A RAVINDER KAUR GREWAL & ORS.

v.

MANJIT KAUR & ORS.

(Civil Appeal No. 7764 Of 2014)

B JULY 31, 2020

[A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Registration Act, 1908 – s. 17 – Document of family settlement – The predecessor of the appellants asserted that his ownership and possession in respect of the suit land comprising Khasra No. 935/1 and 935/2 including constructions thereon of 16 shops, a service station and a boundary wall with Samadhi of his wife in the land, was accepted and acknowledged by his two brothers in a family settlement – However, dispute arose between predecessor of the appellants and his brothers regarding the suit land – Thereafter, a memorandum of family settlement dated 10.03.1988 was executed between the parties – The brothers of the predecessor of the appellants, however, again raised new issues to resile from the family arrangement – As a result, a suit was filed by plaintiff/predecessor of the appellants against his brothers, original defendant nos. 1 & 2 for a declaration that he was the exclusive owner of the suit land – The trial Court decreed the suit partly in favour of the plaintiff – However, the First Appellate Court declared the plaintiff as the owner of the suit land – The First Appellate Court also held that the document dated 10.03.1988 was indisputably executed by the parties and the said document was merely a memorandum of family settlement and not a document containing terms and recitals of the family settlement made thereunder – Being a memorandum of family settlement, it was not required to be registered – In the second appeal, the High Court set aside the conclusion recorded by the First Appellate Court and opined that the document which for the first time create a right in favour of plaintiff in an immovable property in which he has no pre-existing right would require registration, being the mandate of law – Accordingly, the High Court restored the decree passed by the trial Court – On appeal, held: The Jamabandi for the year 1984-85 of the property in dispute reveals that Khasra No. 935/1/1/1 (5-19) shows name of original defendant

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nos. 1 & 2 as owners, whereas the name of plaintiff is shown against khasra No. 935/1/1/2 (5-18) as owner – Although the ownership of the suit property recorded in Jamabandi is of the concerned defendant, the plaintiff had carried constructed thereupon and was in possession – The possession of the plaintiff is admitted and he came in possession with the consent of his brothers – Notably, this finding has not been disturbed by the High Court – That apart, it is also established from records that a plot in the name of plaintiff was given to original defendant no. 2, which was otherwise in possession of original defendant no. 1 – Further, a plot purchased by the plaintiff in the name of his son was given to original defendant no. 1 and his wife – These facts clearly establish that there was not only univocal family arrangement between the parties, but it was acted upon by them without any exception – Now, it was not open to resile from the same – They were estopped from contending to the contrary – The High Court committed manifest error in interfering with and in particular reversing the well-considered decision of the First Appellate Court, which had justly concluded that the document dated 10.03.1988 was merely a memorandum of family settlement, and it did not require registration – Therefore, impugned judgment and decree of the High Court is set aside – The judgment and decree passed by the First Appellate Court is restored in favour of the plaintiff (appellants).

Allowing the appeal, the Court

HELD: 1. The first appellate Court has also justly opined that the parties had acted upon the stated family settlement and if this Court may say so, to the prejudice of the other party. In that, the property in the name of plaintiff at Prem Basti was given to original defendant No. 2, which was otherwise in possession of original defendant No. 1. Further, the plot purchased by the plaintiff in the name of his son was given original defendant No. 1 and his wife, but that plot was admittedly sold by them to another person. Being a case of a family settlement between the real brothers and having been acted upon by them, it was not open to resile from the same. They were estopped from contending to the contrary. This crucial aspect has been glossed over by the High Court and if this Court may say so, the second appeal has been disposed of in a most casual manner. [Para 15][1155-C-E]

2. Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family, as observed in *Kale & Ors. vs. Deputy Director of Consolidation & Ors.*. [Para 16][1155-H; 1156-A-C]

3. The view so taken is backed by the consistent exposition in previous decisions referred to and duly analysed in the reported judgment. The question formulated by the High Court, in opinion of this Court, stands answered in favour of the appellants (plaintiff), in light of exposition of this Court in *Kale*. A priori, this Court has no hesitation in affirming the conclusion reached by the first appellate Court that the document Exhibit P-6 was nothing but a memorandum of a family settlement. The established facts and circumstances clearly establish that a family settlement was arrived at in 1970 and also acted upon by the concerned parties. That finding of fact recorded by the first appellate Court being unexceptionable, it must follow that the document Exhibit P-6 was merely a memorandum of a family settlement so arrived at. Resultantly, it was not required to be registered and in any case, keeping in mind the settled legal position, the contesting defendants were estopped from resiling from the stated arrangement in the subject memorandum, which had recorded the settlement terms arrived at in the past and even acted upon relating to all the existing or future disputes *qua* the subject property amongst the (signatories) family members despite absence of antecedent title to the concerned property. [Para 16][1159-C-D; 1160-A-B]

4. Considering the above, this Court has no hesitation in concluding that the High Court committed manifest error in

interfering with and in particular reversing the well-considered decision of the first appellate Court, which had justly concluded that document dated 10.3.1988 executed between the parties was merely a memorandum of settlement, and it did not require registration. It must follow that the relief claimed by the plaintiff in the suit, as granted by the first appellate Court ought not to have been interfered with by the High Court and more so, in a casual manner, as adverted to earlier. [Para 19][1162-B-C]

Kale & Ors. vs. Deputy Director of Consolidation & Ors. **(1976) 3 SCC 119 : [1976] 3 SCR 202 – relied on.**

