

HIGH COURT OF RAJASTHAN**Bench: Hon'ble Dr. Justice Nupur Bhati****Date of Decision: 22nd May 2024**

S.B. Civil Writ Petition No. 1885/2024

Rajendra, S/o Late Matu Ram ...Petitioner**Versus****Legal Heirs of Late Laxmi Narayan ...Respondents****Legislation:**

Articles 226 and 227 of the Constitution of India

Section 65 of the Indian Evidence Act, 1872

Order 11 Rule 14 of the Code of Civil Procedure, 1908

Section 17 of the Registration Act, 1908

Subject: Civil writ petition challenging the Trial Court's order dismissing an application under Section 65 of the Indian Evidence Act, 1872 for the admissibility of a photocopy of a compromise as secondary evidence.

Headnotes:

Evidence Law - Admissibility of Secondary Evidence - Civil Writ Petition challenging the dismissal of an application under Section 65 of the Indian Evidence Act, 1872 by the Trial Court - The compromise document dated 27.01.2014, relied upon by the petitioner, was unregistered and unstamped - Held, since the document created rights in immovable property, it required compulsory registration under Section 17 of the Registration Act, 1908 - Consequently, an unregistered document is inadmissible in evidence, and its photocopy cannot be allowed as secondary evidence - Writ Petition dismissed. [Paras 15-23]

Family Settlement - Requirement of Registration - Analysis - The compromise document, which partitioned the disputed property and conferred rights upon the parties, was required to be registered as per Section 17 of the Registration Act, 1908 - A family settlement that creates new rights in immovable property must be registered - Cited case law confirms the necessity of registration for enforceability and admissibility in evidence. [Paras 16-19]

Decision - Dismissal of Writ Petition - The Trial Court's order dismissing the petitioner's application for admitting the photocopy of the unregistered compromise document as secondary evidence upheld - No interference warranted - Writ petition dismissed with ancillary applications. [Para 23]

Referred Cases:

- Korukonda Chalapathi Rao & Anr. v. Korukonda Annapurna Sampath Kumar, MANU/SC/0757/2021
- Durga Shankar Bareth v. Shayam Lal [S.B. Civil Writ Petition No. 5511/2021]
- Roshan Singh and Ors. v. Zile Singh, AIR 1988 SC 881
- Bhoop Singh v. Ram Singh Major and Ors., (1995) 5 SCC 709
- Kale and Ors. v. Deputy Director of Consolidation and Ors., (1976) 3 SCC 119
- Shankar Lal v. The Civil Judge (Jr. Division), Shahpura, 2006 AIR (Raj.) 187
- Leela Devi v. Amar Chand [S.B. Civil Writ Petition No. 6969/2006]

Representing Advocates:

