

**MEMORANDUM OF
FAMILY
ARRANGEMENT**
Alias

**तथा
कौटुंबिक व्यवस्थापत्र
संलेख**

MEMORANDUM OF FAMILY ARRANGEMENT

(कलुं कलुं J³elamLebbe mabttucke)



By Adv. Dinakar Parashram Bhave
Mobile: 9820529371

In the recent past, an Article on the subject: "Your Wealth, Your Will" (DeHuer mabttucke, DeHuer F@T e) written by me in Marathi was published in the Maharashtra Times during January-March 2015. Later on its English version was published by the New Book Corporation, Mumbai in its taxation Bulletin in January 2016; and thereafter, in February 2016 these Articles in Marathi & English had been released in the Book-form.

Recently, the Hindi version of the Book: "Your Wealth, Your Will" (DeHuer mabttucke DeHuer James²elverce) was declared as published at the gracious hands of shri. Pushp Joshi, Director-HR, Hindustan Petroleum Corporation Limited, Petroleum House, Mumbai, and released at the small but most impressive function organized on the very auspicious day: 2nd August 2016, (Dece{ Decelem³e (ode Hape))

2. The main focus of these Books was on the awareness aspect and acquainting the readers with fundamentals governing the functional & operational areas concerning the disposition of wealth through testamentary & non-testamentary trajectories, in a non-technical & simple language without much of legalistic jargon, so that the subject would be easily digestible, palatable to a legendary "common-man" depicted by Late R. K. Laxman.

Conflict of Interests & Family Arrangement:

3. As stated above, the emphasis at the initial stage was on avoidance or minimization of litigation by proper planning through the secret document called Will; and the dispute area emerging as a fall out of the defective, deficient Wills or conflict areas concerning implementation of some aspects of Wills was deliberately left untouched, to be dealt with separately in future.

Memorandum of Family Arrangement

4. Today, it is proposed to take-up the issues involving conflict of interests arising primarily due to defective drafting of the Will, or unintentional complexities emerging due to lack of clarity in expressing the true intention by the Testator/Testatrix in his/her Will, or mistaken belief regarding ownership and interest in relation to the ancestral properties or denial of legitimate share to the daughter/s or inadvertent excesses due to ignorance of the limitations under the law on right to dispose of self-acquired properties and the like deficiencies or defects giving rise to unpleasantness and disputes among the family members and close relatives bringing them to the door steps of a Court of law.

5. Looking to the present trend of the Courts of law in India and the Central Government's Litigation Policy, the dispute resolution 'out-of-court' has assumed greater importance & weightage and hence it is now considered more appropriate to deal with the Dispute Resolution through "Family Arrangements", which have been upheld by the highest court of Law in India, that is, the Supreme Court of India.

It is, therefore, proposed to deal with the subject of Family Arrangements in detail: Formation of arrangement/Agreement, documentation, payment of stamp duty, registration & mutation entries relating to properties in the Government & municipal records to give finality to the dispute resolution.

A specimen copy of the "Memorandum of Family Arrangements" is also annexed to give an idea of the legal requirements to be complied with in settling the disputes/ possible disputes to maintain harmonious relations among the legal heirs & near relatives and eschew litigation.

Some technicalities:

6. This present article deals with the Family Arrangement, its formation, execution, and implementation under the Indian legal system.

7. The subject matter does involve some kind of technical & legal complexities, but an attempt is made to place it in a simple & easy to understand manner. Nevertheless, some references to accepted legal & technical definitions and allied settled principles of law are inevitable for the proper understanding of the subject matter, which has multiple facets & complex dimensions conceptually & in practical application.

8. The conflict of interest among the legatees or devisees surfaces when the Testator/Testatrix may not have distributed the property in a "just, fair & reasonable" manner so as to please everyone. In fact, everyone knows that even the God almighty cannot help displease someone at sometime. But when it comes to property, each legal heir wants to have a bigger chunk of the estate! A lion's share!!

WHAT DOES "A Lion's Share" ACTUALLY MEAN?

9. An allegorical story to serve as a pleasant vehicle for a moral doctrine:

Memorandum of Family Arrangement

what is Lion's share? Aesop's fables {Greek author of fables (circa 620-560 BC)} teach in a lucid manner the truth universally applicable. Kindly Read below:

- A Lion, an Ass, and a Fox were hunting in company, and caught a large quantity of game. The Ass was asked to divide the spoil. This he did very fairly, giving each an equal share.

- The Fox was well satisfied, but the Lion flew into a great rage over it and with one stroke of his huge paw, he added the Ass to the pile of slain.

- Then he turned to the Fox.

"You divide it," he roared angrily.

- The Fox wasted no time in talking. He quickly piled all the game into one great heap. From this he took a very small portion for himself, such undesirable bits as the horns and hoofs of a mountain goat, and the end of an ox tail.

- The Lion now recovered his good humor entirely.

- "Who taught you to divide so fairly?" he asked pleasantly.