Bhoop Singh v. Ram Singh Major & Ors. **(1995) 5 SCC 709 : [1995] 3 Suppl. SCR 466;** *Hans Raj & Ors. v. Mukhtiar Singh* **(1996) 3 RCR (Civil) 740;** *Hari Shankar Singhania & Ors. v. Gaur Hari Singhania & Ors.* **(2006) 4 SCC 658 : [2006] 3 SCR 726;** *Som Dev & Ors. v. Rati Ram & Anr.* **(2006) 10 SCC 788 : [2006] 5 Suppl. SCR 778;** *Sahu Madho Das v. Pandit Mukand Ram,* **AIR 1955 SC 481 : [1955] SCR 22;** *Ram Charan Das v. Girjanandini Devi,* **AIR 1966 SC 323 : [1965] SCR 841;** *Tek Bahadur Bhujil v. Debi Singh Bhujil,* **AIR 1966 SC 292;** *Maturi Pullaiah v. Maturi Narasimham,* **AIR 1966 SC 1836;** *Krishna Biharilal v. Gulabchand* **(1971) 1 SCC 837 : [1971] Suppl. SCR 27;** *S. Shanmugam Pillai v. K. Shanmugam Pillai,* **(1973) 2 SCC 312 : [1973] 1 SCR 570;** *Dhiyan Singh v. Jugal Kishore,* **AIR 1952 SC 145 : [1952] SCR 478;** *T.V.R. Subbu Chetty's Family Charities v. M. Gaghava Mudaliar,* **AIR 1961 SC 797 : [1961] SCR 624 – referred to.**

Jagdish & Ors. v. Ram Karan & Ors. **PLR (2003) 133 P&H 182;** *Lala Khunni Lal v. Kunwar Gobind Krishna Narain,* **ILR 33 All 356;** *Mt. Hiran Bibi v. Mst. Sohan Bibi,* **AIR 1914 PC 44;** *Ramgopal v. Tulshi Ram,* **AIR 1928 All 641;** *Sitala Baksh Singh v. Jang Bahadur Singh,* **AIR 1933 Oudh 347;** *Mst. Kalawati v. Sri Krishna Prasad,* **AIR 1944 Oudh 49;** *Bakhtawar v. Sunder Lal,* **AIR 1926 All 173;** *Awadh Narain Singh v.*

A *Narain Mishra,* **AIR 1962 Pat 400;** *Ramgouda Annagouda v. Bhausaheb,* **AIR 1927 PC 227;** *Brahmanath Singh v. Chandrakali Kuer,* **AIR 1961 Pat 79;** *Mst. Bibi Aziman v. Mst. Saleha,* **AIR 1963 Pat 62;** *Kanhai Lal v. Brij Lal,* **AIR 1918 PC 70;** *Rachbha v.*
B *Mt. Mendha,* **AIR 1947 All 177;** *Chief Controlling Revenue Authority v. Smt. Satyawati Sood,* **AIR 1972 Delhi 171 (FB);** *Shyam Sunder v. Siya Ram,* **AIR 1973 All 382 – referred to.**

Case Law Reference

C	**[1976] 3 SCR 202**	**relied on**	**Para 7**
	[1995] 3 Suppl. SCR 466	**referred to**	**Para 12**
	[2006] 3 SCR 726	**referred to**	**Para 12**
	[1955] SCR 22	**referred to**	**Para 16**
D	**[1965] SCR 841**	**referred to**	**Para 16**
	AIR 1966 SC 292	**referred to**	**Para 16**
	[1971] Suppl. SCR 27	**referred to**	**Para 16**
	[1973] 1 SCR 570	**referred to**	**Para 16**
E	**[1952] SCR 478**	**referred to**	**Para 16**
	[1961] SCR 624	**referred to**	**Para 16**
	[2006] 5 Suppl. SCR 778	**referred to**	**Para 17**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7764 F of 2014.

From the Judgment and Order dated 27.11.2007 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 946 of 2004.

Manoj Swarup, Sr. Adv. Rishi Malhotra, Utkarsh Singh, G Ms. Neelmani Pant, Mohit Chaudhary, Prem Malhotra, Parveen Kumar Aggarwal, Surinder Singh Pannu, Abhishek Grover, Pareekshit Bishnoi, Nage Nanya, Sanjay Jain, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

A. M. KHANWILKAR, J.

1. This appeal emanates from the judgment and decree dated 27.11.2007 passed by the High Court of Punjab and Haryana at Chandigarh[1] in R.S.A. No. 946/2004, whereby the second appeal filed by the respondent Nos. 1 to 3 (heirs and legal representatives of Mohan Singh - original defendant No. 1) came to be allowed by answering the substantial question of law formulated as under: -

> "Whether the document Ex.P-6 required registration as by way of said document the interest in immovable property worth more than Rs.100/- was transferred in favour of the plaintiff?"