For Petitioner: Mr. Nishank Madhan

For Respondent: Mr. J.S. Bhaleria

ORDER

Reserved on: 14/05/2024

Pronounced on: 22/05/2024

1. Though the matter had been listed in the 'Fresh' category, at the joint request of both the parties, the matter is heard finally today itself.
2. This writ petition has been filed under Articles 226 and 227 of the Constitution of India, challenging the order passed by learned Additional District and Sessions Judge, Suratgarh ('Trial Court') dated 11.01.2024 (Annex.8) whereby the application preferred by the petitioner under Section 65 of the Indian Evidence Act, 1872 ('Evidence Act') has been dismissed. The petitioner has also prayed that the compromise dated 27.01.2014 (Annex.5) may be allowed to be admissible as secondary evidence in accordance with the law. Certain other ancillary relief(s) have also been sought by the petitioner.
3. Briefly stated, the facts of this petition are that one late Hukma Ram, during his lifetime, was holding the possession of a patta, issued by the State Council of Bikaner for the land admeasuring 2755 square yards dated 15.07.1912 and had also constructed a house on the said disputed land. After the death of Late Hukma Ram, the parties to the suit (Annex.1), being the legal heirs, got their succession rights and are in the possession of the said land, since the past thirty years.
4. The respondent-plaintiffs filed a suit for partition and permanent injunction on 24.10.2010 (Annex.1) on the ground that the petitioner-defendant has partitioned the disputed property without the consent of the respondent-plaintiffs. Subsequently, the petitioner filed an application under Order 11 Rule 14 of the Code of Civil Procedure, 1908 ('CPC') dated 09.05.2016 (Annex.2) to bring the compromise dated 27.01.2024 (Annex.5) on record, which was executed between the parties and was in possession of the respondent-plaintiffs at that time.
5. The Trial Court, while deciding the application, vide order dated 27.01.2021 (Annex.4) directed the respondent-plaintiffs to file an affidavit if they were having the original compromise because the said compromise was neither stamped nor registered, however it had signatures of all the respondent-plaintiffs. Thereafter, the petitioner filed an application on 18.03.2021 (Annex.6) under Section 65 of the Evidence Act seeking permission to produce the copy of the compromise dated 27.01.2014 (Annex.5) as secondary evidence, to which a reply had been filed by the respondent-plaintiffs on 12.08.2021 (Annex.7).

6. The said application preferred by the petitioner under Section 65 of the Evidence Act was dismissed by the learned Trial Court vide order dated 11.01.2024 (Annex.8).

7. Thus, being aggrieved of the order dated 11.01.2024 (Annex.8) passed by learned Trial Court, the petitioner has preferred this writ petition.

8. Learned counsel for the petitioner submitted that the learned Trial Court had specifically directed in the order dated 21.01.2021 (Annex.4) to the respondent-plaintiffs to file an affidavit if they were in possession of the original compromise since the compromise was not duly stamped and registered. He also submitted that in compliance to the said order, only one plaintiff filed an affidavit denying the possession of the original compromise, while the other respondent-plaintiffs did not file any such affidavit, nor produced the original compromise dated 27.01.2014 (Annex.5) before the learned Trial Court, which demonstrates that the original compromise is indeed in possession of the respondent-plaintiffs.

9. Learned counsel for the petitioner further submitted that since the petitioner was not in possession of the said original compromise dated 27.01.2014 (Annex.5) and therefore, a photocopy of the said compromise dated 27.01.2014 (Annex.5) was sought to be produced by the petitioner by way of filing an application under Section 65 of the Evidence Act.

10. Learned counsel for the petitioner also submitted that the learned Trial Court has erred in giving the finding that the affidavit is required on account of the said compromise being unregistered and unstamped since, the compromise dated 27.01.2014 (Annex.6) is merely a family settlement and a memorandum whereby the respondent-plaintiffs had agreed to take their respective share as per the said compromise and in accordance with the law, thus, the said compromise is not required to be registered.

11. Learned counsel for the petitioner placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of ***Korukonda Chalapathi Rao & Anr. v. Korukonda Annapurna Sampath Kumar*** reported in **MANU/SC/0757/2021** wherein it has been held that the family settlement does not require registration and the said document can be used for collateral purposes. The relevant paras are reproduced as under:

“31. xxxx

Thereafter, the Court also approved of the use of the said document for a collateral transaction and observed as follows:

11. Even otherwise, the document Exh. P 12 can be looked into under the proviso to Section 49 which allows documents which would otherwise be excluded, to be used as evidence of 'any collateral transaction not required to be effected by a registered instrument'. In *Varada Pillai v. Jeevarathnammal*, MANU/PR/0037/1918 : (1919) 46 Ind App 285 : AIR 1919 PC 44 the Judicial Committee of the Privy Council allowed an unregistered deed of gift which required registration, to be used not to prove a gift 'because no legal title passed' but to prove that the donee thereafter held in her own right. We find no reason why the same Rule should not be made applicable to a case like the present.