- **"I learned a lesson from the Ass," replied the Fox, carefully edging away.**

10. The Aesop's story brings out the distinction between the 'equal' and "equitable" or just & fair distribution! Each legatee or devisee thinks s/he should get "fair" share; and when that does not happen, the swords are out. The fight continues regardless of the outcome, from one Court to another Court in an endless manner; but the litigation takes a heavy toll, a lot of time & energy of the stake-holders; and the legatees, relatives unwittingly divert a part of the wealth to the legal fraternity & their associates, whose Bank balances swell rapidly compared to progress in litigation.

11. It is quite well-known that the distribution of total wealth of a Nation amongst the stakeholders has had attracted the attention of many a Economist world over. Over a period of time, various theories were evolved: capitalism, socialism and communism; and different countries experimented with these ideologies to effectuate equitable distribution of wealth but with no universally acceptable formula could be agreed upon or implemented. Once it was a cherished dream of many: "From each according to his ability, to each according to his needs" (German: Jeder nach seinen Fähigkeiten, jedem nach seinen Bedürfnissen). A slogan first used by Louis Blanc in 1851 and popularized by Karl Marx in 1875. In the Marxist view, such an arrangement will be made possible with the full development of socialism. But the USSR Empire collapsed in 1991. The world had pinned hopes on the Soviet socialism doctrine, but that failed. The Russian & the Chinese are now leaning towards capitalistic economic pattern, with all its faults.

12. It is interesting to notice that when the world total GDP is over \$ 62 trillion, yet half the population is not having one square meal each day—some

Memorandum of Family Arrangement

have no meals for half the month. A lopsided distribution of wealth passes uncontrolled & uncorrected as there is no unanimity amongst nations.

WEALTH DISTRIBUTION IN A FAMILY:

13. While the large-scale-wealth distribution of a Nation State poses a great problem, it should not happen in the family domain, where the close bond of family must dictate amicable settlement of differences in attitudinal orientations for the common interest of the family wealth. If the decedent has failed to divide the wealth appropriately, surely, the emotional quotient of the legal heirs, coupled with their collective wisdom must drive them to a more sensible path of "give & take" rather than the thorny or litigation muddled path which eventually is destined to ruin the family-wealth instead of preserving & augmenting for the posterity, and likely to cause irreparably damage to the name, fame and honour of the Family.

14. Surely, the more sensible approach would be to sit down at the round-table and draw out the settlement formula, soft paddling the terms & conditions to achieve a 'win-win' feeling amongst all involved. If everyone involved in the settlement process is compassionate, caring and respecting the view point of another person, keeps in mind the Family Honour & genuinely desires to retain the cordiality in intra-personal relationship of the members of the family, an equitable, just re-distribution is always possible. While the five fingers of the palm are unequal in length, they become just equal if one 'bends' them inwardly to touch the proximal palmar crease. A bit of bending makes the difference! Life becomes a lot easier for everyone; sans litigation or conflict. Everyone can enjoy peacefully his/her slice in the cake, the estate!!!

In the latter part of this article, the legal aspects of such family arrangements are dealt with in a comprehensive manner.

WHAT IS FAMILY ARRANGEMENT?

14. The background & purpose can be better understood, if one reads the excerpt's from the Apex Court Constitution Bench decision in the case of **Kale & Others vs. Deputy Director of Consolidation** {Decided on 21st January, 1976: 1976 AIR 807} wherein their Lordships have succinctly unfolded the pith & substance of the whole phenomenon.

15. The Court observed/ held:

QUOTE:

"Before dealing with the respective contentions put forward by the parties, *we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all.*

- By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles

Memorandum of Family Arrangement

once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to them and would be enforced if honestly made.

- In this connection, Kerr in his valuable treatise "Kerr on Fraud" at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus;

"The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to that their rights actually are, or of the points on which their rights actually depend."

- The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administering of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have "a spes successions" {i.e. During the lifetime of a person, the chance of his heir apparent succeeding to the estate or the chance of a relation obtaining a legacy under his will is a 'Spes Successionis'(chance of succession). Such expectancy does not amount to an interest in property and cannot be made the subject matter of a transfer.} so that future disputes are sealed forever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.

- The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations

Memorandum of Family Arrangement

regarding the essentials of the family settlement and the principles governing the existence of the same are made:

“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 rights 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 arrangement” is applied.

- Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is for the interest of families, and has regard to considerations which in dealing with transactions between persons not members of the same family would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections- to the binding effect of family arrangements”.

- In other words, the Honourable Court put the binding effect and the essentials of a family settlement in a concretized form, the matter may be reduced into the form of the following propositions:

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

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

(3) The family arrangement may be even oral in which 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 s. 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property 'It 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

Memorandum of Family Arrangement

him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

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

The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss presently.

UNQUOTE:

16. In Lala Khunni Lal & Ors. Vs. Kunwar Gobind Krishna Narain and Anr. The statement of law regarding the essentials of a valid settlement was fully approved of by their Lordships of the Privy Council. In this connection the High Court made the following observations, which were adopted by the Privy Council:

The learned judges say as follows:

"The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, 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, and we think that (1) L. R. 38 T. A. 87. 102, it is the duty of the Courts to uphold and give full effect to such an arrangement."

