

**Rukmani Devi and anr. Vs. Nand Kishore Through Its Legal Representatives and ors.**

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**Court :** Rajasthan

**Decided On :** Oct-21-2005

**Reported in :** RLW2006(1)Raj340; 2005(4)WLC734

**Judge :** Shiv Kumar Sharma, J.

**Acts :** Registration Act - Sections 17 and 17(2)

**Appeal No. :** D.B. Civil Special Appeal No. 20 of 1986

**Appellant :** Rukmani Devi and anr.

**Respondent :** Nand Kishore Through Its Legal Representatives and ors.

**Advocate for Def. :** O.P. Sharma, Adv.

**Advocate for Pet/Ap. :** R.P. Singh, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Shiv Kumar Sharma, J.**

1. The plaintiff appellants in the instant Special Appeal seek to quash the judgment dated January 27, 1986 of the learned Single Judge whereby three Civil First

appeal, bearing Nos. 202/1973, 56/1974 and 185/1974 were decided.

2. It is contended on behalf of the appellants that finding of learned Single Judge that family settlement was not compulsorily registrable is erroneous, as terms of family arrangement were reduced into writing in it. The counsel for the respondent Nand Kishore, on the other hand supported the impugned judgment.

3. Having considered the submissions advanced before us and scanned the material on record, we notice that the learned Single Judge in the impugned judgment observed that the family settlement between the members of the family had taken place as per Ex.A-1 which was signed by all the parties, except Chunni Bai. It was also held that since the family settlement was acted upon by the parties, nothing remained to be partitioned by the Court. Ratio indicated in *Kale and Ors. v. Deputy Director of Consolidation and Ors.* : [1976]3SCR202 , was considered by the learned Single Judge and it was held that the family settlement was not compulsorily registrable under Section 17 of the Registration Act.

4. In *Kale and Ors. v. Deputy Director of Consolidation and Ors.* supra, their Lordships of the Supreme Court indicated that the family arrangement may be even oral in which registration is not necessary. Registration would be necessary only if the terms of the family arrangement are reduced into writing. In sub-para 4 of para 10 of this judgment, their Lordships observed as under:--

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 172 of the Registration Act and is, therefore, not compulsorily registrable.

5. A bare reading of family settlement filed in the instant matter demonstrates that the terms of family arrangement have been reduced into writing in it. Therefore as

per law laid down in *Kale and Ors. v. Deputy Director of Consolidation and Ors. supra*, registration of the said family settlement was necessary. It appears that the terms of family settlement escaped attention of learned Single Judge and it was held that registration of family settlement was not required. We find ourselves unable to endorse this finding.

6. For these reasons, we allow the appeal and set-aside the impugned judgment dated January 27, 1986 of the learned Single Judge. We remit the matter to learned Single Judge with the request to decide the issues involved in the first appeals afresh on the basis of other evidence adduced by the parties. The family settlement shall however be ignored while considering the rights of the parties. The parties are directed to appear before the learned Single Judge on November 21, 2005 for seeking further instructions. There shall be no order as to costs.

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