2. Briefly stated, the suit was filed by the predecessor of the appellants herein - Harbans Singh, son of Niranjan Singh, resident of Sangrur, Punjab against his real brothers Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) for a declaration that he was the exclusive owner in respect of land admeasuring 11 kanals 17 marlas comprising khasra Nos. 935/1 and 935/2 situated at Mohalla Road and other properties referred to in the Schedule. He asserted that there was a family settlement with the intervention of respectable persons and family members, whereunder his ownership and possession in respect of the suit land including the constructions thereon (16 shops, a samadhi of his wife – Gurcharan Kaur and one service station with boundary wall) was accepted and acknowledged. Structures were erected by him in his capacity as owner of the suit land. It is stated that in the year 1970 after the purchase of suit land, some dispute arose between the brothers regarding the suit land and in a family settlement arrived at then, it was clearly understood that the plaintiff – Harbans Singh would be the owner of the suit property including constructions thereon and that the name of Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) respectively would continue to exist in the revenue record as owners to the extent of half share and the plaintiff would have no objection in that regard due to close relationship between the parties. However, the defendants raised dispute claiming half share in respect of which Harbans Singh (plaintiff) was accepted and acknowledged to be the exclusive owner and as a result of which it was decided to prepare a memorandum of family settlement incorporating the terms already settled between the parties, as referred to above. The stated memorandum

[1] For short, "the High Court"

A was executed by all parties on 10.3.1988. However, after execution of the memorandum of family settlement dated 10.3.1988, the defendants once again raised new issues to resile from the family arrangement. As a result, Harbans Singh (plaintiff) decided to file suit for declaration on 9.5.1988, praying for a decree that he was the owner in possession of the land admeasuring 11 kanals 17 marlas comprising of khasra Nos. B 935/1 and 935/2 situated at Mohalla Road. An alternative plea was also taken that since plaintiff was in possession of the whole suit property to the knowledge of the defendants openly and adversely for more than twelve years, he had acquired ownership rights by way of adverse possession.

C 3. The suit was resisted by the defendants by filing written statement. Harbans Singh (plaintiff) filed replications. On the basis of rival pleadings, the Civil Judge (Junior Division), Sangrur in Suit No. 187/1988 B.T. No. 185 of 18-1-95 (18-1-95) framed following issues: -

"1. Whether the plaintiff is owner in possession of suit land? OPP

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2. Whether there was any family settlement between the parties on 10.3.1988 and memo of family settlement was executed by parties on that day? OPP

3. Whether the plaintiff constructed shops, a service station and boundary wall around the disputed property? OPP

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4. Whether the plaintiff has become owner of suit land by adverse possession? OPP

5. Whether the property in dispute was purchased out by the income of Joint Hindu Family coparcenary property and construction on the suit land was also purchased by Joint Hindu Family coparcenary property? OPD

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6. Whether Sohan Singh, Mohan Singh and Harbans Singh constitute a Joint Hindu Family? OPD

7. Whether the defendants are estopped from denying the execution of memo of family settlement by their act and conduct? OPP

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8. Relief."

During the pendency of the suit, Harbans Singh (plaintiff) expired and, therefore, the appellants herein were brought on record being his

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legal heirs. The trial Court vide judgment and decree dated 19.1.2000, partly decreed the suit in the following terms: -

"RELIEF

30. In view of my discussion on various issues above, the suit of the plaintiff partly succeeds and partly fails. Therefore, his suit is decreed partly to the extent that he is declared to be owner in possession of khasra no. 935/1/1/2 (5-18) and to the extent of ½ share in khasra no. 935/1/1/1 (5-19) with construction there upon. Keeping in view the relationship between the parties and the circumstances of the case, no order as to cost. Decree sheet be prepared accordingly. File be consigned to the record room."

4. Aggrieved by this decision, the appellants/plaintiffs filed first appeal before the District Judge, Sangrur being Civil Appeal No. 45 of 5-2-2000 B.T. No. 60 of 11-6-2001. The first appellate Court, after reappreciating the pleadings and evidence on record, was pleased to allow the appeal and modify the judgment and decree passed by the trial Court. The first appellate Court declared the original plaintiff as owner of the suit land alongwith constructions including 16 shops, a service station and boundary wall with samadhi in the land. The operative order passed by the first appellate Court, dated 29.11.2003, reads thus: -

"18. In the light of the above discussion, the appeal is allowed and the judgment passed by the learned trial court is modified and the suit of the plaintiff is decreed. The plaintiff is declared owner of the land measuring 11 kanals 17 marlas comprised in rectangle and killa no. 935/1/1/1 (5-19), 935/1/1/2 (5-18) situated in Mehlan Road, Sangrur along with construction including 16 shops, a service station and boundary wall with samadh in the land. In view of the peculiar circumstances of the case the parties are left to bear their own costs. Decree sheet be prepared and copy of the judgment be placed on the file of the learned trial court and the same be returned immediately to the successor court of Smt. Harreet Kaur PCS, the then Civil Judge (Junior Division), Sangrur. This court file be consigned to the record room."

5. The respondent Nos. 1 to 3 being legal representatives of Mohan Singh (original defendant No. 1) preferred second appeal before the High Court being R.S.A. No. 946/2004. The learned single Judge answered the substantial question of law reproduced in paragraph 1

A above in favour of the said respondents. The High Court was pleased to set aside the conclusion recorded by the first appellate Court and opined that the document which, for the first time, creates a right in favour of plaintiff in an immovable property in which he has no pre-existing right would require registration, being the mandate of law. Accordingly, the second appeal came to be allowed and the judgment and decree passed B by the lower appellate Court was set aside, thereby restoring the decree passed by the trial Court, vide impugned judgment dated 27.11.2007.

