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**(2016) 05 AHC CK 0134**

**In the Allahabad High Court**

**Case No :** First Appeal No. 629 of 2005 and 177 of 2006

Amar Nath Kapoor And Others

APPELLANT

Vs

Krishna Gopal Kapoor and Others

RESPONDENT

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**Date of Decision :** 25-05-2016

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100, 49  
Specific Relief Act, 1963 — Section 10

**Citation :** (2016) 9 ADJ 554 : (2016) 118 ALR 742 : (2016) 118 ALR 35 :  
(2016) 2 ARC 697 : (2016) 133 RD 231 : (2016) 2 RJ 1732

**Hon'ble Judges :** Sudhir Agarwal and Rakesh Srivastava, JJ.

**Bench :** Division Bench

**Advocate :** S.D. Singh, A.K. Singh, Ajay Kumar Singh, R.S. Prasad and Ravi Kant, Advocates. IN First Appeal No. 629 of 2005, R.R. Mansingh and S.D. Singh, Advocates. IN First Appeal No. 177 of 2006, for the Appellant; B.D. Shukla, Atul Kumar Srivastava, B.D. Shukla,

**Final Decision :** Partly Allowed

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## Judgement

Sudhir Agarwal, J.—Both these appeals are connected involving common questions of facts and law and therefore have been heard together and are being decided by this common judgment.

2. First Appeal No. 629 of 2005 was filed before this Court under Section 96 of Code of Civil Procedure (hereinafter to referred as "CPC") and First Appeal No. 177 of 2006 has been registered after its transfer from the Court of VIIth Additional District Judge, Kanpur Nagar pursuant to this Court's order dated 21.11.2005.

3. First Appeal No. 629 of 2005 (hereinafter to referred as "Appeal II") is a plaintiff's appeal arisen from the same judgment dated 30th of May, 2005 and decree dated 05.07.2005 passed by Sri B.P. Saxena, Additional Chief Metropolitan Magistrate - IV/Additional Civil Judge (Senior Division), Kanpur Nagar in Original Suit No. 1300 of 1994 (hereinafter to referred as "Suit2")

whereby suit has been dismissed.

4. First Appeal No. 177 of 2006 (hereinafter to referred as "Appeal I") has also arisen from the same judgment dated 30th of May, 2005 and decree dated 05.07.2005 passed by the same Judge namely Sri B.P. Saxena, Additional Chief Metropolitan Magistrate - IV/Additional Civil Judge (Senior Division), Kanpur Nagar in Original Suit No. 714 of 1994 (hereinafter to referred as "Suit1") decreeing aforesaid suit and directing defendant appellants to execute sale deed of their share in favour of plaintiff respondents in terms of award dated 27.05.1979 after receiving remaining consideration as stated in the award, along with ten per cent interest from the date of award, till execution of sale deed. This is, therefore, defendant's appeal.

5. Plaintiffs and defendants belong to a family of common ancestor, late Chhutkan Lal Kapoor, who had two sons namely late Sidha Gopal Kapoor and Manoo Lal Kapoor. Amar Nath Kapoor is son of late Manoo Lal Kapoor and Krishna Gopal Kapoor is son of Sidha Gopal Kapoor. To understand the relationship, family tree is given as under: Chhutkan Lal Kapoor

#### Suit 1

6. Krishna Gopal Kapoor, his wife Smt. Usha Rani Kapoor and three sons, Navin Kapoor, Sharad Kapoor and Praveen Kapoor instituted Suit1 in the Court of Second Civil Judge, Kanpur impleading Shri Amar Nath Kapoor, his mother Smt. Shyamo Bibi, wife Smt. Indrani Kapoor and son Om Nath Kapoor as defendants. Suit was instituted for specific performance directing defendants to execute sale deed in favour of plaintiffs in respect to their half share in House No. 7/24, Tilak Nagar, Kanpur, boundaries whereof were mentioned at the bottom of plaint dated 22nd April, 1983. Siddha Gopal Kapoor Mannu Lal Kapoor (Smt. Shyamo Bibi - wife) Krishna Gopal Kapoor (Smt. Usha Rani - wife) Amar Nath Kapoor (Smt. Indrani Kapoor - wife) Om Naveen Kapoor Sharad Kapoor Praveen Kapoor Nath Kapoor First Appeal Nos. 629/05 & 177/06

7. The plaint case set up is that defendants constitute Hindu Undivided Family (here in after to referred as "HUF") of which defendant 1, Amar Nath Kapoor was Karta and manager. The defendants along with Sri Siddha Gopal Kapoor purchased House No. 7/24, Tilak Nagar, Kanpur from one Rai Sahab Lala Dhanpal Chandra, son of Lala Karorimal (Rtd. Principal from Government Technical Institute, Lucknow) who, then, was residing at Sita Niwas, Char Bagh, Lucknow, through sale deed dated 14th of August, 1946, registered in the office of Sub Registrar on 26th of August, 1946. For the aforesaid purchase, requisite funds were made available from HUF funds.

8. Since the date of purchase, defendants and Sri Siddha Gopal Kapoor and his family members are and were in joint possession and ownership of the said property. Defendants being in need of money for expansion of their business, decided to sell their undivided half share in the disputed property, hence, entered into a "contract for sale" dated 07.02.1979 with one Jagdish Prasad Gupta, son

of Gopi Kishan Gupta, and Urmila Devi wife of Vishwa Nath Gupta, resident of 25/79, Birhana Road, Kanpur. Defendants agreed to transfer and convey their half undivided share in disputed property to prospective vendees for a good and valuable consideration. Contract for sale dated 12.02.1979 was registered in the office of Sub Registrar, Kanpur on 27.03.1979. Subsequently, prospective vendees backed out for the reason that vendors could not take steps for division of disputed property by metes and bounds. A cancellation deed dated 24.09.1979 was executed and registered in the office of Sub Registrar, Kanpur.

9. Later on, a dispute of share between appellants and family of Siddha Gopal Kapoor was referred for arbitration and mediation of one M.M. Thapar wherein on 27.05.1979 it was decided before Mediator that defendants shall transfer and convey their undivided half share in the disputed property to plaintiffs. The sale consideration agreed between the parties was Rs. 4,16,000/- out of which Rs. 3,24,875/- was paid in the following manner:

A. Rs. 1,00,000/- by Cheque No. 083783 Dated 13.06.1979 drawn on OBC Ltd., The Mall, Kanpur by Sri Sidh Co. in favour of Amar Nath Kapoor.

B. Rs. 1,00,000/- through entries passed in the name of Amar Nath Kapoor HUF in the account book of M/s. Beni Prasad & Co., Amritsar on 15.06.1979.

C. Rs. 1,24,875/- through entries passed in the name of Amar Nath Kapoor in the account book of M/s. Beni Prasad & Co., Amritsar on 30.06.1980 including interest of Rs. 16,875/-.

10. Defendants handed over possession of half portion of disputed premises which was in their possession to plaintiffs, by vacating the same and handing over keys thereof on 15.06.1979. Defendant 1, Amar Nath Kapoor, who is Karta and manager of HUF addressed a letter Dated 23.04.1980 to the plaintiffs acknowledging and confirming receipt of Rs. 1,00,000/- through Cheque No. 083783 Dated 13.06.1979 as first instalment of cash down payment towards sale consideration of aforesaid half share in the disputed property. It was also acknowledged that a letter of authority dated 21.04.1980 enabling defendant 1 to get a sum of Rs. 1,00,000/- transferred to his credit from M/s. Beni Prasad & Co., Amritsar was issued and the said amount was second instalment towards sale consideration. It was also agreed that whenever plaintiffs would require for transfer of existing electric connection in their name appropriate documents shall be signed by defendants.

