1. What is Family Settlement?

Halsbury’s Laws of England, Volume 18, Fourth Edition, deals with this subject at length. Para 301 defines a family arrangement as follows:

“A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed right or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour”.

“The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term family agreement is applied”.

2. Examples of division of property accepted as family arrangement.

Some examples of division of property judicially approved and accepted as family arrangements are stated in para 303 of Halsbury’s Laws of England. These are:

(1) an agreement for the division of family property by way of compromise of a family quarrel or litigation about a disputed or lost will, or even to prevent family friction, where there is no question as to the devolution of the property nor any disputed right, there being some consideration for the arrangement other than love and affection, or any arrangement as to division of property where the construction of a will or other instrument under which the parties claim is doubtful,

(2) an agreement dividing up family property, though entered into under a misapprehension of the legal rights of the parties, provided the misapprehension is not induced by any party to the agreement, even where the fact the misapprehension existed has been established by subsequent legal decision;

(3) an agreement between members of a family to divide equally whatever they obtain under the will of an ancestor,

(4) an agreement between co-heiresses dividing the property between them;

(5) an agreement between the heir-at-law and a person supposed to be entitled under a lost will dividing the property between themselves and other members of the family;
(6) an agreement dividing the family property between members of the family where some of the members had a title independently of the will of their father, who purported to dispose of the whole among his sons and daughters”.

3. Principles governing family arrangements

Family arrangements are governed by principles which are not applicable to dealing between strangers. When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the court considers what in the broadest view of the matter is most in the interest of the family, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account (see para 304 of Halsbury’s Laws of England).

4. Considerations favouring family arrangements.

Considerations which will lead a court to support a family arrangement are that as a result of the family arrangement disputes are avoided in the family, the honour of the family is safeguarded, or various obligations, morally binding on a family, are provided for, or family property is continued in the family (see para 305 of Halsbury’s Laws of England).

5. Parties in General

Any members of a family may be parties to a family arrangement. Thus, agreements between husband and wife, parent and child, legitimate or illegitimate, uncle and nephews or nieces, coheiresses and brothers have all been supported as family arrangements (see para 309 of Halsbury’s Laws of England).

6. How far consideration is required.

Since the consideration for a family arrangement is partly value and partly love and affection, the pecuniary worth of the consideration is not regarded too closely. The court will not, as a general rule, inquire into the adequacy of the consideration, but there is an equity to set aside a family arrangement where the inadequacy of the consideration is so gross as to lead to the conclusion that the party either did not understand what he was about, or was the victim of some imposition (see para 312 of Halsbury’s Laws of England).

7. Basis for validity of Family Settlement

We may now have a look at the concept of family settlement and the basis on which the same is recognized as valid and binding between the parties. It is often found that between members of the family claims and counter-claims are made against one another in respect of properties held by the members of the family and claims of ownership, maintenance, etc. are canvassed. With a view to avoid protracted litigation and exposure to public gaze of private family disputes, very often the family members try to bring about an amicable settlement of the family differences by invoking the assistance of a well-wisher of the family and arrive at a settlement of their mutual rights and obligations. Such family settlements may result in transfer of properties or recognition of the rights of some members of the
family in various properties in dispute or may create limited rights in respect of such properties in favour of various members of the family. The word “family” is not to be interpreted in the narrow sense of members of a joint Hindu family as defined in Hindu Law but it would include wide range of persons who belong to one family in its comprehensive sense. The basis on which such family settlements are held as valid and binding between all parties is the mutual consideration which flows between the parties while putting an end to the claims and counter claims between them. It has been held under the law of contract that it is lawful consideration for a party when he gives up his claim to any property in return for any payment or transfer of property made to him or any obligation undertaken by the party. Existence of the right in the property is not necessary in order to make the family settlement valid and binding for a valuable consideration. The existence of the dispute or a threatened dispute between the members of the family is considered to be a precondition for a valid family settlement and such disputes and the consequent giving up of claims and counter-claims between the various members of the family constitutes good and valid consideration between the parties for enforcement of the rights and obligations created by such a family settlement. The family settlement, therefore, is not founded on existing rights or liabilities but rather on existing claims and disputes between the parties which are amicably resolved notices may be given by contending parties, even suits may be filed matters may be referred to arbitration and award may work out as family settlement.

8. Is Family Settlement a transfer?

The question has often arisen before the Courts as to whether such family settlements result in transfer of properties from one person to another and whether such transfer can be said to be without consideration. A reference may be usefully made to the decision of the Supreme Court in the case of Ramcharandas V/s. Girjanandinidevi, AIR 1966 SC 323.

