statement in 1965 that the appellant was not the grandson of Lachman a fact which they admitted clearly before the Panchayat Adalat as also before the Assistant Commissioner when they filed the mutation petition. The Revenue Courts clearly held that this plea was totally unfounded and was completely disproved. Thus even assuming the argument of Mr. Sharma to be correct, both parties being in pari delicto none of them could be allowed to take advantage of their wrong. In fact Mr. Garg Counsel for the

appellants was fair enough to give up this plea and clearly conceded before the High Court as also in this Court that Musamat Ram Pyari was married in 1955 as found by the Revenue Courts.

31. Another contention that was advanced before us by Counsel for the respondents was that an oral family arrangement was never pleaded before the Revenue Courts and that the appellants relied mainly on the mutation petition as embodying the terms and conditions of the compromise. In our opinion this contention, apart from being untenable, is not factually correct. The disputes between the appellant Kale and respondents 4 and 5 arose only after the Naib Tahsildar had, on the application of the appellant, mutated his name in respect of the Khata Numbers in dispute. An application was filed by respondents 4 and 5 for setting aside that Order. Thereafter both the parties, namely, the appellant and respondents 4 and 5 obtained adjournment from the Court on the ground that they were going to compromise the dispute. Subsequently the mutation petition was filed which was signed by both the parties. In the Revenue Courts therefore it was the mutation petition alone which formed the pleadings of the parties and therefore it was obvious that the family arrangement was pleaded by the appellant at the first possible opportunity. The family arrangement was again relied upon before the Consolidation Officer in Annexure 5 to the writ petition the relevant portion which appears at page 25 of the Paper Book and runs thus:

The parties contested the suit in the panchayat. They contested it in tahsil also. The plaintiff produced a copy thereof. He produced a copy of a compromise in which the defendant gave half of the land to Kale, treating him as dheota of Lachman, although no party now remembers about that compromise.

In the final Revenue Court i.e., before the Director of Consolidation as also before the High Court the compromise was very much relied upon by the appellant and a finding against the appellant was given both by respondent No. 1 and by the High Court as a result of which this appeal has been filed before this Court. It was suggested by the respondents that Respondent No. 1 had merely made a stray observation in his Order. This does not appear to be correct because respondent No. 1 has proceeded on the footing that a compromise was there but it could not be given legal effect because it contravened some provisions of the law. In this connection the Order of respondent No. 1 reads thus:

Even the Orders passed in the mutation proceedings on the basis of compromise could not maintain as since the mutation proceedings were of summary nature and the compromise of the parties, even if accepted, was against the provisions of law, as either Smt. Ram Pyari could succeed or Kale alone could be deemed to be the successor of Laxman, the last male tenant. There was no question of both the parties sharing the land in between them on the basis of a compromise made against the provisions of law.

Respondent No. 1 also indicated in his Order that the compromise had taken place before the Naib Tahsildar as alleged by the appellant. Lastly both the Single Judge and the Division Bench also have proceeded on the basis that there was in fact a compromise between the parties but have refused to give effect to the compromise because the same was not registered. In these circumstances, therefore, the contention of the respondents 4 and 5 on

this score must be overruled.

32. It was then argued that the appellants have adduced no evidence to prove that there was actually a family arrangement between the parties. We are, however, unable to agree with this contention. There are four important circumstances from which the family arrangement can be easily inferred. These are:

(1) that the parties took adjournment from the Court intimating to it that a compromise was under contemplation;

(2) that a petition for mutation was filed before the Court of Assistant Commissioner clearly alleging that a compromise or a family arrangement had already taken place and that mutation should be made accordingly;

(3) that in pursuance of the compromise both the parties took benefit under the same and continued to remain in possession of the properties allotted to them for full seven years and did not raise any objection at any stage before any authority during this period regarding the validity of the compromise: and

(4) that even though the U.P. Consolidation of Holdings Act, 1953 contained an express provision for filing of an objection u/s 9(2) when the proceedings for correction of the entries were taken respondents 4 and 5 filed no objection whatsoever and filed their additional written statement at a much later stage.

Thus from the actings and dealings of the parties in the course of several years a family arrangement can clearly be inferred in this case.

33. Finally the respondents never took any objection before any of the Courts that no family arrangement had as a matter of fact taken place between the parties. The only objection centerd round the admissibility of the document said to have embodied the terms of the compromise. This contention, therefore, cannot be accepted.