11. Defendants applied on 21st December, 1981 before competent authority under Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter to referred as "Act 1976") for permission. Their application was received in the office of competent authority on 24th December, 1981, but thereafter, it was not pursued by defendants.

12. On 2nd February, 1981 defendant 1 as Karta and manager of HUF, applied to Income Tax Officer, Central Circle-4, Kanpur, for certificate under Section 230 A

(1) of Income Tax Act, 1961 (hereinafter to referred as "Act, 1961") to transfer its half share in disputed property to plaintiffs. Thereafter, necessary certificate under Section 230A (1) of Act, 1961 was granted by Income Tax Department on 11.02.1981.

13. Plaintiffs through plaintiff 1 gave a letter of authority dated 05.04.1983 to M/s. Ram Mohan Das @ Company, Amritsar to transfer Rs. 1,92,556/- for completing entire amount of sale consideration to defendant 1. The said letter of authority was in possession of Mr. N.L. Sahgal, Chief Executive of M/s. Jagatjit Cotton Textile Mills Ltd., Phagwara to be passed on to defendant 1 at the time of registration of sale deed.

14. As per Mediator, plaintiffs were also required to pay interest at the rate of 15 per cent per annum on the sale consideration of Rs. 4,16,000/-. Thus, as on 31st of March, 1983, sale consideration along with interest was worked out to Rs. 5,17,431/- and the same has been paid in the manner as stated above to defendants.

15. Plaintiffs throughout have been ready and willing to purchase defendants' half share in disputed property and to get sale deed executed in their favour, having paid sale consideration which was received by defendants in the manner aforesaid, but defendants avoided execution of sale deed without any rhyme or reason. On 14th of April, 1983 a draft sale deed was prepared and sent to defendants but they did not return the same and also failed to show their willingness for execution of sale deed. Even after 22nd of April, 1983, plaintiffs continued to pursue defendants to execute sale deed in terms of Mediator's award. It was settled between the parties that defendants shall hold Rs. 3,24,875/- as advance till execution of sale deed and on the balance amount, interest shall be payable at the rate of 18 per cent per annum. The said settlement was incorporated in the letter dated 07.01.1984 written by defendants and addressed to plaintiffs.

16. Defendants applied for obtaining permission of Ceiling Authority on 07.01.1984 by duly completing the form, but it could be received on 30th of March, 1988; whereupon plaintiffs approached defendants to execute sale deed, but they did not respond.

17. Subsequently, defendants served a notice dated 17th of August, 1993 claiming Rs. 10,40,885/- as balance sale consideration for execution of sale deed. Plaintiffs in their reply to notice sent a bank draft of Rs. 3,86,871/- which included balance amount of Rs. 1,08,000/- together with interest, agreed at the rate of 18 per cent per annum showing their willingness for execution of sale deed. Defendants returned above bank draft and refused to execute sale deed by their reply dated 29th October, 1993 alleging that plaintiffs have committed breach of terms of contract for sale. Claim of defendants for Rs. 10,40,885/- upto 15th June, 1983 is founded on an assumption that interest agreed at the rate of 18 per cent per annum, payable, was compound and not simple.

18. During pendency of suit, defendant 1, Amar Nath Kapoor, died on 26.02.2004 and since his legal heirs were already on record, therefore, suit proceeded with remaining parties.

19. On behalf of defendants 1, 2 and 3, a combined written statement dated 15th April, 1995 was filed stating that Smt. Shyamo Bibi died on 25.05.1986, that is before registration of suit in 1994. It was admitted that disputed house was purchased for valuable consideration by late Sidha Gopal Kapoor and Amar Nath Kapoor, having equal share. The sale consideration was paid from their respective HUF funds. After purchase, defendant 1 along with his branch occupied entire southern portion together with southern lawn, part of servants' quarters, while late Sidha Gopal Kapoor along with his branch entered into occupation of northern portion of premises. Contract for sale dated 7th of February, 1979 was admitted. Court proceedings for partition were not initiated with an intention to have matter settled between parties, amicably, out of Court, which could not be arrived at due to unfair stand on the part of late Sidha Gopal Kapoor and after his death, by plaintiff 1. It is also admitted that for amicable resolution, dispute was referred to Shri M.M. Thapar for mediation. He (Mediator) made award on 27th of May, 1979 working out value of half share in disputed property as Rs. 4,16,000/-. Since late Sidha Gopal Kapoor was not in a position to pay entire amount in lumpsum, it was decided to make payment in instalments along with interest accruing on the outstanding amount from time to time. Rs. 1,00,000/- was paid on 13.06.1979 by Cheque and further amount of Rs. 1,00,000/and Rs. 1,24,875/- was paid through entries in account books of M/s. Beni Prasad & Co., Amritsar, where after a balance amount of Rs. 10,8000/- together with interest agreed at the rate of 15 per cent per annum, compound, w.e.f. 15.06.1979 up to 15.06.1981, was payable so as to complete sale consideration, failing which 18 per cent per annum compound interest was payable on the outstanding amount. Since plaintiffs failed to pay the entire amount as per award of Mediator, Shri Thapar, hence, plaintiffs are not entitled for equitable relief of specific performance.

20. In the additional pleas it is said that suit is barred by limitation; plaintiffs have not come with clean hands, hence are not entitled for discretionary relief of specific performance.

21. There are three replications Dated 16.07.1996, 26.03.2002 and 29.10.2002 and one additional written statement dated 17.02.1999 which may be referred to as and when the occasion would arise.

## Suit 2

22. Suit2 (O.S. No. 1300 of 1994) was instituted in the Court of Civil Judge, Kanpur Nagar by Amar Nath Kapoor, his wife Indrani Kapoor and son Om Nath Kapoor impleading five defendants namely Sri Krishna Gopal Kapoor, his wife Smt. Usha Rani Kapoor and three sons ? Praveen Kapoor, Naveen Kapoor and Sharad Kapoor. The relief sought is delivery of possession of southern side of

disputed premises stating that plaintiffs have a right of resumption of their enjoyment and possession over disputed property and therefore by granting a mandatory injunction, possession of half of share of southern side of disputed property be directed to be handed over to plaintiffs. They also claimed pendente lite and mesne profits at the rate of Rs. 1100/- per day.

23. Plaintiff case in suit-2 is that plaintiff 1 as Karta and manager of his branch and late Sidha Gopal Kapoor as Karta and manager of his branch, jointly purchased disputed premises that's Bungalow No. 7/24, Tilak Nagar, Kanpur and started living therein along with their respective branches. Both the branches also had joint business. Sri Sidha Gopal Kapoor died on 07.07.1983. Defendants 1, 3, 4 and 5 are lineal descendants of late Sidha Gopal Kapoor. They succeeded and inherited all the rights and interest of late Sidha Gopal Kapoor, after his death, on 07.07.1985. Since defendants failed to comply with the directions contained in award dated 27.05.1979 given by Mediator, Shri M.M. Thapar, regarding payment of balance sale consideration, and delivery of possession of disputed house was made by plaintiffs to defendant 1, hence they claimed resumption of possession of disputed house.

24. Trial Court consolidated both the suits. However, issues were framed separately in both the suits as under :

Suit 1(O.S. No.714/94)

1- D;k oknh Hkou la0 7@24 fryd uxj dkuiqj ds vk/ks Hkkx dk fodz; i= izfroknh ls fu"ikfnr djkus dk vf/kdkjh gS\\

Whether the plaintiffs are entitled to get the sale deed executed by the defendants in respect of their half share in premises No. 7/24, Tilak Nagar, Kanpur?