The Supreme Court has therein observed as follows:

“Such family settlement between the members of the family bonafide to put and end to the dispute amongst themselves is not a transfer. It is also not a creation of an interest. In a family settlement, each party takes a share in the property by virtue of independent title which is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have under the law claim to share in property. All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection”.

In the same case, the Supreme Court has given the reason d’tre for recognizing such family settlements as valid. It has observed:

“Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding the property amongst members of the family. The word “family” in the context is not to be understood in a narrow sense of being a claim to share in the property in dispute”.

The Entire Law Relating To Family Settlements Explained http://www.itatonline.org
9. Is writing necessary for effecting family settlement?

Observations in the case of Tek Bahadur v/s. Debi Singh, AIR (1966) SC 292 also indicate that “Such Family Arrangements can be arrived at orally. Its terms may be recorded in writing as memorandum of what had been agreed upon. The memorandum need not be prepared for the purpose of being used as a document on which future title of parties is to be founded. It is generally prepared as a record of what had been agreed upon in order that there are no hazy notions about it in future. It is only when the family arrangement is reduced to writing with the purpose of using that writing as proof of what they had arranged and where the arrangement is brought about by the document as such, that the document requires registration, because it is then that it would amount to document of title declaring for future what rights and in what properties the parties possess. But a document which is no more than a memorandum of what had been agreed to between the parties does not require compulsory registration under Section 17, Registration Act. Similar observations regarding registration are found in AIR (1966) SC 1836, Pulliah v/s. Narasimham.

The nature of Family Settlement and the allied questions whether such settlements amount to “Transfer” for purposes of Capital Gains or Registration have been dealt with by several decisions of the Supreme Court & also by some High Courts which explain what is family settlement and why it does not amount to “transfer” and why the memorandum of family settlement does not require registration. They are listed as follows:

1. CGT v/s. D. Nagrirathinam - (2003) 129 Taxman 822 (Mad)
2. CIT v/s. AL. Ramanathan - (2000) 245 ITR 494, 128 Taxman 87 (Mad)
3. Lakshmi Ammal v/s. Chakravahthi - AIR 1999 SC 3363
7. Taraknath and Anr. v/s. Sushil Chandra Dey by Lrs. & Ors. - (1996) 4 SCC 697
8. A.L Ramanathan v/s. ITO -(1990) 37 ITR 55 (Mad)
10. H H Maharani Manekaraje Pawar v/s. ITO (1986) 15 ITD 545 (Indore)
12. Ziauddin Ahmed v/s. CGT- (1976) 102 ITR 253 (Gauhati)


(15) Maturi Pullaiah v/s. Maturi Narasimham - AIR 1966 SC 1836
(17) Tek Bahadur Bhujil v/s. Debi Singh Bhujil & Ors.
     AIR 1966 SC 292
(18) Ponnammal v/s. R. Srinivasarangan - AIR 1956 SC 162
(19) Sahu Madho Das v/s. Mukand Ram - AIR 1955 SC 481
(20) Mohd. Amin v/s. Vakil Ahmad - AIR 1952 SC 358

(45) FAMILY SETTLEMENTS AND TAX PLANNING

Family Settlements and Tax Planning

We may now examine the scope of tax planning in connection with family settlements. We have already seen above what is really a family settlement and what is the nature of the transaction brought about as a result of such family settlement. The utility of the instrument of family settlement for tax planning may be examined in the context of: (1) joint family properties, and (2) individual properties.

1. Joint Family Properties

In the case of joint family properties, the most commonly used media of tax planning is effecting complete or total partition. Supreme Court has now held in the case of Apoorva Shantilal Shah v/s. CIT (1983) 141 ITR 558 (SC) that father can effect partial partition even if he has minor sons, in exercise of his powers as patria potestas. He is not disabled to look after interests of his minor sons. It has also been held that even unequal partition can be effected by the father or with consent of all the coparceners, and only the concerned parties aggrieved by it can challenge the same till then it is valid. See CED v/s. Kantilal Trikamlal 105 ITR 92 (SC). Though the decisions relate to partial partition which were recognized as valid under s. 171 of the Income Tax Act, it equally applies in the case of total partition of joint family properties. Now w.e.f 1-1-1970, only total partition is recognized under s. 171.