34. It was then submitted that even the appellant had given a go bye to the compromise and seems to have forgotten all about it. This is also factually incorrect. As indicated earlier right from the Court of the Consolidation Officer upto the High Court the appellant has always been relying mainly on the compromise entered into between the parties.

35. Another argument advanced by Counsel for the respondents was that the family arrangement was not valid because the appellant had absolutely no title to the property so long as Mst. Ram Pyari was in lawful possession of the property as the sole heir to Lachman, and if under the family arrangement any title was conveyed to the appellant, the said conveyance can only be by a registered instrument under the provisions of the Registration Act and the Transfer of Property Act. This argument also, in our opinion, suffers from a serious misconception. We have already pointed out that this Court has widened the concept of an antecedent title by holding that an antecedent title would be assumed in a person who may not have any title but who has been allotted a particular property by other party to the family arrangement by relinquishing his claim in favour of such a donee. In

such a case the party in whose favour the relinquishment is made would be assumed to have an antecedent title. In fact a similar argument was advanced before this Court in Tek Bahadur Bhujil's case, (supra) relying on certain observations made by Bose, J., in Sahu Madho Das's case, (supra) but the argument was repelled and this Court observed as follows:

Reliance is placed on the following in support of the contention that the brothers, having no right in the property purchased by the mother"s money, could not have legally entered into a family arrangement. The observations are:

It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing the right of the others, as they had previously assert ed it to the portions allotted to them respectively.

x x x x x

These observations do not mean that some title must exist as a fact in the persons entering into a family arrangement. They simply mean that it is to be assumed that the parties to the arrangement had an antecedent title of some sort and that the agreement clinches and defines what that title is.

The observations of this Court in that case, therefore, afford complete answer to the argument of the learned Counsel for the respondents on this point.

36. Furthermore the Privy Council in somewhat identical circumstances upheld the family settlement in Ramgouda Annagouda & others v. Bhausaheb and others AIR 1927 227 (Privy Council). In that case there were three parties to the settlement of a dispute concerning the property of the deceased person. These were the widow of the deceased, the brother of the widow and the son-in-law of the widow. It was obvious, therefore, that in presence of the widow neither her brother nor her son-in-law could be regarded as the legal heirs at the deceased. Yet having regard to the near relationship which the brother and the son-in-law bore to the widow the Privy Council held that the family settlement by which the properties were divided between these three parties was a valid one. In the instant case also putting the case of respondents 4 and 5 at the highest, the position is that Lachman died leaving a grandson and two daughters. Assuming that the grandson had no legal title, so long as the daughters were there, still as the settlement was made to end the disputes and to benefit all the near relations of the family it would be sustained as a valid and binding family settlement. In the instant cage also it would appear that the appellant Kale and Mst. Har Pyari had no subsisting interest in the property so long as Mst. Rani Pyari was alive. Ram Pyari in view of the amendment in law by the U.P. Land "Reforms (Amendment) Act, 20 of 1954, continued to be an heir even after her marriage but Mst. Har Pyari ceased to be the heir after her marriage which had taken place before the amendment Nevertheless the three children of Lachman in Order to bring complete harmony to the family and to put an end to all future disputes decided to divide the property each getting a share in the same.

The appellant Kale got Khatas Nos. 5 and 90 and Mst. Har Pyari"s share was placed along with Mst. Ram Pyari in the other Khatas. Thus the appellant and Har Pyari and Ram Pyari also enjoyed full benevolence under the family arrangement. We cannot think of a fairer arrangement than this by which not only the property was divided amongst the children of Laehman but even the spirit of the law, which wiped out the invidious distinction between the married and unmarried daughters by the U.P. Act 20 of 1954, was followed. The facts of the present case, therefore, as we have already indicated, are on all fours with the facts in Ramgouda Annagouda's case (supra) AIR 1927 227 (Privy Council). The Privy Council further held in Ramgouda Annagouda"s case that Ramgouda . being a party to benefit by the transaction was precluded from questioning any part of it. On a parity of reasoning, therefore, the respondents 4 and 5 who were parties to the family arrangement and having been benefited thereunder would be precluded from assailing the same. For these reasons, therefore, the contention of the learned Counsel for the respondents on this point also must be overruled.