2- D;k oknh vuqcU/k dh "krksZa dk vuqiky djkus gsrq ges"kk rRij jgk gS\\

Whether the plaintiffs all along remained ready and willing to act according to the terms and conditions of the agreement?

3- D;k izfroknh dFkr cdk;k /kujkf"i ij pdzo`f) C;kt ikus dk vf/kdkjh gS\\

Whether the defendants are entitled to compound interest on the alleged balance amount?

4- D;k nkok dky ckf/kr gS\\

Whether the suit is barred by time?

5- D;k okn dk ewY;kadu lgh ugha fd;k x;k gS rFkk iznRr U;k; "kqYd vi;kZIr gS\\

Whether the suit is not properly valued and the Court fee paid is insufficient?

6- D;k oknh fdLh vU; mipkj dks ikus dk vf/kdkjh gS\\

Whether the plaintiffs are entitled for any other relief?

7- D;k Jh ,e0,e0 Fkkij dk fu.kZ; izHkko"kkYh ugha gS] tSlk fd izfroknh i= dh /  
kkjk 35v o 35c esa dgk x;k gS\\

Whether the award of Shri M.M. Thapar is ineffective as alleged in Para 35A and  
35B of the written statement?

8- D;k Jh ,e0,e0 Fkkij dk fu.kZ;] iap fu.kZ; ugha gS\\ ;fn gkWa rks mldk izHkko\\

Whether the award of Shri M.M. Thapar is not an arbitration award, if yes, then  
its effect?

9- D;k oknhdk okn vfrfjDr vfHkopuksa ds iSjk 35 lh esa of.kZr rF;ksa ds vk/kkj ij  
iks"k.kh; ugha gS\\

Whether the suit is not maintainable as alleged in para 35C of the written  
statement.? (English Translation by Court)

Suit 2(O.S. No.1300/94)

1- D;k izLrqr okn lh0ih0lh0 dh /kkjk 10 ds vUrxZr LFkfxr gksus ;ksX; gSa\\

Whether the suit is liable to be stayed under Section 10 CPC as alleged in para  
21 of the written statement?

2- D;k okn ewY;kadu xyr fd;k x;k gSa rFkk iznRr U;k; "kqYd vi;kZIr gSa\\

Whether the suit is undervalued and the court fee paid is insufficient?

3- D;k okn fe;kn ls okf/kr gSa\\

Whether the suit is barred by limitation?

4- D;k izfroknhx.k edku ua0 7@24 esa oknh ds 1@2 fgLLs ds vuqKfIr/kkjH  
Fks] ;fn gkWa rks D;k og vuqKfIr oknh us fujLr dj fn;k\\

Whether the defendants were the licensee of plaintiffs' half share in premises no.  
7/24, Tilak Nagar, Kanpur? If so whether the license had been revoked by the  
plaintiffs?

5- D;k izfroknhx.k fu/kkZfjr le; ds vUnj lEiw.kZ fodz; izfrQy vnk djus esa vIQy  
jgsa\\

Whether the defendants have failed to pay the entire sale consideration within  
the stipulated time. If so it's effect?

6- D;k oknhx.k fookfnr lEifRr esa iqu% viuk dCtk o mi;ksx okil izkIr djus ds vf/  
kdkjh gS\\

Whether the plaintiffs are entitled to resume enjoyment in upon and over the  
disputed premises?

7- oknhx.k fdl mi"ke ds vf/kdkjh gS\\

To what relief, if any, the plaintiffs are entitled?

8- D;k izfroknhx.k izfrokn i= ds iSjk 6 esa of.kZr vk/kkjksa ij fookfnr edku ds fglls ij "kel% vuqikyu ds dCts esa gSa\\

Whether the defendants are in possession of the portion of the disputed premises in part performance as alleged in para 6 of the written statement?

(English Translation by Court)

25. Trial Court considered issues of Suit1 first. Issues-1 and 2 were answered in favour of plaintiffs Krishna Gopal Kapoor and others. Issue 3 was answered holding that plaintiffs shall be liable to pay 10 per cent annual interest on the remaining amount of consideration for the purposes of getting sale deed executed. Issue 4 relating to limitation was answered in negative. Issues 7 and 8 were also answered in negative holding, since mediation and award given by M.M. Thapar is admitted to both the parties, therefore, it is effective and operative. Issue 9 was answered in negative holding that the suit is maintainable.

26. Thereafter, issues of Suit-2 were taken. Issue 1 was answered in negative holding that both suits can proceed together. Issue-3 relating to limitation was answered in negative. Issue 4 was also answered in negative holding that both parties were co-owner and in joint possession of disputed property. Issue 5 was answered holding that Mediator's award has partly been executed and a small sum of Rs. 1 Lakh and odd was still payable showing that parties have partly discharged their obligations under award. Issue 6 was answered against plaintiff holding that against total sale consideration of Rs. 4,16,000/-, he has already received Rs. 3,24,875/- and thereafter, handed over possession to defendants. Issue 8 was answered holding that plaintiffs are not in possession and defendants are in possession of the disputed property.

27. Consequently, Suit1 that is Original Suit No. 714 of 1994 was decreed and Suit2 that is Original Suit No. 1300 of 1994 was dismissed.

28. Defendants in Suit1 and plaintiffs in Suit-2 are common and both these appeals have been filed at their instance.

29. Shri Ashish Kumar Singh, Advocate, has advanced submissions on behalf of appellants and Sri K.M. Asthana has made submissions on behalf of respondents. Both have also filed written submissions which have been taken on record.

30. It is contended that a non testamentary document i.e. award Dated 27.05.1979 is not en-forcible and therefore, suit for specific performance was/is not maintainable. Award was compulsorily registrable. Since it was not registered, hence not admissible in evidence and could not have been enforced at all. Trial Court has erred in law in holding that the alleged award is a settlement and therefore, does not require registration. Trial Court also erred in law in holding that award dated 27.05.1979, a non-testamentary document, was an agreement. It is then contended that respondents were not ready and willing to execute sale deed since amount directed to be paid by Mediator was not paid by due date. Delay of more than 12 years in tendering last instalment should



have been construed as if respondents were not willing and ready to get sale deed executed. Since property had been passed on to respondents, Trial Court should have directed for resumption of possession to appellants and by not doing so, had erred in law in dismissing suit<sup>2</sup> that is Original Suit No. 1300 of 1994.

31. Shri K.M. Asthana, learned counsel appearing for respondents, on the contrary, argued that it was a case where facts were basically admitted. Alleged award was also an admitted document to both the parties. Since it is a family settlement/agreement between the parties of a special character, the document was also admitted, partly executed and appellants also relied on said document to claim resumption stating that conditions set out in the said document with regard to payment of balance consideration along with interest was flouted, hence it is not open to appellants to challenge that said document/award as inadmissible in evidence.

32. Rival submissions, advanced by both parties have given rise to following points for determination which need adjudication for deciding these appeals:

1. What is the nature of document/award dated 27.05.1979 and whether it was admissible in evidence in any manner or not at all?

2. Whether non-testamentary document/award dated 27.05.1979 was necessarily registrable and if so what is the effect of its non registration?

3. Whether suit for specific performance of non-testamentary document/award dated 27.05.1979 was not maintainable, since the document was not registered?

4. Whether respondents were ready and willing to pay entire consideration and get the sale deed executed justifying a decree of specific performance by Court below?

5. Whether, even otherwise, suit of respondents for a direction for execution of sale deed could have been decreed by Court below or it has erred in law in decreeing Suit<sup>1</sup> and dismissing Suit-2?