6. The appellants have questioned the correctness of the view taken by the High Court and in particular, reversing the conclusion reached by the first appellate Court. When the present appeal was taken C up for hearing, the Court referred the matter to a larger Bench of three-Judges to answer the question as to whether the acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act, 1963 and is there any bar under the Limitation Act to sue on aforesaid basis in case of infringement of any rights of a plaintiff. D The appeal accordingly proceeded before the three-Judge Bench, which in turn answered the said question vide judgment dated 7.8.2019[2] in favour of the plaintiff. As a result, the matter has been placed before us for consideration of the appeal on its own merits.

7. The appellants would contend that the High Court disposed of E the second appeal in a casual manner and more so, without dealing with the finding of fact recorded by the first appellate Court in favour of the plaintiff. It is urged that the first appellate Court, after noticing the admitted factual position, proceeded to first examine the question whether the document dated 10.3.1988 (Exhibit P-6) was executed by the parties or not. That fact has been answered in favour of the plaintiff (appellants) F after analysing the evidence on record. It has been held that the stated document was indisputably executed by the parties. The next question considered by the first appellate Court was whether the stated document required registration or not, which has been justly answered in favour of the plaintiff (appellants) on the finding that it was merely a memorandum G of family settlement and not a document containing terms and recitals of the family settlement made thereunder. For that, the first appellate Court noted that the plaintiff had constructed 16 shops and a samadhi including boundary wall on the suit land on his own, which fact was indisputable and established from the evidence on record. Further, the plaintiff was

H [2] Reported as (2019) 8 SCC 729

in possession of the suit land. Even this finding is supported by the evidence on record and is well-established. It is also established from record that as per the family settlement, the plot in Prem Basti belonging to Harbans Singh (plaintiff) was given to Sohan Singh (original defendant No. 2), which was in possession of Mohan Singh (original defendant No. 1) and that another plot purchased by plaintiff in the name of his son Vikramjit Singh was given to Mohan Singh (original defendant No. 1) and his wife. Notably, the Defendant Witness No. 1 (DW-1) admitted that the said property was sold thereafter to one Surjit Kaur. In substance, it is established that the parties had acted upon the family settlement, which was recorded in the form of document - Exhibit P-6 being a memorandum of family settlement. In other words, the concerned parties had acted upon the family arrangement as per the settlement terms decided in 1970 and reinforced by the document Exhibit P-6 (memorandum of family settlement). Being a memorandum of family settlement, it was not required to be registered and, in any case, the parties having acted upon the terms of the said settlement to the prejudice of the other party, it was not open to them to resile from the said arrangement. Thus, they are estopped from disowning the arrangement already reached, acted upon and so recorded in the memorandum of family settlement. Thus understood, the plaintiff was accepted and acknowledged to be the owner of the suit property by all the family members who were also party to the memorandum of family settlement (Exhibit P-6). The appellants have placed reliance on the decision of this Court in ***Kale & Ors. vs. Deputy Director of Consolidation & Ors.***[3] They pray for restoration of the decree passed by the first appellate Court and setting aside the impugned judgment.

A B C D E

8. On the other hand, the respondent Nos. 1 to 3 would contend that the High Court has rightly considered the document Exhibit P-6 as containing terms and recitals of family settlement and for which reason it was essential to get the same registered. It is urged that there was no pre-existing title in favour of the plaintiff in respect of the suit property, as the same was purchased in the name of concerned defendant by way of a registered sale deed. The parties were not in possession of Joint Hindu Family property as such and therefore, the question of partition of that property does not arise. The plea that there was no Joint Hindu Family property was taken by the plaintiff in the replication filed before

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[3] (1976) 3 SCC 119

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A the trial Court. This plea was taken in the context of the assertion made by the defendants in the written statement that the suit property was jointly owned by Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2). The contesting respondents have reiterated the stand that there was no family settlement in 1970, as stated by the plaintiff and that the signature of the defendant No. 2 appearing B in document Exhibit P-6 is forged and fabricated. Further, the High Court has justly non-suited the plaintiff and preferred to restore the partial decree passed by the trial Court on the conclusion that the document Exhibit P-6 is inadmissible in evidence, as it has not been registered despite the transfer of title in immovable property worth more than C Rs.100/-. In other words, the High Court answered the substantial question of law against the plaintiff and as a result of which it rightly allowed the second appeal filed by the defendants (respondent Nos. 1 to 3). The view so taken by the High Court is unexceptionable.

9. We have heard Mr. Manoj Swarup, learned senior counsel for D the appellants and Mr. Parveen Kumar Aggarwal, learned counsel for the respondents.

10. The core issue involved in this appeal is: whether the document Exhibit P-6 was required to be registered as interest in immovable property worth more than Rs.100/- was transferred in favour of the E plaintiff?

