

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:  
TRIPURA:MIZORAM & ARUNACHAL PRADESH)  
SHILLONG BENCH

W.P.(C) No. 14(SH) of 2009

Bagwati Prasad Goenka  
Son of Durga Prasad Goenka,  
r/o Police Bazar, East Khasi Hills  
District Shillong, Meghalaya.

: Petitioner

versus

1. The State of Meghalaya  
represented by the Chief Secretary,

2. State of Meghalaya  
represented by the  
Commissioner and Secretary to the  
Govt. of Meghalaya,  
Revenue (registration)  
Department, Shillong,  
Meghalaya.

3. The Inspector General of the  
Registration, Shillong,  
Meghalaya.

4. The Sub-Registrar,  
East Khasi Hills District,  
Shillong, Meghalaya

: Respondents

**B E F O R E**  
**THE HON'BLE MR JUSTICE T VAIPHEI**

For the petitioner : Mr N Khan, Adv

For the respondents : Mr EC Suja, GA

Date of hearing : 09.02.2012

Date of judgment and order : 17.02.2012

## **JUDGMENT AND ORDER**

This writ petition is directed against the refusal of the Sub-Registrar/East Khasi Hills District, Shillong to register the deed of family settlement executed by the petitioner with his family members on the ground that such settlement deed amounts to transfer, which is prohibited by Meghalaya Transfer of Land (Regulation) Act, 1971 without obtaining the permissions of the competent authorities, etc.

2. The facts giving rise to this writ petition, as pleaded by the petitioner, are that he is a Hindu by religion and is governed by the Mitakshara law and is also one of the coparceners of Hindu Undivided Family (HUF) headed by his father, namely, Shri D.P. Goenka as the karta of the HUF. This HUF owns and possesses ancestral immovable properties with heritable and transferable rights within the jurisdiction of the respondent No. 4. According to the petitioner, all the members of the HUF, who have shares and interests in the said immovable properties, unanimously executed a deed of family settlement on 30-9-1999 spelling out distinctly the respective shares of the members of the HUF. Out of the said properties, the petitioner was apportioned two plots of land situated at Qualapatty and Police Bazar, East Khasi Hills District, Shillong, which is morefully described in the Schedule to Annexure-A2. When the family settlement deed was placed before the respondent No. 4, he refused to register same by the order/letter dated 29-10-2007 on the ground that (i) permission was not obtained from Shillong Cantonment Board; (ii) transfer of property located at Dhankheti is hit by the Meghalaya Transfer of Land (Regulation) Act, 1971 ("the Act" for short); (iii) Permission has not been obtained from the State Government and (iv) settlement is not permissible as it

attracts the provisions of the Act. It is contended by the petitioner that all the properties involved in the deed of family settlement were devolved upon his family members by virtue of their status as coparcenars by birth in the HUF and such settlement does not amount to transfer within the meaning of the Act. According to the petitioner, the refusal on the part of the respondent No. 4 to register the deed of family settlement is illegal and based on extraneous considerations. This is how this writ petition has been filed. The writ petition is opposed by the State-respondents, who have now filed their affidavit-in-opposition. However, on perusal of the affidavit, it becomes evident that no substantial contention is made by them; all that they say is that the writ petition is liable to be dismissed.

3. Mr. N. Khan, the learned counsel for the petitioner, submits that the respondent No. 4 has violated the mandate of the Indian Registration Act, 1908 in refusing to register the deed of family settlement on the grounds mentioned by him in the impugned letter inasmuch as the devolution of the shares of the properties belonging to HUF in terms thereof cannot, by any stretch of imagination, be construed to be a transfer. He further contends that as long as the identities of the executants are not in dispute or its execution not denied or the deed of family settlement duly stamped, whenever necessary, the respondent No. 4 has no power to refuse the proposed registration on any other ground. To buttress his contentions, he draws support from the decision of the Apex Court in **Sarin v. Ajit Kumar, AIR 1966 SC 432; Kale v. Deputy Director of Consolidation, (1976) 3 SCC 119; Thamma Venkatta v. Thamma Ratanma, (1987) 3 SCC 294** and **Abdul Aziz v. State of Assam and others, (2008) 1 GLR 306**. On the other hand, Mr. E.C. Suja, the learned Additional

Government Advocate, appearing for the State-respondents, supports the impugned decision of the respondent No. 4 by contending that as ownership of property stands transferred by virtue of the deed of family settlement, the transaction, without obtaining previous sanction of the competent authority, is hit by Section 3 of the Act, and no interference is thus called for with the impugned order by this Court.

4. The question as to whether partition of coparcenary property is a transfer or not came up for consideration before the Constitution Bench of the Apex Court in **Sarin case** (*supra*). The relevant paragraph of the decision is found at para 10 of the judgment, which are as follows:

*“(10) Mr. Purshotta,, however, contends that when an item of property belonging to the undivided Hindu family is allotted to the share of one of the coparcenars on partition, such allotment in substance amounts to transfer of the said property to the said person and it is, therefore, an acquisition of the said property by transfer. Prima facie, it is not easy to accept this contention. Community of interest and unity of possession are the essential attributes of coparcenary property; and so, the true effect of partition is that each coparcener gets a specific property in lieu of the property allotted individual coparcenars they, in substance renounce their right in respect of the other properties; they get exclusive title to the properties allotted to them and as a consequence, they renounced their undefined right in respect of the rest of the property. The process of partition, therefore, involves the transfer of joint enjoyment in severalty by them of the respective properties allotted to their shares. Having regard to his basic character of joint Hindu family property, it cannot be denied that each coparcener has an antecedent title to the said property, though its extent is not determined until partition takes place. That being so, partition really means that whereas initially all the coparcenars have subsisting title to the totality of the property of the family jointly, that joint title is by partition transformed into separate titles of the individual coparcenars in respect of several items of properties allotted to them respectively. If that be the true nature of partition, it would not be easy to uphold the broad contention raised by Mr. Purshottam that partition of an undivided Hindu family property must necessarily mean transfer of the property to the individual coparcenars. As was observed by the Privy Council in **Girja Bai v. Sadashiv Dhundiraj**, 43 Ind App 151 at p. 161: (AIR 1916 PC 104 at p. 108):*

*“Partition does not give him (a coparcener) a title or create a title in him; it only enables him to obtain what is his own*

*in a definite and specific form for purposes of disposition independent of the wishes of his former co-sharers”.*

In **Abdul Aziz case** (*supra*), where the Registering Authorities insisted the production of no objection certificate from the Deputy Commissioner/Sub-Divisional Officer and from the Development authorities under the Town and Country Planning Act as a condition for registration of the sale deed in question, the Division Bench of this Court held that such insistence is unsustainable in law. I have carefully gone the various provisions of the Registration Act, but am unable to find any provision wherefrom the Registering Authorities can withhold or refuse to register on the ground mentioned in the impugned letter. Once it is held, under the authority of the Apex Court, that family settlement does not amount to transfer, the respondent No. 4 has exceeded his jurisdiction in refusing to register the family settlement or has failed to exercise the jurisdiction vested in him by or under the Indian Registration Act, 1908.

5. For the reasons stated in the forgoing, this writ petition succeeds. The respondent No. 4/Registering Authorities are, therefore, directed to register the deed of family settlement presented by the petitioner in accordance with provisions of the Registration Act, 1908 within a period of one month from the date of receipt of this judgment. No costs.

JUDGE

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