6. Whether Trial Court is justified in directing respondents to pay 10% simple interest on unpaid amount so as to oblige appellants to execute sale deed of property in dispute?

33. We propose to answer issues - 1 to 5 together since they are interconnected. It would be appropriate first to cull out certain admitted facts since both the parties have filed their separate suits which have some common but admitted facts. These common admitted facts are:

(a) House in dispute that's premises No. 7/24, Tilak Nagar, Kanpur was jointly purchased vide sale deed dated 26.08.1946 by fathers of plaintiffs and defendants i.e. Amar Nath Kapoor and Siddha Gopal Kapoor.

(b) At that time they were having an HUF wherein Amar Nath Kapoor was Karta and funds for purchase of the house were made available from HUF funds.

(c) Both and their heirs had possession and ownership of the said house having equal shares therein. (as a matter of fact, both occupied separate part of house for residence purpose but in law their ownership and possession was joint).

(d) With regard to division of property there was a dispute between the parties. For resolution thereof, they (i.e. Siddha Gopal Kapoor and Amar Nath Kapoor) approached Shri M.M. Thapar to function as a Mediator, being common friend of family, and settle the dispute.

(e) Terms and conditions of settlement arrived at before mediator were noted in the document dated 27th of May, 1979.

(f) Property was valued by Mediator worth Rs. 8.32 lacs, half whereof was worked out to Rs. 4.16 lacs.

(g) Siddha Gopal Kapoor was supposed to pay Rs. 4.16 lacs to Amar Nath Kapoor, whereupon Amar Nath Kapoor was to hand over keys and vacant possession of disputed house, which was in his and his family's possession.

(h) Since Siddha Gopal had some difficulty in making payment in one stroke hence Mediator provided mode of payment as under:

(i) Rs. 1 lac by 15.02.1979;

(ii) Rs. 1 lac by adjustment in account of Amar Nath Kapoor in the Firm of his choice where both the parties were partner, by 15.06.1979;

(iii) On the instalments paid, interest at 15% per annum payable up to the date of payment;

(iv) Rs. 1.08 lac by 15.06.1980 together with interest at the rate of 15% per annum from 16th of June, 1979 to 15th of June, 1980;

(v) Rs. 1.08 lac by 15th of June, 1981 together with interest at the rate of 15% per annum (payable annually) from 15th of June, 1979 to 15th June, 1981. If the amount is paid earlier, interest was payable only till payment;

(i) First three instalments of Rs. 1 lac, Rs. 1 lac and Rs. 1.08 lac along with interest were actually paid as per terms and conditions contained in the document dated 27.05.1979 prepared by Mediator.

(j) Amar Nath Kapoor after having received first two instalments of Rs. 1 lac each i.e. Rs. 2 lacs, and in full confidence and acceptance of settlement, handed over vacant possession of disputed house (the portion where he and his family was residing) to respondents on 15th June, 1979.

(k) It also appears that for execution of sale deed permission from Ceiling Authority was necessary, for which Amar Nath Kapoor submitted application on 21st December, 1981, but what happened thereto is not clear. However, another application seeking permission of Ceiling Authority was filed on 7th of January, 1984 and permission was granted on 30th of March, 1988.

(I) He also applied to Income tax Department for grant of certificate under Section 230A (1) of the Act, 1961, which was granted on 11th February, 1981."

34. Case of appellants is that since fourth instalment was not paid in time along with interest as directed by Mediator vide document/award dated 27th of May, 1979, respondents were not entitled to file suit for specific performance against appellants and on the contrary, appellants are entitled for resumption of premises, vacant possession whereof was handed over to the respondents.

35. Parties are ad idem in respect of co-owner ship of house in dispute, earlier joint possession, later on transfer of possession by appellant to respondents and also a settlement arrived at between parties which was substantially adhered to and acted upon inasmuch as out of four instalments, three were paid by respondents; and, appellants after receiving first two instalments handed over vacant possession of their share in disputed house to respondents.

36. Learned counsel for appellants has argued that document dated 27.05.1979 prepared by Mediator is an award and has also been named and titled by parties as such, therefore, it was compulsorily registrable and without being registered Court below could not have admitted it in evidence.

37. Learned counsel for respondents, on the contrary, sought to argue that it is a peculiar case where terms and conditions of settlement are not only admitted to parties but the same have been substantially adhered to. In fact plaintiffs in Suit1, have relied on the said document in support of their prayer for execution of sale deed. Plaintiffs appellants in Suit-2 are also relying on same document for the purpose of seeking a decree of resumption of possession in disputed house to the extent of their share which they have handed over to respondents.

38. It is in these circumstances what is needed is to ascertain the true nature of document dated 27.05.1979.

39. We have no manner of doubt that title given by author or the manner in which parties have addressed a document, would not govern its nature but it is to be considered and determined from contents thereof, to arrive at a conclusion as to what is the nature of a document. The parties constituted HUF and have continued to run the same without disclosing as to when initial HUF ceased and new HUF was created.

40. HUF between the parties as long back as 1946 when house in dispute was purchased is admitted. It has not come on record as to when the aforesaid HUF ceased or new or different HUF came into existence. Even when dispute was required to be resolved with mediation of Mr. M.M. Thapar, it does not appear that there was cessation of already continuing HUF. Karta of HUF may change but HUF itself came to an end at any point of time even till 1979, is not a fact pleaded by either party, therefore, there is no reason to hold that HUF between the parties ceased after 1946 at some point of time.

41. In Hindu Law, concept of joint family or HUF has been given great respect

and honour. In India and particularly among Hindus, the family bonds are not only very strong but they have given right to a society who believe in a joint family going to the extent of even the concept of village community.

42. In the concept of property, there have been three layers, i.e., Patriarchal Family, Joint Family and Village Community. The patriarchal family is headed by father and consists of his off springs. Joint family may include within itself members, related to each other, though not having common ancestors and goes beyond family flowing from father himself.

43. It is said that unlike England, where the concept of ownership, as a rule, is single, independent and unrestricted, and it may be joint, but the presumption is to the contrary. It may be restricted but only in special instances and under special provisions. The situation in India is totally different. Here joint ownership is normally the rule and may be presumed to succeed until contrary is proved. If an individual holds property in severalty, in the next generation, it will relapse into a stand of joint tenancy. A Hindu may start with nothing and make a self acquired fortune by dint of his own labour, capacity and merits and he is the absolute owner of estate but in a couple of generations his offspring would ramify in a joint family, like a banian tree which also stands as a single shoot. If the property is free from hands of its acquirer, it will become fettered in the hands of his heirs.

44. The "patriarchal family" may be defined as a group of natural or adoptive descendants, held together by subjection to the eldest living ascendant, father, grandfather, great grand father. Whatever be a formal prescription of law, the Head of such a group is always in practise, despotic; and he is the object of respect, if not always of affection, which is probably seated deeper than any positive institution. Manu says, "three persons, a wife, a son and a slave, are declared by law to have in general no wealth exclusively their own; the wealth which they may earn is regularly acquired for the man to whom they belong." Narada says, "he is of age and independent, in case his parents be dead; during their lifetime he is dependent, even though he be grown old."

45. The "joint family" is normally a transition form from "patriarchal family" at the death of common ancestors or Head of house. If the family chose to continue united, the eldest son would be the natural head. The former one is head of family by natural authority, the later other can only be so by a delegated authority. He is primus but inter pares.