Their Lordships have no hesitation in adopting that view."

17. This decision was fully endorsed by a later decision of the Privy Council in Mt. Hiran Bibi and others v. Mt. Sohan Bipi .

18. In Sahu Madho Das and others v. Pandit Mukand Ram and another(2) this Court appears to have amplified the doctrine of validity of the family arrangement to the farthest possible extent, where Bose, J., speaking for the Court, observed as follows:

"It is well settled that compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it

Memorandum of Family Arrangement

under the family arrangement. It is assumed that the title claimed by the person receiving the property, under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. But, in our opinion, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members- and avoid in anticipation, future disputes which might ruin them all, and we have no hesitation in taking the next step. (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and, simple from him or her, or as a conveyance for consideration when consideration is present."

19. In Ram Charan. DAS v. Girjanandini Devi & Ors. (3), this Court observed as follows:

"Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. The word 'family' in the content 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 (1) A.I.R. 1914 P.C.44. (2) [1955] 2 S.C.R. 22, 42-43. (3) [1965] 3 S.C.R. 841, 850-851, having a claim to a share in the property in dispute. The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having been 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."

20. In Maturi Pullaiah and Another v. Maturi Narasimham and Others- AIR 1966 SC 1836 this Court held that although conflict of legal claims in praesenti or in futuro is generally condition for the validity of family arrangements, it is not necessarily so. Even bona fide dispute 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 a family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the courts would more readily give assent to such an agreement than to avoid it."

21. In a recent decision of the Apex Court in S. Shanmugam Pillai and others v. K. Shanmugam Pillai & others the entire case law was discussed and the Court observed as follows:

Memorandum of Family Arrangement

"If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.

22. Thus it would appear from a review of the decisions analyzed above that the Courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the Courts is that if by consent of parties a matter has been settled, it should not be allowed to be re-opened by the parties to the agreement on frivolous or untenable grounds. The object is to preserve the property and the good name of the family by recognizing that it is not in the good interest of the family or the members to engage in fights or disputes.

To sum up:

To effect a family arrangement all that is necessary is that the parties must be related to one another in some way and have a claim or a possible claim to the property or even a semblance of a claim or spes successionis or even on some other ground as, say, affection or ignorance of the parties of their rights; and when the purpose or object is of maintaining peace and harmony in the family.

WHAT IS MEANT BY "ARRANGEMENT"?

23. The word 'arrangement' in the 'Family Arrangement' means to come to an agreement about, to settle the dispute. The process of 'arrangement' is just like the process of arbitration. The process of arrangement is not synonyms with process of determination of the rights of the parties like in a legal suit instituted in any court of law by the warring parties. The arrangement is not arrived at strictly in accordance with law of inheritance as in vogue for the time being. Consequently, even the person who has no right to inherit particular property may get some share in an arrangement arrived at. The arrangement is more about compassionate nature, arrived at to take care of mutual interest, desire to co-exist peacefully. As held by the Apex Court in number of cases, 'arrangement' with reference to family arrangement is to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes, which might ruin them all, and simultaneously tarnish the name, reputation & family honour .

24. In some cases the Courts have upheld the agreements; and in some other cases the Courts have refused to accept as bon fide the arrangements amongst the signatory parties. Illustratively:

VALID ARRANGEMENTS:

The following are examples of family arrangements which have been approved, accepted by the Court.

(i) An agreement providing for payment of the son's debts in consideration of his giving up his interest in the family business.

Memorandum of Family Arrangement

(ii) A resettlement of the family property making provision for an illegitimate child.

(iii) An agreement between members of a family to divide equally whatever they obtain under the will of an ancestor.

INVALID ARRANGEMENTS:

The following are examples of family arrangements which were held as not bona fide or just/fair:

(i) A compromise of claim to estates founded on a mistake as to the title induced by misrepresentation of one of the parties to the compromise.

(ii) An agreement as to family property not executed by all the intending parties to it.

FAMILY ARRANGEMENT AMONG MUSLIMS:

21. The Family arrangement is also valid among Muslims. The following case law supports the view: Income Tax Appellate Tribunal – Guwahati: Bibijan Begum vs. Income-Tax Officer on 10 April, 1989: Equivalent citations: 1990 32 ITD 157 Gau

- The Guwahati Bench of the Income Tax Appellate Tribunal in a very elaborate judgment held that there is no bar for Mohammedans to effect a family arrangement. In that case the assessee had an absolute right over her Mehr property and in exchange of that land the assessee received another land over which a multi-storeyed building was to be constructed. The assessee's two daughters and two sons had antecedent right to the properties in the capacity as her heirs though their shares were not specified. The Tribunal held that by a family arrangement the rights of those children had been specified. The family arrangement by which the assessee and her four children received 1/5th share each in the multi-storeyed building was, therefore, valid. The Tribunal therefore, held that the assessee lady could not be assessed in respect of that share of house property which was given to her children pursuant to the family arrangement.