37. We might mention here that the learned Counsel for the respondents relied on two decisions of the Patna High Court in Brahmanath Singh Ors. v. Chandrakali Kuer and another and Mst. Bibi Aziman and another v. Mst. Saleha and others for the proposition that unless a party to a settlement had an antecedent title the family, settlement would not be valid. In view, however, of the decisions of this Court and of the Privy Council the authority of the Patna High Court on this point is considerably weakened and cannot be treated as a good law. The Patna High Court also held that where the document itself contains or embodies the terms of the family settlement it will be compulsorily, registrable but not when if speaks of the past. In view of our finding that the mutation petition before the, Assistant Commissioner was merely a memorandum of the family arrangement, the authority of the Patna High Court does not appear to be of any assistance to the respondents.

38. Rebutting the arguments of the learned Counsel for the appellant, Mr. Sharma for the respondents contended that no question of estoppel would arise in the instant case inasmuch as if the document was to be compulsorily registrable there can be no estoppel against the statute. In the first place in view of the fact that the family arrangement was oral and the mutation petition was merely filed before the Court of the Assistant Commissioner for information and for mutation in pursuance of the compromise, the document was not required to be registered, therefore, the principle that there is no estoppel against the statute does not apply to the present case. Assuming, however, that the said document was compulsorily registrable the Courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. This principle has been established by several decisions of this Court as also of the Privy Council. In Kanhai Lal v. Brij Lal AIR 1918 PC 70 the Privy Council applied the principle of estoppel to the facts of the case and observed as follows:

Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Ram Dei, against her own interests and those of her daughter, Kirpa, and greatly to her own detriment, to alter her position by agreeing to the

compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordships" opinion he is bound by it, and cannot now claim as a reversioner.

39. This Court in Dhiyan Singh and Anr. v. Jugal Kishore and Anr. observed as follows:

We do not think the fact that there was a voluntary compromise whereas here there was the imposed decision of an arbitrator makes any difference because we are not proceeding on the footing of the award but on the actings of the parties in accepting it when they need not have done so if the present contentions are correct.

X X X X X

Even if the arbitrator was wholly wrong and even if he had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other an absolute estate in the properties they agreed to divide among themselves and did divide. That, in our opinion is a representation of an existing fact or set of facts. Each would consequently be estopped as against the other and Brijlal in particular would have been estopped from denying the existence of facts which would give Mst. Mohan Dei an absolute interest in the suit property.

In view of the principle enunciated in the aforesaid case it is obvious that respondents 4 and 5 would be estopped from denying the existence of the family arrangement or from questioning its validity.

40. In Ram Charan Das's case while dwelling on the point of the family arrangement this Court observed as follows:

It seems to us abundantly clear that this document was in substance a family arrangement and, there fore, was binding on all the parties to it. Moreover it was acted upon by them.

x x x

In our opinion the document on its face appears to effect a compromise of the conflicting claims of Gopinath on the one hand and the present plaintiff Ram Charan Das and his brothers on the other to the estate of Kanhaiyalal.

At p. 851 this Court pointed out that as the settlement consisted of recognition of the right asserted by each other none of the parties could be permitted to impeach it thereafter.

41. To the same effect is the decision of this Court in Krishna Bihari lal's case (supra), where the doctrine of estoppel was discussed, and while referring to the previous cases of this Court, it was observed as follows:

In Dhyan Singh's case -[1952] SCR 478 this Court Ruled that even if an award made is invalid, the persons who were parties to that award are estopped from challenging the

validity of the award or from going behind the award in a subsequent litigation. In Subbu Chetty"s Family Charities v. Gaghava Mudaliar AIR 1961 SC 797-this Court Ruled that if a person having full knowledge of his rights as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponent at the relevant time, he cannot be permitted to go back on that arrangement when reversion actually opens. At the time of the compromise Lakshmichand and Ganeshilal were the nearest presumptive reversioners. They must be deemed to have known their rights under law. Under the compromise they purported to give a portion of the suit properties absolutely to Pattobai, evidently in consideration of her giving up her claim in respect of the other properties. They cannot be now permitted to resile from the compromise and claim a right inconsistent with the one embodied in the compromise.

42. Finally in a recent decision of this Court in S. Shanmugam Pillai case (supra) after an exhaustive consideration of the authorities on the subject, it was observed as follows:

Equitable principles such as estoppel, election, family settlement, etc. are not mere technical Rules of evidence. They have an important purpose to serve in the administration of Justice. The ultimate aim of the law is to secure justice. In the recent times in Order to render justice between the parties, Courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

X X X X X

As observed by this Court in Subbu Chetty"s Family Charities case AIR 1961 SC 797, that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open.