11. It is not in dispute that the parties are closely related. Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) were real brothers of Harbans Singh (original plaintiff). Original defendant No. 4 – Harjinder Kaur is the wife of Sohan Singh (original F defendant No. 2). The father of the plaintiff and defendant Nos. 1 and 2 died during minority of defendant Nos. 1 and 2. The defendants had proved the copy of sale deed dated 16.4.1970 (Exhibit DW-3/A), whereby Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) purchased land admeasuring 5 kanals 19 marlas comprised in khasra No. 935/1. Harbans Singh (plaintiff) had appeared G on behalf of the purchaser at the time of execution of the sale deed. Jamabandi for the year 1984-1985 of the property in dispute (Exhibit D-1) reveals that khasra No. 935/1/1/1 (5-19) shows the name of Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) as owners, whereas the name of Harbans Singh (plaintiff) is H shown against khasra No. 935/1/1/2 (5-18) as owner. Mohan Singh

(original defendant No. 1) had stated that the land standing in the name of Harbans Singh (original plaintiff) was purchased by him from the funds of joint family, but that fact has not been proved or established by the contesting defendants. In that sense, it may appear from the revenue record that the concerned parties were owners in respect of separate properties and not as joint owners. The fact remains that Harbans Singh (original plaintiff), Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) are closely related being real brothers. Further, although the ownership of the suit property recorded in Jamabandi is of concerned defendant, Harbans Singh (plaintiff) had constructed 16 shops, samadhi of his wife – Gurcharan Kaur and a boundary wall on the property and was in possession thereof. Pertinently, the trial Court had opined in paragraph 24 of its judgment that all the three brothers – Harbans Singh (plaintiff), Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2), as noted in Exhibit P-6, owned various properties, on which possession of Harbans Singh (plaintiff) being the eldest brother is admitted. However, it was a permissive possession. The first appellate Court has also opined in paragraph 16 of the judgment that Harbans Singh (plaintiff) came in possession of the suit property with the consent of the defendants. Notably, this finding of fact has not been disturbed by the High Court. That apart, it is established from the record that plot at Prem Basti belonged to Harbans Singh (plaintiff), which was given to Sohan Singh (original defendant No. 2) after taking possession thereof from Mohan Singh (original defendant No. 1). Further, plot purchased by Harbans Singh (plaintiff) in the name of his son was given to Mohan Singh (original defendant No. 1) and his wife. It has been admitted by DW-1 that later on the said plot was sold to one Surjit Kaur. These facts clearly establish that there was not only univocal family arrangement between the parties, but it was even acted upon by them without any exception. This factual position has not been doubted by the High Court.

12. As a matter of fact, the High Court has not bothered to even advert to this aspect, whilst analysing the correctness of the finding of fact recorded by the first appellate Court, which was the final fact-finding Court. From the impugned judgment, it is noticed that after giving the basic facts, the High Court first extracted the relevant portion from the trial Court's judgment (paragraphs 17-21 thereof) and thereafter adverted to the finding and conclusion recorded by the trial Court on other issues. The High Court then went on to extract paragraph 16 of

A the judgment of the first appellate Court in its entirety, running into about 8 pages and then formulated the substantial question of law. For answering the said substantial question of law, the High Court first adverted to the decision of this Court in ***Bhoop Singh vs. Ram Singh Major & Ors.***[4] and reproduced paragraphs 12, 13, 16 and 18 thereof. After that, the relevant portion of the decision of the same High Court in
B the case of ***Hans Raj & Ors. vs. Mukhtiar Singh***[5] has been extracted. After doing so, the High Court then referred to the contention of the appellants herein and extracted paragraphs 44 and 54 of the judgment in ***Hari Shankar Singhania & Ors. vs. Gaur Hari Singhania & Ors.***[6] The High Court then adverted to a decision of the same High Court in
C ***Jagdish & Ors. vs. Ram Karan & Ors.***[7] and reproduced paragraph 14 thereof. Only after reproducing the aforesaid extracts *inextenso*, learned single Judge of the High Court adverted to the factual aspects of the present case in the following words, to allow the appeal: -

> "On a consideration of the matter, I find that a document which,
> D for the first time, creates a right in favour of plaintiff in an immovable property in which he has no pre-existing right, then registration is required. The presumption of pre-existing right can only be inferred if a consent decree is passed where such claim is admitted by the other party, but a document which is not disputed by the party and there is no admission regarding the acceptance of a right and suit
> E is based on such a document under which the right is transferred to the plaintiff in a property in which he has no pre-existing right, then it would not require registration as is the ratio of the judgment of the Hon'ble Supreme Court in the case of Som Dev and others (supra). In view of this proposition of law if the matter is considered,
> F the question of law, as framed, has to be answered in favour of the appellants.
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> In the present case, it may be noticed that the property in dispute was purchased by way of two sale deeds and the ownership of the parties was duly reflected in the revenue record. The plaintiff
> G claimed right to the property under the deed of family settlement Exhibit P-6. Thus he claimed that the defendants had relinquished

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[4] (1995) 5 SCC 709
[5] (1996) 3 RCR (Civil) 740 (paragraphs 7 to 9)
[6] (2006) 4 SCC 658
H [7] PLR (2003) 133 P&H 182

their right in the immovable property in his favour under the memorandum of family settlement which was alleged to have been executed much earlier. In any case, it has to be held that the document transferring title in an immovable property worth more than Rs.100/- rupees, even if it was by way of relinquishment, the same required registration. Thus, the learned trial Court was right in holding that no title passed on to the plaintiff under Exhibit P-6 i.e. family settlement entered into between the parties. This view of mine finds support from the judgment of the Hon'ble Supreme Court in the case of Hari Chand (dead) through LRs vs. Dharampal Singh Baba, 2007 (4) Herald (SC) 3028, wherein the Hon'ble Supreme Court has been pleased to lay down that the family settlement could only be if one has lawful right over the property and then alone family settlement could be executed. When there is no lawful rights of the parties over the property, there was no occasion to file the suit on the basis of family settlement.

In view of what has been stated and discussed above, this appeal is allowed and the judgment and decree passed by the learned lower Appellate Court is set aside and that of the learned trial Court is restored, but with no order as to costs."