Some excerpts from the ITAT Judgment:

QUOTE:

9. In this connection, it is worthwhile to refer to Mulla's Hindu Law, 14th Edn., page 238. It was mentioned therein that the court leans strongly in favour of family arrangements to bring about harmony in the family and to do justice to the various members and, avoid, in anticipation, future disputes. It was further observed that in the case of a family arrangement, it is not necessary that there should have been previous dispute as to the rights of the parties. The term 'family' in the context of family arrangement is to be understood in a narrower sense of being a group of persons who are recognized in law as having a right of

Memorandum of Family Arrangement

succession or having a claim of share in the property in dispute. Xxxxxx It was pointed out that such transaction brought about by the family arrangement is not the creation of an interest. It was pointed out that ordinarily each party takes a share or interest in the property by virtue of independent title which is admitted to that extent by the other parties.

xxx

16. As pointed out by the I.T.O., the assessee obtained certain properties in the village on account of meher which she was entitled to receive from the husband in consideration of the marriage. At para 100 of Tyabji's Muhammadan Law (third edition), it was observed that the wife may validly agree to a reduction of her meher, or make a gift (or remission) of the whole of it to her husband or after his death to his heirs; provided that she voluntarily and deliberately gives up her right and that such remission may be made conditional in lieu of an annuity and if purported to be made by the widow to a deceased husband or his heirs, consists of a release of the claim, which under the Mohammedan Law was not required to be accepted by the heirs of the husband. Thus in our opinion, the assessee in the present case had the absolute right over her meher property. It is also equally true that her children are heirs to such properties i.e. to say they have got antecedent right to such properties in their capacity as heirs, though at the point of time each one of them cannot identify or specify a claim to a particular property with ascertainable accuracy. But this family arrangement executed between the parties concerned, the rights of those children have been specified i.e. the first son would be entitled for the second floor, the first daughter for the third floor, the second daughter for the fourth floor and the other soft for the fifth floor. We have mentioned above that the family arrangement in the present case should be treated as valid. Even otherwise, one may argue that the transaction was in the nature of a gift by the assessee's mother to the children. But here again that as a result of the family arrangement or family settlement which is in the nature of a partition, there could be no gift involved as the recipient had already acquired antecedent rights to such properties and as a result of this family arrangement their specific shares have been particularized and identified.

UNQUOTE:

- The Guwahati High Court in the case of Ziauddin Ahmed v. CGT, 102 ITR 253 held that the family arrangement amongst the members of Mohammedan family is valid and therefore, the shares given by a father to his sons at less than market value in order to preserve the family peace is not liable to gift tax.

MEMORANDUM OF FAMILY ARRANGEMENT-CUM-COMPROMISE:

22. As is well known, the family dispute may arise on account of some unfair division of property specified in the Will, or it may arise due to challenge of the Will itself by some legatee or devisee pointing out some inherent "defect" or

Memorandum of Family Arrangement

“deficiency” in the Will document such as it being not signed in the presence of at least two witnesses; or more than two Wills, both undated are in existence; or such similar defect including denial of any property to a legal heir, who claims that s/he had been unduly neglected.

23. In such circumstances, the need arises for the ‘family’ to come together and try to resolve the disputes and arrive at amicable settlement applying “give & take” principle so as avoid defaming the family name & at the same time eschewing the litigation path which ruins the wealth of the family. When the object, purpose of the family is to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, the Courts are ready & willing to support such arrangements.

Now, the next hurdle is how to go about and have separation of property and then keep adequate ‘record’ thereof so as to avoid possibility of the matter being ‘reopened’ in the future.

24. As has been noticed above, the arrangement has to be agreed upon amongst the contenders and the matter should be discussed amongst them to arrive at workable division of the estate. Then, the next step is to record a family arrangement arrived at orally, in the form of a memorandum of family arrangement-cum-compromise. This document is required to be drawn up wherein the properties and assets belonging to the parties to the family arrangement are required to be specified. Thereafter the fact of arriving at family arrangement sometime in the past with the help of well-wishers and family friends is required to be mentioned in the operative portion of the Memorandum of Family Arrangement-cum-Compromise. The properties and businesses which have been allotted to different parties are required to be specified. There has to be a clear understanding amongst all as what share each one has got and unequivocal acceptance for allowing others to enjoy their respective share of property peacefully, without hindrance. Once the understanding is reached, agreed upon and given effect to, then the next step would be to document it for posterity & ensuring that it does not get re-opened.

25. In addition to the Memorandum of Family Arrangement, other documents like affidavits of each of the parties to the Family Arrangement are required to be obtained wherein each of the parties confirms on oath that s/he has received a particular asset or a part of it and the family arrangement is arrived at to his/her total satisfaction and it is binding on him/her and anyone claiming through him/her. In such an affidavit the party giving up his/her right in other properties which are allotted to other parties to the Family Arrangement states that the said other properties may be transferred in the records of the registering authorities without notice to him/her. Each affidavit is required to be executed before a Notary Public or Judicial Magistrate; and all such Affidavits so executed are to be attached to the Memorandum of family arrangements as forming an integral part of the Agreement.