46. An undivided Hindu family thus is ordinarily joint not only in estate but in food and worship. The presumption, therefore, is that members of a Hindu family are living in a state of union unless contrary is established. This presumption however varies inasmuch as it is stronger in case of real brothers than in case of cousins and farther one go, from the founder of family, the presumption becomes weaker and weaker.

47. However, there is no presumption that a family, because it is joint, possesses

joint property. Under Mitakshara Law, possession of property is not necessary requisite for constitution of a joint family, though where persons live together, joint in food and worship, it is difficult to conceive of their possessing no property whatever, such as ordinary household articles which they would enjoy in common.

48. The intention to break joint family by effecting partition in respect of joint family property has always been considered with great respect, where amicably and peacefully, intacting love and affection, the members of joint family have settled their rights mutually. It can be given effect, orally, as also in writing.

49. In *Appovier v. Ramasubba Aiyan* (1866) 11 MIA 75, Lord Westbury took a view that partition covers both, a division of right and a division of property. This is also reiterated in *Girja Bai v. Sadashiv Dhundiraj* (1916) 43 IA 151. When members of undivided family agreed amongst themselves either with respect to a particular property or with reference to entire joint estate that it shall thenceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject matter so agreed to be dealt with; and in the estate, each member has thenceforth a definite and certain share which he may claim the right to receive and to enjoy in severalty although the property itself has not been actually severed and divided.

50. At this stage, we may also have a look on the concept of partition by agreement between the family or family arrangement.

51. In *Raghubir v. Moti* (1913) 35 All 41 PC and *Anurago Kuer v. Darshan Raut*, AIR 1938 PC 65, partition by agreement was explained by observing, that, if there be a conversion of joint tenancy of an undivided family into a tenancy in common of the members of that undivided family, the undivided family becomes a divided family with reference to the property, i.e., the subject to agreement and that is a separation in interest and in right, although not immediately followed by a de facto actual division of subject matter. This may, at any time, be claimed by virtue of separate right. This was also held so in *Amrit Rao v. Mukundrao* (1919) 15 Nag LR 165 PC.

52. If we look into the facts of present case in the light of Privy Council's decision in *Raghubir v. Moti* (supra); *Anurago Kuer v. Darshan Raut* (supra); and, *Amrit Rao v. Mukundrao* (supra), we find that though there was no formal partition between appellants and respondents but admittedly Sidha Gopal Kapoor and his branch were occupying Northern portion of premises while Amarnath Kapoor and his branch were occupying Southern portion of house in dispute. A de facto actual division existed with an oral agreement between parties since long. Appellants also handed over Southern portion of house which they were occupying to respondents. This fact also supports an inference that house in question by oral agreement or settlement between parties was already divided. Parties, therefore, had a practise of having oral family arrangement or agreement or settlement so as to avoid Court cases among them. It was an

amicable and happily accepted family arrangement between them.

53. A "family arrangement" also stand and enjoy a respectable and recognised status. It is an agreement arrived by members of family, either by compromise of doubtful or disputed rights, or by preserving a family property or by avoiding litigation for the peace and security of family or saving its honour. A severance of joint status may result, not only from an agreement between the parties but from any act or transaction which has the effect of defining their shares in the estate though it may not partition the estate. Among all the coparceners, now it has been held, that, an agreement between all of them is not essential so as to result in disruption of joint status though it is required for the actual division and distribution of property, held jointly. A definite and unambiguous indication of intention by one member to separate himself from family and to enjoy his share in severalty will amount to a division in status. (See, *Ram Narain Sahu v. Musammatt Makhana*, ILR (1939) All. 680 (PC) and *Puttrangamma and Ors. v. M.S. Ranganna and Ors.* AIR 1968 SC 1018).

54. Further whenever there is a partition, presumption is that it was a complete one both as to parties and property. There is no presumption that any property was excluded from partition. On the contrary, it has been held that burden lies upon him who alleges such exclusion to establish his assertion.

55. Thus what is evident is that the term "family arrangement", "partition", "family settlement" etc. they all construe to be, and, convey, one and the same sense and meaning.

56. The word "settlement" has been defined in Oxford Advanced Learner's Dictionary of Current English by A.S. Horn by, Seventh edition at page 1390 as under:

"the action of reaching an agreement; the settlement of a dispute, the conditions, or a document stating the conditions, on which money or property is given, an official agreement that ends an argument between two people or groups to negotiate a peace settlement."

57. In Black's Law Dictionary its meaning has been given as:

"act or process of adjusting or determining; an adjusting; an adjustment between persons concerning their dealings or difficulties; an agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other; arrangement of difficulties; composure of doubts or differences; determination by agreement; and liquidation."

58. Under some statutory provisions also definition of "settlement" has been provided. In Section 2(b) of Specific Relief Act, 1963, the "settlement" has been defined as under:

"settlement" means an instrument other than a will or codicil as defined by the Indian Succession Act, 1925 (39 of 1925) whereby the destination or devolution

of successive interests in moveable or immovable property is disposed of or is agreed to be disposed of."

59. Section 2(24) of Indian Stamp Act, 1899 also define "settlement" as under:

"settlement" means any non-testamentary disposition, in writing, of movable or immovable property made

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition and, where, any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition."

60. The term "Compromise" has been defined in Law Lexicon, the Encyclopaedic Law Dictionary, 2nd Edition Reprint 2007 by P. Ramanatha Aiyar, page 373 as under:

"Compromise. To adjust by mutual concession ; to settle without resort to the law ; to compound (as noun). An "adjustment of matters in dispute by mutual concessions." "An agreement between the parties to a controversy for a settlement of the same." (Abbott.) "A settlement of differences by mutual concessions." "The mutual yielding of opposing claims ; the surrender of some right or claimed right in consideration of a like surrender of some counterclaim." (Anderson Law Dict.) "An agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon." (Bouvier.)"

61. In *Sita Ram v. Board of Revenue*, AIR 1979 All 301, this Court observed that the expression "settlement" means a non-testamentary disposition of property by an instrument in writing, containing even a declaration of trust, for distribution of property among the settlor's family or his dependent or those for whom the settlor desires to provide or for religious or charitable purpose. In other words, settlement among members of family in respect of the property, jointly owned by them, is a kind of compromise/mutual concession and arrangement between the members of family to settle their rights in respect of the member of the family.

62. It can thus safely be said that a compromise is an agreement between two or more parties as a settlement of matters in dispute.

63. Privy Council in *Trigge v. Lavallee*, (1863) 15 P.C. 271, while construing the term "compromise" held that it is an agreement to put an end to disputes and to terminate or avoid litigation. In such cases, consideration which each party receives is the settlement of the dispute; the real consideration is not the

sacrifice of a right but the abandonment of a claim.

64. Subsequently in *Rani Mewa Kunwar v. Rani Hulas Kunwar*, (1874) 1 I.A. 157, Court said that compromise is based on assumption that there was an antecedent title of some kind in the parties and the agreement acknowledges and defines what that title is.

65. The above definition of "compromise" covers the cases wherein about the title of property, there may be a dispute but in respect to property whereof there was no doubt about the ownership of parties that it is vested in one or more of them, if it is brought within the scope of family arrangement, and is allotted to one of the other parties, it may result qua that property that there is a transfer of ownership.

66. In this contest, in *Khunni Lal v. Gobind Krishna*, [1911] 33 All. 356, Court said, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognizing the right of the others as they had previously asserted it to the portion allotted to them respectively, it was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement.

67. Following this, in *Hiran Bibi v. Sohan Bibi*, AIR 1914 P.C. 44, their Lordships said:

"A compromise of this character is, in no sense of the word, an alienation by a limited owner of the family settlement in which each party takes a share of the family property by virtue of the independent title which is, to that extent and by way of compromise, admitted by the other parties."