13. As against this, the first appellate Court thoroughly examined the pleadings and the evidence, oral as well as documentary, placed on record by the concerned parties. In the first place, it examined the question whether the document Exhibit P-6 was executed by the parties or not. After adverting to the relevant evidence, the first appellate Court opined that the trial Court was right in concluding that Exhibit P-6 was executed by the parties referred to therein. That being concurrent finding of fact, needs no further scrutiny. The High Court has not reversed this finding of fact, as is noticed from the extracts of its judgment reproduced above. The first appellate Court then went on to examine whether the document required registration. The High Court has reproduced paragraph 16 of the judgment of the first appellate Court in its entirety. What is relevant to notice is that the first appellate Court adverted to the pleadings and oral and documentary evidence produced by the respective parties and found that the plaintiff had proved the compromise (Exhibit CX) dated 15.5.1992 between the plaintiff and defendant Nos. 2 and 3, namely, Sohan Singh and Harjinder Kaur. Harjinder Kaur had stepped into witness box and admitted the said fact. She also admitted the fact of execution

A of a family settlement. Thus, the dispute was between the successors of Harbans Singh (plaintiff) and successors of Mohan Singh (original defendant No. 1). The first appellate Court thus accepted the stand of the plaintiff that in the year 1970, after purchase of land, dispute arose between the parties regarding the suit land and in that family settlement, plaintiff was held to be owner of the suit property including its constructions. The first appellate Court in that context observed thus: -

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> "16. … The specific case of the plaintiff that he constructed with his personal money 16 shops on the suit land, one service station with boundary wall and also samadh of Smt. Gurcharan Kaur. It is admitted that samadh of Gurcharan Kaur is in the suit property. If the plaintiff was not acknowledged the owner of the suit property then there was no question of construction of samadh of Gurcharan Kaur his wife by the plaintiff on the suit property. So the version of the defendant that no dispute arose in the year 1970 and no family settlement took place can not be accepted…"

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D The first appellate Court then analysed the evidence of defendant witnesses and held that the same were not reliable or trustworthy as they did not know any fact regarding the suit property. The first appellate Court then adverted to another crucial fact and noted that Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) were residing in house situated at Prem Basti prior to 1988, which belonged to Harbans Singh (plaintiff). As noted earlier, this property as per the family arrangement was given to Sohan Singh and has been so recorded in the memorandum of family settlement (Exhibit P-6). The first appellate Court found that the defendants had failed to prove that they were in possession of the suit property or remained in possession thereof. On the other hand, the evidence on record clearly established that the plaintiff was in possession of the suit property. The first appellate Court then interpreted document Exhibit P-6 and found that it was not with regard to khasra No. 935 (11-17), but it referred to other properties. After analysing the relevant evidence, the first appellate Court held that Exhibit P-6 cannot be construed as a document containing terms and recitals of a family arrangement, but only a memorandum of family arrangement. It went on to observe as follows: -

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> 16. … Document Ex.P-6 is not with regard to khasra no. 395 (11-17) but other property is also included in the said document. A plot situated in Prem Basti which was in the name of Harbans

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Singh and Gurcharan Kaur was already got vacated from Mohan Singh and was given to Sohan Singh and Harjinder Singh. A plot measuring 17 marlas which was purchased by Vikaramjit Singh was given to Manjit Kaur and Mohan Singh and Manjit Kaur DW-1 has admitted that she had already sold that plot to Surjit Kaur. So it can be concluded that said document was acted upon. Although few sentences of the said documents are in the present tense but the court is to see from the material on record whether the said document created right in the immovable property or rights were already created but the document was written by way of memorandum. The said document does not pertain to khasra no. 935/1/1/1 (5-19) but entire khasra no. 935/1 (11-17). Had the said document created right in khasra no. 935/1/1/1 (5-19) then there was no question of throwing khasra no. 935/1/1/2 in common pool and other property of the parties. There is specific recital that on the basis of sale deeds Harbans Singh was owner in possession of the suit property and was coming in possession of the same. Harbans Singh has constructed 16 shops and service station there. **In other words, it proves that Harbans Singh was being considered as owner in possession of the suit property. Prior to execution of the said document on that day they compromised not to raise any dispute regarding his ownership. So this document was a writing with regard to fact which was already being considered and admitted by the parties. So it cannot be said that this document, copy of which is Ex.P-6 created right for the first time in the immovable property**……"

(emphasis supplied)

And again, as follows: -

"16. ….. **Since the parties were closely related to each other and document was executed with regard to the fact-which they were already admitting so I am of the view that document dated 10.3.1988 copy of which is Ex.P-6 did not require registration**. In case Hans Raj cited supra the matter was got compromised and document itself created right in the property. In case Hari Singh vs. Shish Ram & others cited supra it was held that document between the parties was partitioned and consideration was passed from one party to other. In Shishpal