32. In *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. Private Ltd.* MANU/SC/0836/2011 : (2011) 14 SCC 66, the question arose whether an arbitration agreement contained in a compulsorily registrable document which was not registered could be used to prove the collateral transaction, namely, the provision for arbitration. This Court held as follows:

11. Section 49 makes it clear that a document which is compulsorily registerable, if not registered, will not affect the immovable property comprised therein in any manner. It will also not be received as evidence of any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance. Second is as evidence of any collateral transaction which by itself is not required to be effected by registered instrument. A collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with that transaction. The question is whether a provision for arbitration in an unregistered document (which is compulsorily registerable) is a collateral transaction, in respect of which such unregistered document can be received as evidence under the proviso to Section 49 of the Registration Act.

16. An arbitration agreement does not require registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument. Therefore having regard to the proviso to Section 49 of the Registration Act read with Section 16(1)(a) of the Act, an arbitration agreement in an unregistered but compulsorily registerable document can be acted

upon and enforced for the purpose of dispute resolution by arbitration.
(Emphasis supplied)

33. If we apply the test as to whether the Khararunama in this case by itself 'affects', i.e., by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it merely refers to what the Appellants alleged were past transactions which have been entered into by the parties, then, going by the words used in the document, they indicate that the words are intended to refer to the arrangements allegedly which the parties made in the past. The document does not purport to by itself create, declare, assign, extinguish or limit right in properties. Thus, the Khararunama may not attract Section 49(1)(a) of the Registration Act.

34. As far as Section 49(1)(c) of the Registration Act is concerned, it provides for the other consequence of a compulsorily registrable document not being so registered. That is, Under Section 49(1)(a), a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or extinguishment. Section 49(1)(c) in effect, reinforces and safeguards against the dilution of the mandate of Section 49(1)(a). Thus, it prevents an unregistered document being used 'as' evidence of the transaction, which 'affects' immovable property. If the Khararunama by itself, does not 'affect' immovable property, as already explained, being a record of the alleged past transaction, though relating to immovable property, there would be no breach of Section 49(1)(c), as it is not being used as evidence of a transaction effecting such property. However, being let in evidence, being different from being used as evidence of the transaction is pertinent [See Muruga Mudallar (supra)]. Thus, the transaction or the past transactions cannot be proved by using the Khararunama as evidence of the transaction. That is, it is to be noted that, merely admitting the Khararunama containing record of the alleged past transaction, is not to be, however, understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the Khararunama and the receipt would produce any legal effect on the immovable properties in question."

12. *Per contra*, learned counsel for the respondents submitted that the said compromise which has been relied upon by the petitioner was never

executed nor acted upon. He also submitted that the photocopy of the said compromise was unregistered and unstamped and therefore, the same is not admissible in evidence as per the Indian Stamp Act, 1899 as well as the Registration Act, 1908.

13. Learned counsel for the respondents placed reliance upon the judgment passed by the Coordinate Bench of this Hon'ble Court in the case of ***Durga Shankar Bareth v. Shayam Lal*** [S.B. Civil Writ Petition No. **5511/2021** decided on **19.09.2022**], wherein it has been held that Section 33 and 35 of the Indian Stamp Act, 1899 is not concerned with the copy of an instrument and the party can only be made to rely upon the document which is an instrument within the meaning of Section 2(14) of the Indian Stamp Act, 1899. The relevant paras of the judgment are reproduced as under:

"7. This Court had an occasion again to consider the scope and ambit of Sections 33(1), 35 and 36 of the Act and Section 63 of the Indian Evidence Act in *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao and others*, AIR 1971 SC 1070 and held that :-

"13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document.

Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. Instrument' is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for

inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

14. If Section 35 only deals with original instruments and not copies Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words an instrument in Section 36 must have the same meaning as that in Section 35. The legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding. In other words, although the objection is based on the insufficiency of the stamp affixed to the document, a party who has a right to object to the reception of it must do so when the document is first tendered. Once the time for raising objection to the admission of the documentary evidence is passed, no objection based on the same ground can be raised at a later stage. But this in no way extends the applicability of Section 36 to secondary evidence adduced or sought to be adduced in proof of the contents of a document which is unstamped or insufficiently stamped."

8. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Indian Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899."

14. Learned counsel for the respondents also placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of ***Roshan Singh and Ors. v. Zile Singh*** reported in **AIR 1988 SC 881**, wherein it has been observed that a family settlement which causes a change of the legal relation to the property, has to be registered under Section 17(1)(b) of the Registration Act, 1908 and thus, instant case the petitioner has been rightly denied to place the photocopy of the compromise on record, in the presence of the unregistered and unstamped compromise. The relevant para is reproduced as under:
- "(9) It is well-settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing

ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under S. 17 (1) (b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well-settled that a mere list of properties allotted at a partition is not an instrument of partition and does, not require registration. Section 17 (1) (b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow : (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, S. 49 of the Act will prevent its being admitted in evidence. Secondly evidence of the factum of partition will not be admissible by reason of S. 91 of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered to prove the fact of partition : See Mulla, Registration Act, 8th Edn. , pp. 54-57.”

15. Heard learned counsel for the parties, perused material available on record and judgments cited at the Bar.
16. This Court observes that upon perusal of the compromise dated 27.01.2014 (Annex.5), it is seen that the parties have entered into an agreement and further, the execution of the said agreement has been made between the parties where the condition no. 2 specifically reflects that the property mentioned in the agreement is partitioned into equal parts. The condition of the compromise dated 27.01.2014 (Annex.5) is reproduced as under:

“2. उक्त सम्पत्ति को तीनों पक्षकारों ने बराबर -बराबर हिस्सा में बांट लिया है। जिसका एक ब्लॉक प्रिन्ट सर्व सजिम्मत से बनाया गया है। जो इस रा

ीनामें का भाग है। ब्लू प्रिन्ट में दर्शाया गया भूखण्ड संख्या (1) माप
52 x 52.5 =

2730 वर्गफुट प्रथम पक्षकार के हिस्से में आया है।"

Moreover, by way of this compromise dated 27.01.2014

(Annex.5), rights have been created in favour of the parties while mentioning the area of the land which the party is owner of, on account of such agreement. The said conditions are reproduced as under:

"2. उक्त सम्पत्ति को तीनों पक्षकारों ने बराबर-बराबर हिस्सा में बांट लिया है। जिसका एक ब्लू प्रिन्ट सर्वसजिम्मत से बनाया गया है। जो इस रीनामें का भाग है। ब्लू प्रिन्ट में दर्शाया गया भूखण्ड संख्या (1) माप 52 x 52.5 = 2730 वर्गफुट प्रथम पक्षकार के हिस्से में आया है।

3. भूखण्ड संख्या (2) माप 54 x 50.5 = 2727 वर्गफुट द्वितीय पक्षकारानु के हिस्से में आया है।

4. भूखण्ड संख्या (3) माप 54 x 50.5 = 2728 वर्गफुट तृतीय पक्षकारानु के हिस्से में आया है।

5. यह कि इस भूखण्ड में न दीक कबेशीदा भूखण्ड पर श्री रानीन्द्र कुमार ने स्वयं का मकान बना रखा है। जिसका स्वयं ही मालिक रहेगा। बंट वारे से अग्ररेगा। xxxx

7. यह कि ब्लू प्रिन्ट में दर्शाया गये भूखण्ड संख्या (1) में प्रथम पक्षकारानु प्रत्येक 1/7 सकुमार हिस्से के मालिक होंगे।

8. यह कि ब्लू प्रिन्ट में दर्शाया गये भूखण्ड संख्या (2) में द्वितीय पक्षकारानु प्रत्येक 1/9 हिस्से के मालिक होंगे।

9. यह कि ब्लू प्रिन्ट में दर्शाया गये भूखण्ड संख्या (3) में तृतीय पक्षकारानु प्रत्येक 1/6 हिस्से के मालिक होंगे।"

17. This Court also finds that Section 17 of the Registration Act, 1908 provides for the documents that have to be compulsorily registered, and under the sub-clause (1)(b), it has been clearly specified that all such non-testamentary

instruments which purport or operate to create, declare, assign, limit or extinguish any right, title or interest, in the present or in the future, whether vested or contingent and of the value of Rs. 100/- and above, to or in immovable properties, requires compulsory registration. The relevant provision reads as under:

“17. Documents of which registration is compulsory.