68. The question relating to "family arrangement" came to be considered by a Full Bench of this Court in *Ramgopal v. Tulshi Ram and Anr.*, AIR 1928 All. 641 and two questions considered therein were:

"(1) Does the arrangement amount to a contract?

(2) Was the matter "reduced to the form a document?"

69. Court observed that it has to determine, whether by a family arrangement dealing with immovable property, there is any transfer of ownership in certain property, for the ownership of certain other property. Full Bench said that in the usual type of "family arrangement" in which there is no question of any property, the admitted title which vests in one of the parties, being transferred to one of the other parties, there is no transfer of ownership as such, is necessary to bring the transaction within the definition of "exchange" in Section 118 of Transfer of Property Act, 1882. Court said that, therefore, a binding family arrangement of this type may be made orally. Thereafter, the Court referring to Section 91 of Indian Evidence Act, 1872 (hereinafter referred to as "Act, 1972") and 17 and 49 of Registration Act, 1908 held that a contract, if reduced in the form of a document, where the value of the subject matter is Rs. 100 or upwards, its



registration is compulsory.

70. The matter also came to be considered by a three Judge Bench in *Kale & Ors. v. Deputy Director of Consolidation & Ors.*, AIR 1976 SC 807. Court concretized certain propositions considering the effect and essentials of "family settlement" and in para 10 of the judgment, said:

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in Immovable properties and therefore does not fall within the mischief of Section 17(2) (sic) [Section 17(1)(b)] of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

71. For maintaining peace and cordial relations amongst the members of family, Courts have dealt with the cases of family arrangement with an objective to encourage mutual understanding and settlement amongst the members, whether by way of an oral agreement or written but so long it is successful for maintaining harmony amongst the members, Courts have attempted always to uphold such arrangements.

72. A family arrangement is an agreement between the members of family

intended to be generally and reasonably agree, for the benefit of family, either by compromising doubtful or disputed rights or by preserving family property or peace and security of family by avoiding litigation or by saving its honour. Arrangements are respected and acted upon by Courts. The Courts are reluctant to disturb arrangements mutually entered into by parties. For a family arrangement to be good and binding, it is not necessary that there should be a family dispute which had to be settled or compromised. The fact that by their agreement parties have avoided necessity or possibility of legal proceedings is sufficient consideration to support it.

73. It is in this context, Woodroffe and Ameer Ali in their Law of Evidence 13th Edition, Volume 3 at page 2896 have said:

"Family arrangements Estoppel by conduct may arise in the case of family arrangements, the decisions as to which extend not merely to cases in which arrangements are made between members of a family for the preservation of its peace but also to cases in which arrangements are made between them for the preservation of its property. . . ."

74. The learned authors have further said:

"Where family arrangements have been fairly entered into, without concealment or imposition on either side, with no suppression of what is true, or suggestion of what is false, then although the parties may have greatly misunderstood their situation, and mistaken their rights, a Court of Equity will not disturb the quiet, which is the consequence of that agreement; but when the transaction has been unfair, and founded upon falsehood and misrepresentation, a Court of equity would have a very great difficulty in permitting such a contract to bind the parties. When a family arrangement has been entered into, or acquiesced in by all the persons interested in the family property, and has been carried into effect, then none of the persons who consented thereto may thereafter be heard to repudiate that arrangement, or to set up that it is not binding in law. A family arrangement stands on a different footing from an ordinary contract. A settlement of doubtful claims, or rather what the parties believed to be doubtful claims without the worry and expense of litigation might itself be a sufficient "consideration" for such an arrangement. The fact that there was no other consideration to support the arrangement, or that it transferred the property to a person without any right, is not, therefore, a sufficient ground for setting aside a family arrangement."

75. In Law of Evidence by Sarkar 13th Edition page 1128, a family arrangement is explained by observing that, "a family arrangement has been defined as an arrangement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigating or by saving its honour."

76. In Kale and others v. DDC and others (supra), Court has said that if a mere

memorandum is prepared after family arrangement had already been made, either for the purpose of record or for information of Court or for making necessary mutation, then such document would not fall within the mischief of Section 17(1)(b) of Registration Act, 1908 (hereinafter to be referred as "Act, 1908").

77. When we go through the document dated 27.05.1979 we find that it is in the form of recording of proceedings conducted before Mediator and whatever settlement was arrived at between parties, same has been noted therein.

78. The appellants in support of their contention that the said document ought to have been compulsorily registered, otherwise it is inadmissible in evidence, have relied on decisions in *Lachhman Dass v. Ram Lal*, AIR 1989 SC 1923; *Sardar Singh v. Smt. Krishna Devi* and another, AIR 1995 SC 491 ; and *Bhoop Singh v. Ram Singh Major and others*, AIR 1996 SC 196.

79. We may discuss the aforesaid judgments as under.

80. In *Lachhman Dass v. Ram Lal* (supra), the dispute was between two brothers. Both appointed one Ajit Singh as Arbitrator for settlement of dispute about 242 kallas of land situated near Chandni Bagh, Panipat in the State of Haryana. The land stood in revenue record in the name of Lachhman Dass only. Ram Lal brother claimed that it was a benami in the name of Lachhman Dass. Arbitrator made award on 22nd May, 1974 and moved application in Civil Court for making award rule of the Court. Arbitrator held that half share in disputed property was benami and belongs to Ram Lal. Lachhman Dass contested the application stating that he has no faith in Arbitrator and has repudiated the proceedings of arbitration. He also raised objection that award was not properly stamped and being an unregistered one, cannot be made rule of the Court. Trial Court dismissed objections of Lachhman Dass and made award rule of the Court. In appeal District Judge held that award was not properly stamped, hence cannot be made rule of the Court. It also held that award declared right in immovable property and since it was unregistered, it could not be made rule of the court. High Court in appeal upheld the award, restored order of Trial Court and reversed order passed by District Judge holding that award did not create any right as such in immovable property, it only admitted the already existing rights between the parties and hence requires no registration. Supreme Court held that real purpose of registration is to secure that every person dealing with property where such document requires registration, may rely with confidence upon statements contained in the register as a full and complete account of all transactions by which title may be affected. Section 17 of the said Act being a disabling section, must be construed strictly. Unless a document is clearly brought within the provisions of the section, its non-registration would be no bar to its being admitted in evidence. Court also held that award declares that half share of the ownership of Lachhman Dass shall now be owned by Ram Lal in addition to his half share owned in these lands and this declaration did create, declare or assign a right, title and interest in the immovable property. Court

further said that it is not merely declaration of a preexisting right but creation of new right of the parties. It further said, "The section, however, enjoins registration in respect of any document, which purports not which intends to create a right in immovable property or declare a right in immovable property. It is not a question of declaration of an existing right."

81. Court also relied on its earlier decision in *Satish Kumar and others v. Surindar Kumar*, AIR 1970 SC 833 and said, "It was incorrect to state that an award which could not be enforced was not an award and the same did not create any right in the property which was the subject matter of the award. An award whether registered or unregistered, according to Justice Hegde, does create rights but those rights could not be enforced until the award is made the decree of the Court." In other words, Court said that a document might validly create rights but those rights may not be enforced for various reasons and one of the reasons is that an award though has created a right in immovable property, but if not registered, it is not enforceable.

82. In *Ratan Lal Sharma v. Purshottam Harit*, AIR 1974 SC 1066 is also a judgement relied on in *Lachhman Dass* (supra). In a partnership firm's division of assets, Court held that it makes an exclusive allotment of partnership assets including factory liabilities, payments, hence registration is compulsory and clause of agreement dealing with immovable property would not be enforceable, if award is not registered.