Memorandum of Family Arrangement

26. In order to enable the person of the family, to whom a particular property is allotted, to deal with the property as his own, a consent letter may be required to be given by a member in whose name the said property was standing prior to the family arrangement. Depending on the facts of each case, various other connected documents may be required to be brought on record by mentioning them in the agreement so as to effectuate a proper and binding family arrangement. The entire idea of the Family Arrangement is that each legal heir, contender or claimant finally & eventually gives up his/her claim or right on the remainder of the property other than the one allotted to him/her; and undertakes not to lay any claim on such property in future. It is acceptance of the property allotted to a person & his/ her giving up right, title & interest in all the residue estate permanently & forever, constitutes essentiality of the Family Arrangement. Only on such understanding & undertaking to abide by the settlement so reached, that the disputes/currently prevailing or likely to arise in future can be given quietus once and for all.

FAMILY ARRANGEMENT AND PARTITION:

27. A family arrangement may be based on disputed or potential or possible or even notional claim/s. In a partition, there should be very clear pre-existing rights. In a family arrangement, as is obvious, some degree of relationship is involved. A partition can be entered into between persons who have or who may not have family relationship, but they must be co-owners of the property. A family arrangement can be in the nature of re-aligning, re-distributing or even consolidating certain claims and rights or even foregoing certain rights in favour of some claimant. A partition is always in the nature of division of the property between the co-owners alone. There could be other differences on a case-to-case basis.

FAMILY ARRANGEMENT AND GIFT:

28. A family arrangement needs to be distinguished from a voluntary transfer without any consideration, that is, a gift. What constitutes a 'gift' in law?

(i) At common law, for a gift to have legal effect, it was required that (a) there be intent by the donor to give a gift, and (b) delivery to the recipient of the item to be given as a gift. Section 122 of the Transfer of Property Act, 1872 defines: "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made:-Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

(ii) Thus, three elements are essential in determining whether or not a gift has been made: delivery, donative intent, and acceptance by the donee. Even

Memorandum of Family Arrangement

when such elements are present, however, courts will set aside an otherwise valid gift if the circumstances suggest that the donor was, in actuality, defrauded by the donee, coerced to make the gift, or strongly influenced in an unfair manner.

(iii) The two principal categories of gifts are inter vivos gifts and causa mortis gifts.

(a) Inter vivos gifts: Inter vivos is Latin for "between the living" or "from one living person to another." A gift inter vivos is one that is perfected and takes effect during the lifetime of the donor and donee and that is irrevocable when made. It is a voluntary transfer of property, at no cost to the donee, during the normal course of the donor's life.

(b) Causa Mortis Gifts: A gift causa mortis (Latin for "in contemplation of approaching death") is one that is made in anticipation of imminent death. This type of gift takes effect upon the death of the donor from the expected disease or illness. In the event that the donor recovers from the peril, the gift is automatically revoked. Gifts causa mortis only apply to personal property.

DIFFERENCE: GIFT VS. FAMILY ARRANGEMENT

- The Guwahati High Court in Ziauddin Ahmed's case (102 ITR 253) had held that a receipt of family property at less than adequate consideration, pursuant to a family arrangement, cannot be taxed under the erstwhile gift tax law, which sought to deem such receipt otherwise as a taxable gift.

- Interestingly, Section 56 (2) (vi) of the Income Tax Act, 1961, as amended effective April 2006 provides that if the aggregate sum of money received by an individual without consideration during the year is more than ₹ 50,000 the same will be chargeable to tax. Effective, October 2009, receipt of sum of Money, Immoveable property as well as certain specified movable property if the amount exceeds ₹ 50000 in aggregate in case of each of such category of assets, the Donee, is liable to pay tax by including the value of Gift in his income, under the head: "income from other sources". However, the Gift given /received by a specified "relative" is 'exempt', regardless of value.

- One can possibly argue that when receipt from relatives is exempted, on a parity of reasoning the asset received under the family arrangements, at less than adequate consideration, may be held as exempt.

STAMP DUTY AND REGISTRATION:

29. As regards the Registration of the Memorandum of Family Arrangement, under the Registration Act, 1908, the matter is no longer res integra, that is, it is settled beyond doubt and stands concluded.

- In Bhoop Singh vs Ram Singh Major & Ors on 11 September, 1995 (1996 AIR 196, 1995 SCC (5) 709), the Honourable Supreme Court held:

Memorandum of Family Arrangement

QUOTE:

“13. In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs.100/- and upwards, the document or record or compromise memo shall be compulsorily registered.

14. In Tek Bahadur v. Debi Singh & Ors., AIR 1966 SC 292, the Constitution Bench of this Court considered the validity of the family arrangement and the question was whether it requires to be compulsorily registered under section 17. This Court, while upholding oral family arrangement, held that registration would be necessary only if the terms of the family arrangements are reduced into writing. A distinction should be made between the document containing the terms and recital of family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of 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) of the Registration Act. It was held that a memorandum of family arrangement made earlier which was filed in the court for its information was held not compulsorily registrable and therefore it can be used in evidence for collateral purpose, namely, for the proof of family arrangement which was final and binds the parties. The same view was reiterated in Maturi Pullaiah & Anr. v. Maturi Narasimham & Ors., AIR 1966 SC 1836, wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time in favour of the parties mentioned therein. In case where no such interest is created the document will be valid, despite it being non-registered and will not be hit by section 17 of the Act.