- (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:— xxxx
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;”

Furthermore, though clause (2)(vi) of the Section 17 of the Registration Act, 1908 provides an exception to the mandatory registration of a compromise decree, however, it is important to note that while considering this exception, the Hon’ble Apex Court in the case of ***Bhoop Singh v. Ram Singh Major and Ors.*** reported in **(1995) 5 SCC 709**, observed that the said exception applies only to the cases where a decree or the order of the court, including a decree or order expressed to be made on a compromise, merely declares a pre-existing right and does not create a new right, title or interest by itself, in the immovable property of the value of Rs.100/- or upwards, which is not the case at hand. The exception to Section 17(1)(b) and (c) reads as under:

“17. Documents of which registration is compulsory.

- (2) Nothing in clauses (b) and (c) of sub-section (1) applies to— xxxx
- (vi) any decree or order of a Court 2 [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or”

The relevant para of the judgment of Hon’ble Apex Court in the case of ***Bhoop Singh (supra.)*** reads as under:

“16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registerable.”

18. This Court also takes into consideration the judgment of the Hon'ble Apex Court in the case of ***Kale and Ors. v. Deputy Director of Consolidation and Ors.*** reported in **(1976) 3 SCC 119** wherein it was observed that a distinction has to be made between a document containing terms and recitals of a family arrangement made under the document and a mere memorandum which had been prepared after the family arrangement had been made either for the purpose of record or for the information of the court, in order to make necessary mutation. It was also observed that in such a scenario, the said memorandum does not create or extinguish any rights of the immovable property and thus, is not required to be registered. On the contrary, upon perusal of the compromise dated 27.01.2014 (Annex.5), it becomes clear that the said compromise confers upon the parties with the right on the said immovable property and thus, the said compromise dated 27.01.2014 (Annex.5) requires registration. The relevant of the judgment is reproduces as under:

“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 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 s. 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 arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement. 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.”
19. This Court also takes into account the judgment passed by this Court in the case of ***Leela Devi v. Amar Chand* [S.B. Civil Writ Petition No. 6969/2006 decided on 02.05.2023]** wherein it was upheld that the family arrangement did not require registration since it did not create/relinquish the rights for the properties. The relevant part of the judgment is reproduced as under:
- “(15) This Court finds that the document in-question since being a family arrangement is not required to be registered and, thus, is admissible in evidence. It is also apparent from the bare perusal of the record and material available that the petitioner's husband and

respondent had accepted each others right in the property and also accepted wilfully the manner in which their father had given the property between these two brothers. It is apparent that after both the brothers accepted the property wilfully given to them by their father-Rajmal Ji, the details of the property were mentioned in the document in-dispute. Also bare perusal of the document ravel that there is no creation/ relinquishment of the rights for the properties as in order to settle the dispute between the parties a family agreement was entered between the parties and both the brothers namely Amarchand and Chain Sukh happily accepted the same.

(16) From the precedent law cited Kale (supra), this Court finds that the condition of family settlement applies in this case. It is an admitted position that an oral arrangement between the family members was entered into a Bahi with the title "Dastavej Baabat Pariwarik Samjhota". The parties have antecedent title/claim & interest in the property, which is acknowledged in this settlement. The entry in Bahi was proceeded by an oral arrangement. The family arrangement is voluntary. The arrangement has apparently been arrived at between the members of a family descending from a common ancestor and are near relatives who were looking for- ward to sink their differences, settle and resolve their disputes to enjoy complete harmony and goodwill in the family. The Bahi entry was to protect the family unity and solidarity while equitably dividing the family property. This Court finds that the equitable principles like family settlement ought to be relied upon in resolving such disputes and cannot be subjected to rigors of technicalities in law.

