

Oral family settlements are legally valid

The Law Commission of India has observed that oral partitions are a means of securing peace and welfare in a Hindu joint family

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Disputes related to division and distribution of joint Hindu family properties abound in our courts. The main reason for members desiring division is to become exclusive and sole owners of their separated and distinct share, which consequently gives them greater control over the property, allowing them to deal with it in any way they want to. When one is a joint owner of an undivided immovable property, the physical demarcation of one's exact share cannot be clearly made. By carrying out a partition – whether oral or in writing – one's erstwhile joint and undivided share in an immovable property becomes separated, distinct and clearly identifiable.

Under the provisions of Hindu Law, oral family settlements, including oral partition are permissible and legally valid modes of effecting division of joint family properties. Courts in India have taken a

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liberal and broad view of the validity of oral family settlements including oral partitions amongst members descending from a common ancestor, and try to uphold their validity.

The courts lean in favour of upholding the validity of bona fide oral family settlements, including oral partitions on the ground that if made amicably and after obtaining mutual consent of parties, such arrangements should not be allowed to be reopened at a later stage on frivolous or untenable grounds. The ultimate aim should be to protect family members from perpetual strife which mar the unity of the family.

In its report dated July 2008, the Law Commission of India, too, observed that oral partitions and oral family arrangements are a means of securing peace and welfare of a family,

and are especially helpful in cases of illiterate members of Hindu joint family or those who have no means to bear legal expenses on more formal methods.

In the landmark case of *Kale and Others v Deputy Director of Consolidation and Others* (1976), the Supreme Court held that family arrangements are governed by a special equity and hence would be valid even if effected orally. Of course, if made orally no question of paying stamp duty or registration fee arises.

Payment of stamp duty and registration would only be necessary if the terms of the oral family arrangement/oral partition are reduced into writing in the form of a document. Here too, a distinction should be made between a document containing terms that actually bring about the division of properties on one hand, and a mere memorandum prepared after the family arrangement had already been made (mainly to serve as an information record) on the other hand.



A document which is in the nature of purely a memorandum of an oral settlement which was arrived at earlier, is not required to be stamped or compulsorily registered. An unregistered memorandum would indeed be valid, final and binding on the parties. This is because a pure memorandum does not by itself create or extinguish any rights in immovable properties.

However, stamp duty and registration fee would have to be paid on a deed of settlement containing terms that affect the division and distribution of properties, as such a document creates/extinguishes rights,

title and interest in immovable properties.

Although an inexpensive and convenient mode, oral family settlements and oral partitions may make it extremely difficult to ascertain each individual's specific share in the property, especially with the passage of time.

Where a settlement or partition has not been reduced to writing by way of a settlement deed/partition deed, it leaves the possibility open for any party to deny the oral settlement or partition as having taken place altogether and challenging its validity.

Admittedly, family members who undertake an ami-

cable division of their joint properties by executing a written instrument which is duly stamped and registered, greatly minimise their chances of future disputes on the extent and nature of each individual's distinct share. Bearing these legalities in mind, one can ensure the process of arriving at family settlements is smooth.

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