UNQUOTE:

- Therefore, the Memorandum declaring that the re-alignment of property had been agreed orally & implemented, does not require Registration and the Certified True Copy (by Notary) can be submitted to the Authorities concerned –Revenue or Municipal—for carrying out “mutation entries” in the Records , based on the Memorandum signed by all concerned. On the other hand, if the family arrangement involved a declaration of right, in presenti, then, it requires registration as per decision in the case of Chandreshwar Singh V. Ramchandra Singh, AIR 1973 Pat. 215 at p.223.

It was also held by the Honourable Apex Court that that even if a Family Arrangement, which required registration was not registered, it would operate as a complete estoppel against the parties, which had taken advantage thereof.

Memorandum of Family Arrangement

To sum up the legal position:

I. A family arrangement can be made orally.

II. If made orally, there being no document, question of payment of stamp duty or registration does not arise.

III. If the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the State Stamp Act, and Indian Registration Act, 1908.

IV. A mere Memorandum prepared after the family arrangement had already been made either for the purpose of record or for information of the court for making necessary mutation, requires no Registration, but the instrument or document being in writing needs to be duly stamped.

STAMP DUTY ON MEMORANDUM FAMILY ARRANGEMENT:

30. As adverted in the foregoing paragraphs, the Memorandum is a sort of Agreement for keeping a record of the orally agreed re-distribution of the total properties arrived at & implemented. Surely, the purpose is to keep the understanding in black & white and duly acknowledged by all concerned by setting their respective hands at the end of the Memorandum. Each party to the Agreement also executes an Affidavit-Disclaimer acknowledging what is "received" & "giving up his/her claim or interest" in the remainder of the properties of the decedent.

(a) As regards the chargeability of the Stamp Duty on such a document is concerned, it is settled legal position that the Stamp Act does not require transactions to bear stamp duty; it is dealing and dealing only with documents. The levy is on the "instruments" classified under various Articles set out in the Schedule appended to the Stamp Act.

• A reference is invited to the decision of the Delhi High Court: in *Shri Mangat Ram & Another vs Shri Ram Narain Gupta & another* I.A. 2698/07 in CS (OS) No. 549/1995 decided on 5 April, 2010:

QUOTE:

"50. At this stage, I would like to deal with the first submission of Mr. Kapoor that a memorandum in relation to any transaction, once drawn, would attract stamp duty. This submission is founded upon the decision in *Cohen and Moore v. Commissioners of Inland Revenue* 1933(2) KB 126 relied upon by Mr. Kapoor. In *Cohen* (supra) the court held:

".....It has been pointed out on more than one occasion that the Stamp Act does not require transactions to bear stamp duty; it is dealing and dealing only with documents. Where, therefore, there has been an oral agreement of sale no stamp duty is exigible: but if the parties choose to make a record of the fact that

Memorandum of Family Arrangement

they have entered into an agreement there seems every reason why stamp duty should be exigible. I cannot myself think that in S.59 the Legislature intended to draw any distinction between the case where by a document in writing the parties record an agreement entered into at the time of signing the record by means of an offer and acceptance contained in the written document, and the case where they are making a record in writing of an oral offer and an oral acceptance, made, it may be, only a few days before. In my opinion, S.59 does apply to a record made of an oral agreement arrived at between the parties....."

51. The aforesaid observations, in the Indian context and on the basis of the law as it stands, would have to be qualified. Firstly a sale or any other form of transfer of the value of more than Rs.100/- of immovable property can be made only by a registered instrument. The instrument once drawn would be liable to bear stamp duty. Secondly, even if a sale of immovable property is made orally for consideration less than Rs. 100/- with delivery of possession, a subsequent memorandum created merely for posterity, in my view, would neither require stamping nor registration. Therefore, I do not accept the first submission of Mr. Kapoor in the wide terms as it is advanced. The same would have to be qualified in the aforesaid terms."

UNQUOTE:

(b) Section 2 (l) of the Maharashtra Stamp Duty Act, 1958 defines the term "Instrument" as under:

(l) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt; { the documents "excluded" from definition of "instruments" & consequently from Levy of stamp duty under section 3 of the Maharashtra Stamp Duty Act, 1958, are those enumerated in The Union List or List-I (the last item is numbered 97) given in Seventh Schedule in the Constitution of India on which Parliament has exclusive power to legislate. List I, Entry 91 reads: Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts." On the aforesaid 'instruments' levy is under the Indian Stamp Act, 1899.}

(C) It is a settled position that a "Document" which does not create or extinguish any right or liability is not an "instrument" & hence not liable to stamp duty. But a Memorandum of Family Arrangement when signed by the members of the family would be a "document" in the nature of "Agreement" vide Article 5 of the Schedule I to the Maharashtra Stamp Act, 1958 and entry (h) (B) thereof, the Stamp Duty payable is rupees one hundred.