2. Single Coparcener

Similarly, where there is only a single coparcener and the other members of the family are females not entitled to any share, such as wife, mother, unmarried sisters, unmarried daughters etc. who have right of maintenance, a family arrangement can be arrived at with those members by Karta allotting to them specific properties in settlement of their claims. For example, in a joint family between the mother and son, it would be quite legitimate for the son to give one half property to the mother in lieu of her right of maintenance by way of family arrangement. See CIT v/s. Narain Dass Wadhwa (1980) 123 ITR 281 (P & H) Similarly, it would be open to the Karta to allot properties to the unmarried daughters or sisters in lieu of their claim of maintenance and marriage expenses by way of family settlement. Therefore, where partition cannot be effected for some
reason or the other, it would be advantageous to allot the properties under a family settlement.

3. Requisites for family settlement –

The requirements of a valid family settlement are:
(a) existing or future disputes or differences between the members of the family in respect of their rights on the properties.
(b) existing or semblance of a claim of the various members of the family on such properties and,
(c) resolving of the said claims by family settlement arrived at between the members of the family including the guardians of minors involved.

Thus, prior to the settlement there should be some evidence of claims or counter claims or differences or disputes between the members of the family on this issue which will justify a family arrangement taking place. The best evidence of this would be litigation in court or exchange of legal notices between parties, and adjudication through arbitrator. But this is not absolutely essential - Pulliah v. Narsimham AIR 1966 SC 1836. Further, it may also be noted that in the case of non Hindus also family settlements can be arrived at between the members of the family.

4. Non Hindus and family settlements

It may also be noted that in the case of non-Hindus also family settlements can be arrived at between the members of the family. If there are disputes, whether the properties are individual properties or joint family properties, such disputes can on filing suits and then arriving at some family arrangement be settled and property transferred to other members which will not attract gift tax or capital gains tax nor invite Registration. Of course, now after 1-4-1997, gift tax levy is abolished.

5. Individual Properties

In the case of individual properties, whether in respect of Hindus or other communities, there can be a valid family settlement. The other family members can have claims in the estate either on account of rights of maintenance or otherwise and in settlement of such claims a family arrangement can be arrived at which will be considered to be one for a valid consideration and, therefore, such a settlement will not fall within the ambit of Section, 64 of the Income Tax Act, 1961. Such a transaction is clearly with and for a valid consideration. Obligations regarding maintenance are to be found under the general law and specifically, under the Hindu Adoption and Maintenance Act, 1956 and if any settlement takes place in this connection, it will be for a valid and valuable consideration. It is also significant that in case of family settlement, the Courts have gone so far as to hold that such family settlements do not amount to a transfer. Those observations are to be found in the decision of the Supreme Court in Ramcharandas v/s. Girjanandnidevi AIR 1966 SC 323 and other cases referred to therein. A particular instance of family settlement is found in a decision of the Supreme Court in CWT v/s. Vijayaba, 117 ITR 734(SC) where there did not appear to be any legal claim of the son against the Maharani, but even then a promise by her to pay certain amount to the son was held to be a valid liability created by her by way of a family settlement which was binding on the parties concerned. It may be that at times, the line is thin between a gift and a family settlement. A gift
cannot masquerade as a family settlement which has to be bonafide and preceded by some dispute or difference between the parties as regards their claims. It is not necessary that the claim should be a legal and valid claim in order that there should be a valid family settlement, but nonetheless, there should be some differences or disputes in order that it should amount to a valid family settlement.

However, since the abolition of Gift Tax from 1-4-1997 the tax implications of family settlements are reduced and the question assumes importance now only as regards Stamp Duty and Registration of documents recording family settlements and Capital Gains if they are construed as gifts or transfers of immovable properties.

6. What should be the procedure to avoid the stamp duty?

A family settlement arrangement be made oral. The concerned parties to deliver possession of the property allotted and the title deeds and records to the other. After few days, affidavits be recorded reciting therein the factum of settlement, date of settlement properties allotted, possession transferred documents of title handed over and arrangement implemented and acted upon etc. The parties may make necessary application for mutation in respect of agricultural land and for entry in register of record / title maintained by the municipal Council or local authority. If the property stands let out, notice of attorning in favour of the recipient be given, fresh rent deed be got executed and recipient to issue receipt. Necessary modification be got made with appropriate tax Departments for lands and buildings tax, house tax and to her taxes, electricity water etc. After some time a memorandum or confirmation recording the event may be executed for own satisfaction. It should not be in present tense but should be in past tense. It should not create or confer any interest or right or title but may acknowledge the factum of claims accepted and acted upon.

7. If the family arrangement is not required to be registered what is the evidentiary value of such family arrangement?

Even if the family arrangement is not registered it has evidentiary value. It is binding on persons who are parties to it and who have taken any advantage under such family arrangement.