20. This Court further observes that the contention of the petitioner that the photocopy of the said compromise dated 27.01.2014 (Annex.5) has been erroneously denied by the learned Trial Court, to be taken on record by way of secondary evidence under Section 65 of the Indian Evidence Act, 1872 is devoid of merit, because by virtue of the rights conferred upon the parties under the said compromise dated 27.01.2014 (Annex.5), the said compromise was required to be registered and in the absence of the registration, even the original cannot be allowed as evidence, thus, in the present case too, on account of the non-registration, the photocopy of the said document cannot be subsequently allowed as secondary evidence under Section 65 of the Indian Evidence Act, 1872. For the purpose of the same, this Court takes into consideration the judgment passed by the Coordinate Bench of this Hon'ble Court in the case of **Shankar Lal v. The Civil Judge**

(Jr. Division), Shahpura reported in **2006 AIR (Raj.) 187** wherein it has been observed that in cases where the original is inadmissible in evidence itself, then the secondary evidence for the said document cannot be led. The relevant para of the judgment is reproduced as under:

“24. There is no dispute between the parties that as per the law in existence in the calendar year 1929 when the aforesaid transaction was reduced in writing for transfer of immovable property, it was required to be stamped as per Entry No. 13 of Schedule-I of the Jaipur Stamp Act, which came into force on 1.3.1927 and the same is not stamped as per the said Act. Further the said document was also required to be compulsorily registered but the same was not registered under Hidayat No. 22 and Jaipur Registration Act, 1944. Under the Stamp Law of Jaipur Stamp Act, the definition of instrument under Section 3(12) and the definition of instrument under Section 2(14) of the Indian Stamp Act, 1899 is same. As per the provision of law existed at the relevant time, the document in question was required to be stamped and compulsorily registered but the same is insufficiently stamped and unregistered, therefore, in view of the aforesaid position of law, settled in *Champalal*

v. Pannalal (supra), *Sawa v. Kuka (supra)*, *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao and Ors. (supra)* and *Dr. Shiv Kant Pandey and Anr. v. Ishwari Singh (supra)* that when the original is inadmissible in evidence and no secondary evidence can be allowed to be led. Therefore, in my view, the trial Court has not committed any kind of error in rejecting the application for leading secondary evidence to prove title.

(2) In case the aforesaid question No. 1 is answered in negative, then whether a photocopy of the unstamped and unregistered document can be considered for the purpose of impounding the document and further considered for the purpose of seeking the collateral purposes:”

21. Therefore, in the light of the above discussion, the contention of the petitioner that the photocopy of the compromise dated 27.01.2014 (Annex.5) should be taken on record as secondary evidence is devoid of merits since the said compromise which specifically creates the rights of the parties in the property in question, is not registered and thus, the said compromise which in itself is inadmissible on account of the compromise being unregistered, the photocopy of the said compromise also cannot be brought on record by way of leading secondary evidence.

22. This Court also finds that the learned Trial Court has rightly observed that the said compromise dated 27.01.2024 (Annex.5) clearly provides for partition of the land in dispute and thus, confers rights in favour of the parties. The learned Trial Court therefore has rightly observed that only after the said compromise is duly stamped, it can be allowed as evidence and thus, in the absence of the said compromise being duly stamped and registered, the photocopy of the said compromise dated 27.01.2014 (Annex.5) could not have been allowed by way of leading secondary evidence under Section 65 of the Evidence Act.
23. Therefore, no interference is called for by this Court in the order passed by the learned Trial Court in the order dated 11.01.2024 (Annex.8) and thus, the writ petition is dismissed. Stay Petition and other misc. application, if any pending, shall also stand disposed of.

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