vs. Vikram cited supra it was held that during life time of Gyani Ram the plaintiff filed suit so there could not be any family settlement. In case Smt. Karamjit Kaur and another versus Smt. Sukhjinder Kaur and others cited supra vide compromise the plaintiff and defendant no. 1 to 4 had agreed to take 30 bighas of land out of 90 bighas left by Mohinder Singh so it was held that said compromise has created right in favour of defendants no. 5 and 6 to the property of more than Rs.100/- So require registration. All the above said authorities cited by counsel for defendants are distinguishable on facts and ratio of said authorities cannot be applied to the facts of the present case. Since plaintiff is proved to be in existence in possession of the suit property. So construction of shops land service station on the said property was done by the plaintiff himself and not from funds of joint family. This fact is further corroborated by writing dated 10.3.1988 copy of which is Ex. P-6. Since said document did not require registration so plaintiff is proved to be owner of the suit property. The defendants estopped from denying the execution of the family settlement. Defendants have failed to prove that Harbans Singh, Mohan Singh and Sohan Singh constituted Joint Hindu Family Property and construction of the suit property was raised from the Joint Hindu Family Funds. Thus, finding recorded by the learned Trial Court on issues No. 3, 5 and 7 are set aside and it is held that the plaintiff constructed shops and service station and boundary wall on the suit property with his own funds. The defendant has failed to prove that property in dispute was purchased by the income of the Joint Hindu coparcenary property and Sohan Singh, Mohan Singh and Harbans Singh constituted Joint family. So these issues are decided in favour of the plaintiff. **Parties executed document Ex.P-6 dated 10.3.1988 by way of memorandum of family settlement and it did not require registration. The defendants are estopped from denying the execution of the said document and plaintiff is proved to be owner in possession of the suit land**. Issues No. 1 and 2 and 7 are also decided in favour of the plaintiff. Since the plaintiff came in possession of the suit property with the consent of the defendants and his possession never become adverse to the interest of the defendants so finding of the learned trial Court on issue no. 4 is affirmed."

(emphasis supplied)

14. As noticed from the extracted portion of the judgment of the High Court in paragraph 12 above, it is amply clear that the High Court has not dealt with the factual aspects adverted to by the first appellate Court to conclude that the document Exhibit P-6 was only a memorandum of family settlement and not a document containing the terms and recitals of a family settlement. Being the former, no registration was necessary. For which reason, relief claimed by the plaintiff founded on the family settlement between the real brothers arrived at in 1970, acted upon without any exception and documented on 10.3.1988, ought to follow.

15. The first appellate Court has also justly opined that the parties had acted upon the stated family settlement and if we may say so, to the prejudice of the other party. In that, the property in the name of plaintiff at Prem Basti was given to Sohan Singh (original defendant No. 2), which was otherwise in possession of Mohan Singh (original defendant No. 1). Further, the plot purchased by the plaintiff in the name of his son was given to Mohan Singh (original defendant No. 1) and his wife, but that plot was admittedly sold by them to one Surjit Kaur. Being a case of a family settlement between the real brothers and having been acted upon by them, it was not open to resile from the same. They were estopped from contending to the contrary. This crucial aspect has been glossed over by the High Court and if we may say so, the second appeal has been disposed of in a most casual manner. Inasmuch as, the impugned judgment of the High Court merely contains extraction of the judgment of the trial Court and first appellate Court and of the relied upon judgments (precedents). The only consideration is found in two concluding paragraphs, which are extracted above (paragraph 12). Even on liberal reading of the same, it is not possible to conclude that the High Court in exercise of its appellate jurisdiction (second appeal) had undertaken proper analysis and scrutiny of the judgment of the first appellate Court in right perspective, much less keeping in mind the limited scope of jurisdiction to entertain second appeal under Section 100 of the Code of Civil Procedure, 1908. The impugned judgment is bordering on a casual approach by the High Court in overturning the well-considered decision of the first appellate Court. Although the impugned judgment runs into 36 pages, the manner in which it proceeds leaves us to observe that it is cryptic. We say no more. On this count alone, impugned judgment does not stand the test of judicial scrutiny.

16. Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that

A when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them
B and would be enforced if honestly made. The object of such arrangement is to protect the family from long drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family, as observed in ***Kale*** (supra). In the said reported decision, a three-Judge Bench of this
C Court had observed thus: -

> "9. ….. 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
> D 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
> E 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**
> F **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**
> G **material benefits**. ….."

(emphasis supplied)

In paragraph 10 of the said decision, the Court has delineated the contours of essentials of a family settlement as follows: -

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"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced 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 arrangement 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) 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

A arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

(emphasis supplied)

Again, in paragraph 24, this Court restated that a family arrangement being binding on the parties, 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. In paragraph 35, the Court noted as follows: -

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"35. … 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. ….."

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D And again, in paragraph 36, the Court noted as follows: -

"36. … 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 Nos. 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. …"

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F While rejecting the argument regarding inapplicability of principle of estoppel, the Court observed as follows: -

"38. … **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**. ….."

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(emphasis supplied)

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And in paragraph 42, the Court observed as follows: - A

> 42. ..... **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 Nos. 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. ..." B
>
> (emphasis supplied)

The view so taken is backed by the consistent exposition in previous decisions[8] referred to and duly analysed in the reported judgment. The C question formulated by the High Court, in our opinion, stands answered in favour of the appellants (plaintiff), in light of exposition of this Court in ***Kale*** (supra). A priori, we have no hesitation in affirming the conclusion reached by the first appellate Court that the document Exhibit P-6 was nothing but a memorandum of a family settlement. The established facts and circumstances clearly establish that a family settlement was arrived D at in 1970 and also acted upon by the concerned parties. That finding of