A family arrangement being binding on the parties to the arrangement clearly operates as an estoppel to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same Kale vs. Dy. Director of Consolidation AIR 1976 SC 807.

Even a family arrangement, which was registrable but not registered can be used for a collateral purpose, namely for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement Kale vs. Director of Consolidation AIR 1976 SC 807 (1976) 3 SCC 119.

A family arrangement or settlement even embodied in a compromise decree is binding on all the parties to it. A consideration (which is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst the relations) having passed by each of the disputants, the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter. A party who had taken benefit under the transaction is not entitled to turn round and say that transaction
was of a kind which the other party could not enter into and was therefore invalid. Ra,

8. **Whether is it necessary that the arrangement is bonafide and for consideration?**

Yes. If a family settlement or a family arrangement is found to be bonafide, voluntary,
without coercion, under influence, misrepresentation and stands actuated upon, it deserves
to be upheld and accepted by the courts, even if it involves release or relinquishment or
surrender of disposition, assignment, or transfer. (Refer : Smt. Vidyawati Devi Rathi vs.
ITR 342 (Madras).

Briefly stated, though conflict of legal claims in present or in future is generally a
condition for the validity of a family arrangement, it is not necessary so. Even bonafide
disputes, present or possible, which may not involve legal claims will suffice. Members
of a Joint Hindu Family may to maintain peace or to bring about harmony in the family,
enter into such a family arrangement. If such an arrangement is entered into bonafide and
the terms thereof are fair in the circumstances of a particular case, courts will more
readily give consent to such an arrangement than to avoid it. (Refer : Pulliah vs.

9. **Can any property he allotted to female by family arrangement and the quantum?**

Yes. Any property can be allotted to a female in lieu of her right of maintenance,
maintenance or to discharge any other obligation. (Refer CGT vs. N. Jothi Kumar 91986)
157 ITR 785 (Madras), State of Kerala vs. K.P Gopal (1987) – 166 ITR 111(Kerala),
Basant Kumar Aditya Vikram Birla vs. CGT - (1982) 137 ITR 72(Calcutta), Satpal
Bansal vs. CIT (1986) 162 ITR 582 (P & H F), B.T Ravindra Nath Puja vs. CIT (1989)
179 ITR 243(Karnataka), Guramma Pharanth Deshmukh vs. Malappa Chambasappa –
Ravi Singhal – AIR 1999 Delhi 156.

No set formula is, about the amount. It depends on the status of the family and the
claimants. No set formula can be laid for fixing the amount of maintenance. It has in
very nature of things to depend on the facts and circumstances of each case.

Some scope for leverage can, however, be always there. Court has to consider the status
of the parties, their respective needs, capacity of the husband to pay having regard to his
reasonable expenses for his own maintenance. (Refer: Smt. Jaspeer Kaur Sahgal vs.

10. **Is a family arrangement transfer u/s. 2(47) of the Act attracting liability to capital
gain?**

No. It is not a transfer and there is no liability to capital gain. (Refer : CIT vs. AL
2780(Bom./89) dated 17-12-1993, H.H Moharan Manekuraj Pawan vs. ITO (15 ITD
545 (Indore), Mohd. Haroon Japanwala vs. ITO (22 ITD 61) Delhi, DCIT, Spl. Rg. 46 vs.
11. Whether the concept of family arrangement can be extended to firms and companies?

Family arrangement can be arrived at amongst individuals and not between Companies. The shareholders and the Company are separate and distinct persons and the shareholders have not interest in the business of the company. (Refer 27 ITR 1(SC), 112 C.C 379(SC). However, one can think of a family arrangement between the partners in respect of their share, if the partners were/are members of the family because the firm is not a legal person other than its partners. The partners are the real owner of the assets of the firm. The firm name is only a compendious name given to the partnership for the sake of convenience. The assets of the firm belong to and are owned by the partners of the firm. (Refer: N. Khadervali Saheb & Anrs. Vs. N. Gudi Sahib (20030 261 ITR 1(SC). The word ‘family’ in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognized in law as having a right of succession or having a claim to share in the property in dispute. To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. If the dispute which is settled is one between near relations then the settlement of such disputes can be considered as a family arrangement (Refer : Ram Charan Das vs. Girija Nandini Devi – AIR 1966 SC 323). If the partnership is amongst the family members, it may be possible. However, if outsiders are also partners, then it appears that properties of such firm may not be available for a family arrangement. As far as company is concerned it appears that its properties cannot be subject matter of family arrangement even if all the shareholders are members of the same family.

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