Memorandum of Family Arrangement

Article 5 reads:

**5. AGREEMENT OR ITS RECORDS
OR MEMORANDUM OF AN AGREEMENT -**

(a) TO (g-e) XXXX

(h) (A) if relating to, - (i) TO (vi) xxxxxx

(B) if not otherwise provided for-One hundred rupees.

In other words, the Memorandum of Family Arrangement is required to be executed on the non-judicial stamp paper of ₹. 100/- (Rupees one hundred only) and the Affidavits annexed thereto will have to be executed on the Stamp paper of ₹. 100/- (Rupees one hundred only) and signed before the Notary Public or the Judicial Magistrate. As clarified, the document is not required to be registered under the Registration Act, 1908.

(d) While the stamp duty rate on the Memorandum of an Agreement or Affidavit will vary from State to State, a couple of illustrations are given below:

- In the State of Uttar Pradesh, the Stamp Duty is as follows:

SCHEDULE I-B [See section 3]

**STAMP-DUTY ON INSTRUMENTS UNDER THE INDIAN STAMP ACT,
1899 AS AMENDED UPTO DATE IN ITS APPLICATION TO UTTAR
PRADESH**

NOTE- The Articles in Schedule I-B are numbered so as to correspond with similar Articles in Schedule I of Act no.2 of 1899.

5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT -

(a) xxx

(b) xxx

(c) If not otherwise provided forone hundred rupees

- Similarly, in Karnataka State:

THE KARNATAKA STAMP ACT, 1957

Schedule. (Updated till 13/10/2011.)

| Description of Instrument | Proper Stamp Duty |
|---------------------------|-------------------|
|---------------------------|-------------------|

| | |
|--|--|
| Article 5. Agreement or 2 [its records or] | |
|--|--|

| | |
|----------------------------|--|
| Memorandum of an Agreement | |
|----------------------------|--|

| | |
|---------|--|
| (i) xxx | |
|---------|--|

| | |
|---------|--|
| (h) xxx | |
|---------|--|

| | |
|-----------------------------------|-------------|
| (j) if not otherwise provided for | Two hundred |
| rupees]. | |

Memorandum of Family Arrangement

- It is, thus, necessary to look into the Stamp Act of the State in which the Memorandum of Family Arrangement is being executed & ensure that the Agreement /Affidavits are executed on the stamp paper of requisite value by referring to the relative Schedule Entry in the State Stamp Act.

DRAFTING OF MEMORANDUM OF FAMILY ARRANGEMENT:

31. It may be noted that the Courts have consistently held that the Memorandum would have to be registered if the re-alignment or re-distribution terms & conditions are spelt out in the Family Arrangement document and based on which assets are re-distributed. In that case, the document will be construed as an "instrument" of transferring, creating rights relating to the property and would attract stamp duty at applicable rates. However, if the properties are already transferred based on oral agreement, the memorandum will be a simple agreement of record of understanding and hence, just Stamp Duty of ₹. 100/- (Maharashtra & Uttar Pradesh) ₹. 200/- (Karnataka) will suffice.

- For having a general idea as to how the Memorandum of such Agreements, is to be drafted, **a specimen copy** is given as Attachment hereto.

- The Agreement must spell out the name of the person, who will keep the "original" copy of the Agreement and it must be recorded that s/he agrees and undertakes to produce it before any court or authority when required. For record purposes, Certified True copies may be given to each signatory; and it may also be recorded in the Agreement itself.

- It is, however, necessary to have the Memorandum of Family Agreement duly vetted by an Advocate familiar with such matters to avoid complications when it is submitted for carrying out mutations in Official records of municipality or Revenue Department.

MUTATION ENTRIES: REVENUE / MUNICIPAL RECORDS

32. Based on the duly executed Memorandum of Family Arrangement the final step would be to file a copy thereof with the Revenue & Municipal Authorities with an application jointly signed by all requesting to carry out mutations entries in the Records; and subsequently modified entries duly attested by the Competent Authority be given to each signatory. In that manner, the Family Arrangement gets effectually sealed for posterity, and everyone is assured that s/he holds proper title document.

33. To sum up:

(i) It is desirable that the legal heirs & other relatives come to a negotiating table & as a remedial step to the defective Will or deficient Will, draw up the plan on give & take principle, for just, fair & reasonable distribution of wealth, so that the name, fame or reputation of the family is spared and the costly, time consuming litigation path is eschewed.

Memorandum of Family Arrangement

(ii) The Family Arrangement has been well recognized as the most honourable way of settling the disputes or possible disputes among the heirs & other relatives arising on account of invalid wills or dispute-prone distribution of wealth under the testamentary disposition; and resolving the matters amicably for maintaining the peace & harmony in the family. Traditionally, in England & other commonwealth countries including India, the highest Court of the land and all the High Courts have given blessings to bona-fide arrangements among family members.