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[8] Lala Khunni Lal vs. Kunwar Gobind Krishna Narain, ILR 33 All 356
Mt. Hiran Bibi vs. Mst. Sohan Bibi, AIR 1914 PC 44
Sahu Madho Das vs. Pandit Mukand Ram, AIR 1955 SC 481 E
Ram Charan Das vs. Girjanandini Devi, AIR 1966 SC 323
Tek Bahadur Bhujil vs. Debi Singh Bhujil, AIR 1966 SC 292
Maturi Pullaiah vs. Maturi Narasimham, AIR 1966 SC 1836
Krishna Biharilal vs. Gulabchand, (1971) 1 SCC 837
S. Shanmugam Pillai vs. K. Shanmugam Pillai, (1973) 2 SCC 312
Ramgopal vs. Tulshi Ram, AIR 1928 All 641
Sitala Baksh Singh vs. Jang Bahadur Singh, AIR 1933 Oudh 347 F
Mst. Kalawati vs. Sri Krishna Prasad, AIR 1944 Oudh 49
Bakhtawar vs. Sunder Lal, AIR 1926 All 173
Awadh Narain Singh vs. Narain Mishra, AIR 1962 Pat 400
Ramgouda Annagouda vs. Bhausaheb, AIR 1927 PC 227
Brahmanath Singh vs. Chandrakali Kuer, AIR 1961 Pat 79
Mst. Bibi Aziman vs. Mst. Saleha, AIR 1963 Pat 62
Kanhai Lal vs. Brij Lal, AIR 1918 PC 70 G
Dhiyan Singh vs. Jugal Kishore, AIR 1952 SC 145
T.V.R. Subbu Chetty's Family Charities vs. M. Gaghava Mudaliar, AIR 1961 SC 797
Rachbha vs. Mt. Mendha, AIR 1947 All 177
Chief Controlling Revenue Authority vs. Smt. Satyawati Sood, AIR 1972 Delhi 171 (FB)
Shyam Sunder vs. Siya Ram, AIR 1973 All 382 H

A fact recorded by the first appellate Court being unexceptionable, it must follow that the document Exhibit P-6 was merely a memorandum of a family settlement so arrived at. Resultantly, it was not required to be registered and in any case, keeping in mind the settled legal position, the contesting defendants were estopped from resiling from the stated arrangement in the subject memorandum, which had recorded the settlement terms arrived at in the past and even acted upon relating to all the existing or future disputes *qua* the subject property amongst the (signatories) family members despite absence of antecedent title to the concerned property.

C 17. As regards the decision in ***Bhoop Singh*** (supra) and ***Som Dev & Ors. vs. Rati Ram & Anr.***[9], the same dealt with the question of necessity to register any decree or order of a Court governed by clause (vi) of Section 17(2) of the Registration Act, 1908[10]. In the present case, however, clause (v) of sub-Section 2 of Section 17 of the 1908 Act is attracted. Section 17 as applicable when the cause of action arose (prior D to amendment of 2001) reads thus: -

"Part III

OF REGISTRABLE DOCUMENTS

17. Documents of which registration is compulsory.-

E (1) xxx xxx xxx

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to –

(i) xxx xxx xxx

F (ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx

(v) any document not itself creating, declaring, assigning, limiting G or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another

[9] (2006) 10 SCC 788

H [10] For short, "the 1908 Act"

document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

….."

18. In our considered view, reliance placed by the High Court on the decisions of this Court will be of no avail to alter or impact the conclusion recorded by the first appellate Court. As aforementioned, in ***Bhoop Singh*** (supra) and ***Som Dev*** (supra), the Court was dealing with the issue of compulsory registration of a decree or order of Court. In the context of the applicable clause (vi) in sub-Section (2) of Section 17, the Court in ***Bhoop Singh*** (supra) went on to hold as follows: -

"18. The legal position qua clause (*vi*) can, on the basis of the aforesaid discussion, be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create *for the first time* right, title or interest in immovable property of the value of Rs.100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in *Lahore case*, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (*vi*) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

A In the present case, as noted earlier clause (v) of Section 17(2) is attracted, which pertains to execution of any document creating or extinguishing right, title or interest in an immovable property amongst the family members. Thus, the dictum in ***Kale*** (supra) is attracted in the fact situation of this case.

B 19. Considering the above, we have no hesitation in concluding that the High Court committed manifest error in interfering with and in particular reversing the well-considered decision of the first appellate Court, which had justly concluded that document dated 10.3.1988 executed between the parties was merely a memorandum of settlement, and it did not require registration. It must follow that the relief claimed by the C plaintiff in the suit, as granted by the first appellate Court ought not to have been interfered with by the High Court and more so, in a casual manner, as adverted to earlier.

20. Having said that, it is unnecessary to examine the alternative plea taken by the plaintiff to grant decree as prayed on the ground of D having become owner by adverse possession. For the completion of record, we may mention that in fact, the trial Court had found that the possession of the plaintiff was only permissive possession and that finding has not been disturbed by the first appellate Court. In such a case, it is doubtful that the plaintiff can be heard to pursue relief, as prayed on the E basis of his alternative plea of adverse possession.

21. Be that as it may, we deem it appropriate to set aside the impugned judgment and restore the judgment and decree passed by the first appellate Court in favour of the plaintiffs (appellants herein).

22. Accordingly, this appeal is allowed. Impugned judgment and F decree of the High Court is set aside. The judgment and decree passed by the first appellate Court is restored in favour of the plaintiff (appellants herein). Decree be drawn up accordingly. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

Ankit Gyan Appeal allowed.