In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against respondents 4 and 5. Respondent No. 1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases. The learned Counsel for the respondents placed reliance upon a number of authorities in Rachcha v. Mt. Medha, AIR 1947 All 177 Revenue Authority v. Smt. Satyawati Sood and others and some other authorities, which, in our opinion have no bearing on the issues to be decided in this case and it is therefore not necessary for us to refer to the same.

43. Finally it was contended by the respondents that this Court should not interfere because there was no error of law in the judgment of the High Court or that of Respondent No. 1. This argument is only stated to be rejected.

44. In view of our finding that the family settlement did not contravene any provision of the law but was a legally valid and binding settlement in accordance with the law, the view of Respondent No. 1 that it was against the provisions of the law was clearly wrong on a point of law and could not be sustained. Similarly the view of the High Court that the compromise required registration was also wrong in view of the clear fact that the mutation petition filed

before the Assistant Commissioner did not embody the terms of the family arrangement but was merely in the nature of a memorandum meant for the information of the Court. The High Court further erred in law in not giving effect to the doctrine of estoppel which, is always applied whenever any party to the valid family settlement tries to assail it. The High Court further erred in not considering the fact that even if the family arrangement was not registered it could 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 and also for the purpose of applying the Rule of estoppel which flowed from the conduct of the parties who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement. In Shyam Sunder and others v. Siya Ram and another it was clearly held by the Allahabad High Court that the compromise could have been taken into consideration as a piece of evidence even if it was not registered or for that matter as an evidence of an antecedent title. The High Court observed as follows:

The decision in Ram Gopal v. Tulshi Ram,-AIR 1928 All. 641 is clear that such a recital can be relied upon as a piece of evidence.

X X X X

It is clear, therefore, that the compromise can be taken into consideration as a piece of evidence.

x x x x

To sum up, therefore, we are of the view that the compromise could have been relied upon as an admission of antecedent title.

45. On a careful consideration of the facts and the circumstances and the law discussed above, we are clearly of the opinion that the Orders of the High Court as also that of Respondent No. 1 suffer from a substantial error of law resulting in serious injustice to the appellant by reopening a dispute which had been settled almost seven to eight years before the proceedings for reopening the same were started. In not interfering to correct the clear error of law committed by Respondent No. 1, the High Court failed to exercise jurisdiction vested in it by law, and, therefore, the Order of the High Court itself was legally erroneous and cannot be sustained. The contentions raised by the appellant are well founded and must prevail, while the contentions advanced by the respondent fail.

46. In these circumstances, therefore, the appeal is allowed, the judgment of the High Court is set aside and by a writ of certiorari the Order of Respondent No. 1 dated January 22, 1965 is hereby quashed. The Order of the Settlement Officer dated November 28, 1964 which actually gave effect to the compromise is hereby restored and the Revenue authorities are directed to attest the mutation in the names of the appellant and respondents 4 and 5 in accordance with the family arrangement entered into between the parties referred to in this case. In the peculiar circumstances of the case there will be no Order as to costs.

47. **Sarkaria, J:-**I am at one with my learned Brother, that this appeal should be allowed

with no Order as to costs and that the Order dated January 22, 1965 of Respondent 1 quashed, the Order dated November 28, 1964 of the Settlement Officer restored, and the Revenue authorities directed to attest the mutation in accordance with the antecedent family arrangement which had been orally arrived at between the parties and acted upon for several years. I further agree that the family settlement arrived at by the parties was oral, and the petition filed by them on August 7, 1956 before the Assistant Commissioner was merely an information of an already completed oral transaction. In other words, the petition was only an intimation to the Revenue Court or authority that the matters in dispute between the parties had been settled amicably between the members of the family, and no longer required determination and that the mutation be effected in accordance with that antecedent family settlement. Since the petition did not itself create or declare any rights in immovable property of the value of Rupees 100 or upwards, it was not hit by Section 17(1)(b) of the Registration Act, and as such was not compulsorily registrable. The rest of the reasoning in the judgment of my learned Brother has also my concurrence except that I will reserve my opinion with regard to the alternative proposition, whether this petition-assuming it was compulsorily registrable u/s 17(1)(b) of the Registration Act- could be used to raise an estoppel against any of the parties hereto. Decision of this point, in my opinion, is unnecessary for the disposal of this cas

Equivalent Citation : AIR 1976 SC 807: (1976) RD 355: (1976) 3 SCC 119: (1976) 3 SCR 202