83. In *Sardar Singh v. Smt. Krishna Devi* (supra), certain land was found exclusively in the name of one Kartar Lal. His brother Sardar Singh sought resolution by appointing private Arbitrator. Arbitrator held both, owners of house in equal share. Court held that such an award requires registration as it creates right in favour of Sardar Singh and extinguishes certain rights of Kartar Lal who has a sale certificate of the disputed property exclusively in his name. Court further held that unregistered award per se is not inadmissible in evidence. It is a valid award and not a mere waste paper. It creates rights and obligations between the parties thereto and is conclusive between them. It can be set up as a defence, as evidence of resolving disputes and acceptance of it by parties. If it is a foundation, creating right, title and interest in praesenti or future or extinguishes the right, title or interest in immovable property of the value of Rs. 100 or above, it is compulsorily registrable and non-registration renders it inadmissible in evidence. If it contains a mere declaration of a preexisting right, it is not creating a right, title and interest in praesenti, in which event it is not a compulsorily registrable instrument. It can be looked into as evidence of the conduct of parties in accepting award, acting upon it that they have preexisting right, title or interest in the immovable property. Therein Court held that award if only declares preexisting rights and hence is not necessarily registrable. In para 11, Court said:

"In the light of the above conclusion and of the contents of the award referred to hereinbefore, the necessary conclusion is that the award did not create any right,

title or interest in the appellant for the first time, but it declared the preexisting factum, namely the appellant and Kartar Lal purchased the property jointly and that Kartar Lal was the benamidar and that both of the brothers had half share in the house with a right to enjoyment of the property in equal moiety. Thus the award is not compulsorily registrable. The contention of the counsel for the respondent is that if the unregistered award is accepted as a foundation and received in evidence effecting interest in immovable property, there is possibility of avoiding registration and by indirect process get title conferred, defeating the mandate of Section 17 and Section 49 of the Registration Act. Each case must be considered from its own facts and circumstances; the preexisting relationship of the parties; the rights inter vivos and the interest or rights they claimed and decided in the award and the legal consequences. On the facts of this case we hold that the appellant and Kartar Lal being tenants in common, migrants from Pakistan after partition, the appellant being Government servant, obviously, his brother Kartar Lal purchased the property for their benefit as coparceners or co-owners.

In that view it must be held that the award does not have the effect of creating any right in praesenti, nor is it an attempt to avoid law."

84. In *Kashinathsa Yamosa Kabadi v. Narsingsa Bhaskarsa Kabadi*, AIR 1961 SC 1077 an award was made in arbitration which was accepted by the parties. A question arose that in absence of registration can such award be pleaded in defence as a binding decision between the parties. The Court said:

"It may be sufficient to observe that where an award made in arbitration out of court is accepted by the parties and it is acted upon voluntarily and a suit is thereafter sought to be filed by one of the parties ignoring the acts done in pursuance of the acceptance of the award, the defence that the suit is not maintainable is not founded on the plea that there is an award which bars the suit but that the parties have by mutual agreement settled the dispute, and that the agreement and the subsequent actings of the parties are binding. By setting up a defence in the present case that there has been a division of the property and the parties have entered into possession of the properties allotted, defendant 1 is not seeking to obtain a decision upon the existence, effect or validity of an award. He is merely seeking to set up a plea that the property was divided by consent of parties. Such a plea is in our judgment not precluded by anything contained in the Arbitration Act."

(emphasis added)

85. In *Bhoop Singh v. Ram Singh Major* (supra) suit was filed by plaintiffs, heirs of one Nand Ram who was one of five sons of one Jeevan Ram. Defendant Bhoop Singh belongs to the branch of Rakha Ram, another son of Jeevan Ram. Ganpat was a son of Nanha Ram, still another son of Jeevan Ram. A suit was also filed by Bhoop Singh which was disposed of ordering a declaratory decree in respect of the property in suit detailed in the heading of the plaint, to the effect that

plaintiff will be the owner in possession from today in lieu of defendant after his death and plaintiff deserves his name to be incorporated as such in the revenue papers. The decree was granted in favour of the plaintiff against the defendant, in view of the written statement filed by defendant admitting claim of plaintiff to be correct. Question arose whether such decree was necessarily required to be registered. Court answered legal position qua Section 17 (2) (vi) by summarizing the matter as under:

(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 subsection (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 subsection (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.

86. Shri K.M. Ashthana, learned counsel for respondents, has relied on the authorities in *S. Shanmugam Pillai v. K. Shanmugam Pillai*, AIR 1972 SC 2069; *K.K. Modi v. K.N. Modi*, AIR 1998 SC 1297; *Hari Shanker Singhanian and others v. Gaur Hari Singhanian and others*, AIR 2006 SC 2488; *Aloka Bose v. Parmatma Devi and others*, AIR 2009 SC 1527; and *Kale and others v. DDC* (supra).

87. In *Shanmugam Pillai v. K. Shanmugam Pillai* (supra) there was no dispute with regard to question whether a settlement or a compromise or an award needs compulsory registration or not. In respect to certain property plaintiff claimed possession as Haqdar and also as reversioner's. Trial Court decreed the suit in respect to certain property but dismissed in respect to other. Appeals were preferred by both the parties, but plaintiff's appeal was dismissed and defendant's appeal was allowed resulting in dismissal of entire suit. Plaintiff also failed in Supreme Court. While dealing rival issues with respect to "family arrangement", Court in paragraphs - 24 and 25 of judgment observed that normally Courts lean strongly in favour of family arrangement that brings about harmony in family and do justice to its various members and avoid, in

anticipation, future disputes which might ruin them all. "Family arrangement" can as a matter of law be inferred from a long course of dealings between the parties. It also observed that although conflict of legal claims in presenti, or in future is generally a condition for validity of family arrangements, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims, would be sufficient. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, Courts would more readily give assent to such an agreement than to avoid it.

88. In *K.K. Modi v. K.N. Modi* (supra), dispute was between five sons of Seth Gujjar Mal Modi and three sons of younger brother of Seth Gujjar Mal Modi i.e. Kedar Nath Mothi. With the help of financial institutions a memorandum of understanding was arrived at between the two groups. A question arose whether Clause 9 of memorandum of understanding would constitute an agreement and decision of a financial institution pursuant thereto would constitute an "award". In para 17 of judgment, Court noted the attributes which must be present for an arbitration agreement to be considered as an agreement and said:

"The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,

(2) That the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the Court or from a statute, the terms of which make it clear that the process is to be an arbitration,

(3) The agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal,

(4) That the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides,

(5) That the judgment of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,

(6) The agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal."

89. Answering the aforesaid in negative, Court said, that memorandum of understanding records settlement arrived at regarding a dispute and differences between two groups belonging to the same family. In terms of settlement, shares and assets of various companies are required to be valued in the manner specified in agreement. Valuation was done by a company. In the implementation of Memorandum of Understanding which is to be done in consultation with the financial institutions, any dispute or clarification relating to implementation is to be referred to the Chairman, IFCI or his nominees whose decision will be final

and binding. The purport of Clause 9 is to prevent any further disputes between two Groups. Agreement requires division of assets in agreed proportions after their valuation by a named body and under a scheme of division by another named body and it is intended to clear any other difficulties which may arise in the implementation of the agreement by leaving it to the decision of the Chairman, IFCI. This clause is not intended to be for any different decision than what is already agreed upon between parties to the dispute. It is meant for a proper implementation of settlement already arrived at. Here no question regarding registration of the document was involved.

90. In *Hari Shanker Singhania and others v. Gaur Hari Singhania and others* (supra), an application under Section 20 of Arbitration Act, 1940 was rejected, being barred by limitation, where against appeal was also dismissed, hence the matter came to Supreme Court. There was a partnership firm formed by three brothers of Singhania family. They owned considerable amount of immovable property. Family arrangement was dissolved by way of dissolution deed as a family settlement. There was a clause enabling parties to go for arbitration in case of dispute. Distribution of assets could not be finalized, hence each of three groups appointed a nominee as to make out an arrangement whereby distribution of immovable property could be settled. Still no agreement of distribution could be arrived at. Then, an application for appointment of Arbitrator was filed under Section 20. It is in this context Court made certain observations with regard to approach of Court in maintaining, upholding and honouring family arrangement as much as possible with an approach so that there may not be an unnecessary litigation between the members of family.

91. Lastly, in *Aloka Bose v. Parmatma Devi and others* (supra) again we do not find any thing which may help the respondents in any manner.

92. Be that as it may, the law as discussed above makes it very clear that a document whether compulsorily is registrable or not, but if has resulted in some declaration or creation or assignment etc. those effects will have their consequences. The only question would be whether the same can be enforced in a court of law or not, if the document is unregistered.

93. Interestingly here is a case where same document has been relied by both the parties in two suits filed by them, separately, As plaintiff also they have relied on the same document as well as in defence they have relied on the same document. Appellants contended that fourth instalment has not been paid in time with due interest which was payable compounded, therefore, there is a breach on the part of other side, while other side has taken a stand that no compound interest was payable; and only simple interest was payable and it attempted to pay fourth instalment in due time, but appellants created hurdles, firstly by not getting requisite clearance from Ceiling Authority and Income Tax Department in time and secondly by their conduct in not taking interest for execution of sale deed. It is not in dispute that the terms of settlement have substantially been observed and acted upon between parties and issue is only with regard to non



payment of last and fourth instalment which is almost 7th of total consideration payable by defendants to appellants.

94. Looking to the nature of entire controversy and document, we are of the view that settlement having already been substantially acted upon between parties, Court below has not erred in law by directing appellants to execute sale deed after receiving remaining amount along with due simple interest. It has rightly accepted the stand of both the sides founded on the same document which was already acted upon substantially.

95. Moreso, when we go through the document dated 27.5.1979, though it is termed as "award" but from the contents thereof, we find that it has recorded entire proceedings. Mediator was appointed for determination of division of property between the parties. Parties also agreed that decision of Mediator shall be final and binding on them. There were following properties in dispute:

"(1) Common property consisting of building situated in Mohalla Pheelkhana, bearing Municipal Nos. 28/56, 28/56A and 28/56B. This Chiefly consists of flats which are rented out by and on behalf of joint owners Messrs Sidh Gopal Amar Nath, and the rental income is being shared equally.

(2) There is a vacant land measuring about 9 bighas, 13 biswas in Jajamau area and falls within the jurisdiction of Municipal Corporation and is also governed by the Land Ceiling Act.

(3) They have further land in Kalyanpur (the precise area is not available) which too is within the Municipal Corporation limit and is governed by the land ceiling Act.

(4) There is yet another piece of land jointly owned by Shri Krishan Gopal Kapoor and Shri Om nath Kapoor, which is also situated in Kalyanpur area.

(5) Property No. 7/24 Tilak Nagar, Kanpur, which consists of a big bungalow with compound and servant quarters and cattle house."

96. We are told that dispute is only in respect to property No. 5 which has led to filing of two suits. Appellants did not insist on division of this property by metes and bounds and agreed that respondents shall pay value of share of appellants and thereafter, appellants shall forgo their claim. It is pursuant thereto value of house was worked out and the same was acted upon after making payment of three instalments by respondents. Appellants also acted upon by handing over possession to respondents. This document has been relied by both the parties in defence also. It does not recognise any new right of parties, but the parties have their own existing rights and it is only declaration of such rights as also exchange of rights in one or other way. We are of the view that registration of this document was not necessary in respect to property No. 5. In any case under Section 49 even an unregistered document was admissible for collateral purpose particularly when both sides relied on the said document in support of their case as well as in defence of their case to rely on as what was consented between

parties. Hence Court below has rightly decreed Suit - 1 filed by respondents and dismissed Suit - 2 filed by appellants.

97. Now, coming to Issue - 6, we are of the view that Trial Court while considering interest, ought not to have moderated upon rate of interest by directing respondents to pay only 10 per cent simple interest on remaining amount of fourth instalment. Instead rate of interest as provided by Mediator ought to have been adhered to. Mediator has directed for payment of interest in the case of fourth instalment, at the rate of 15% per annum (payable annually). Meaning thereby it was compound interest in respect to last instalment of Rs.1.08 lacs. In respect to other instalments it only says that interest shall be 15 per cent per annum. It has not been stated specifically that it shall be payable annually. Hence, in respect to earlier three instalments the rate of interest was only 15 per cent per annum as simple interest and that has actually been paid by the respondents. In respect to last instalment i.e. second instalment of Rs.1.08 lac, interest is payable at the rate of 15 per cent per annum (payable annually) from 15th June, 1979 to 15th June, 1981. Words "payable annually" particularly in reference to interest means that interest is calculable annually and it renders the rate of interest to be calculated on compound basis for the reason that interest, if payable annually, will be computed every year, and if not paid it shall be treated as unpaid amount, entitled to earn interest further. The mention of words "payable annually" only with respect to fourth instalment, i.e., second instalment of Rs. 1.08 lacs and non mention of these words in respect of earlier instalments, make it clear that interest herein is different than what it was payable in respect of earlier instalments. We find substance in the submission of appellants that in respect of fourth instalment, i.e., second instalment of Rs. 1.08 lacs, interest at the rate of 15% was calculable on compound basis. Court below in taking otherwise view has erred in law and has further erred in law by going to the extent of moderating interest which was admitted by parties for the reason that when particular terms and conditions are accepted by parties, it would not open to any party to wriggle out of one or more conditions and adhere to other conditions. All the conditions have to be taken as a whole or not at all. We, therefore, hold that 15% interest in respect of unpaid amount of fourth instalment is to be computed on compound basis and has to be paid by respondents in order to get sale deed executed by appellants. In the agreement it was contemplated that entire payment shall be made by 15.06.1981 but for the reasons stated above, i.e., non availability of clearance certificate from Ceiling Department etc. and thereafter involvement of parties in litigation last instalment has remained unpaid till date. We, therefore, hold that same rate of interest on compound basis will have to be paid by respondents to appellant on unpaid amount of instalment, till date of actual payment, so as to make it obligatory upon appellant to execute sale deed. Since the said amount has not been paid so far, the same rate of interest will continue till the amount is actually paid and on payment of such amount, appellants shall execute sale deed as directed by Court below.

98. In the result, impugned judgment dated 30.05.2005 is partly modified in respect to rate of interest which shall be payable as directed above and in respect of rest part of judgment and decree the same shall remain as it is.

99. Questions No. 1 to 5 formulated above are answered accordingly and against appellant. Question No. 6 is answered in favour of appellants.

100. Accordingly, First Appeal No. 629 of 2005 is hereby dismissed and First Appeal No. 177 of 2006 is hereby partly allowed modifying judgment dated 30.05.2005 and decree dated 05.07.2005 in Original Suit No. 714 of 1994 in respect of payment of interest by respondents and it shall be payable as directed above.

101. The parties shall bear costs to the extent of success in these appeals.