(iii) The Memorandum of family arrangement does not transfer or create any new rights relating to the property but merely ensures just & fair re-distribution of wealth and hence it is not required to be compulsorily registered under the Registration Act, 1908.

(iv) As regards the Stamp Duty on the Memorandum of family arrangement, it may be necessary to examine the provisions of the State Act. Each state has a separate law on the stamp duty.

In Maharashtra, Article 5 of the Schedule-I appended to the Maharashtra Stamp Act, 1958, would cover such Agreements and hence the stamp duty of ₹. 100/- would be payable. In other words, the memorandum / Agreement may be engrossed on the non-judicial stamp paper of ₹.100/- which has to be purchased in the name of one of the signatories. However, the annexure Affidavits will have to be on the stamp paper of ₹. 100/- purchased in the name of each signatory.

(v) On completion of the Agreement, requisite applications be made before the Revenue / Municipal authorities to carry out changes in the Official records in conformity with the Family Arrangement document.

(vi) If all the concerned parties come forward in striking the balance, each one would enjoy peace of mind, and the name, fame or reputation of the family would remain intact. If they do not elect this path, the resultant misery may ruin one & all and diminish the wealth in the litigation process.

EPILOGUE:

This monograph demonstrates that it is not a bed of roses all the way. The path is thorny one. The obstacles in the way are difficult but not un-surmountable. The test of wisdom lies in choosing the lesser evil and navigating confidently to reach the goal.

As regards the Conflict of interests, the defects or deficiencies in the Will may be eschewed and all concerned should come to the round-table in the best interest of all and strike the balance to evolve a truly just, fair & reasonable re-distribution formula keeping in mind the "give & take" principle and draw the plan for re-alignment or re-distribution of wealth, implement it and put it in Memorandum of Family Arrangement format for record purposes for posterity. Have the Memorandum carried to the Authorities for carrying out 'mutation entries'. These Family Arrangements are held by the Courts as fully legal.

Memorandum of Family Arrangement

Truly, wisdom lies in choosing the right path, taking the right step, at the right time to save the family from hassels & preserve, distribute wealth in just & fair manner.

BANDRA (EAST)
15th September 2016

D. P. BHAVE
ADVOCATE

ATTACHMENT

(Specimen copy)

(May be adopted in consultation with an Advocate familiar with such matters)

MEMORANDUM OF FAMILY ARRANGEMENTS ENTERED INTO AND EXECUTED BY

MEMBERS OF THE FAMILY OF LATE Mr. xxx,

INDEX

| Sr. No. | Date | Document | Annex No. |
|---------|------------|---|-----------|
| 1. | 15-09-2016 | Memorandum of Family Arrangements. | |
| 2. | 03-08-2016 | A Notarized copy of last will and testament of late Mr. xxx | I |
| 3. | | Immovable Properties | II |
| 4. | | (i) Property Card & Village Map | III |
| 5. | | (ii) Tenancy rights –rent receipt | IV |
| 6. | | (iii) Tenancy rights –rent receipt | V |
| 7. | | (iv) Share certificate–MMM-co-op. society. | VI |
| 8. | | Movable Properties | VII |
| 9. | 15-09-2016 | Affidavit Declaration of DECLARATION OF Mrs. AAA | VIII |
| 10. | 15-09-2016 | Affidavit Declaration of Shri. BBB, CCC, DDD,EEE,FFF,GGG | IX TO XIV |

ˆ 100/-

**STAMP PAPER OF RUPEES ONE HUNDRED ONLY
(State of Maharashtra)**

(Please Type in double space)

MEMORANDUM OF FAMILY ARRANGEMENTS

This Memorandum of Family Arrangements is made and entered into on this 15th day of September in the year two thousand and sixteen [15-09-2016], at (Place),

Memorandum of Family Arrangement

BETWEEN

1. Mrs. AAA, aged about , a Housewife (occupation), residing at (address, city, state, PIN), hereinafter referred to as the Party of the First Part, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include her heirs, executors and administrators)

AND

2. Mr. BBB, aged about, a Merchant (occupation), residing at (address, city, state, PIN), hereinafter referred to as the Party of the Second Part, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include his heirs, executors and administrators)

AND

3. Mr. CCC, aged about, a Government Servant (occupation), residing at (address, city, state, PIN), hereinafter referred to as the Party of the Third Part, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include his heirs, executors and administrators)

AND

4. Mr. DDD, aged about, an Entrepreneur running a Hotel (occupation), residing at (address, city, state, PIN), hereinafter referred to as the Party of the Fourth Part, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include his heirs, executors and administrators)

AND

5. Mr. EEE, aged about ... , a Merchant (occupation), residing at (address, city, state, PIN), hereinafter referred to as the Party of the Fifth Part, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include his heirs, executors and administrators)

AND

6. Mrs. FFF, aged about, a Housewife (occupation), residing at (address, city, state, PIN), hereinafter referred to as the Party of the Sixth Part, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include his heirs, executors and administrators)

AND

7. Mrs.GGG, aged about, a Private Company service (occupation), residing at (address, city, state, PIN), hereinafter referred to as the Party of the Seventh Part, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include his heirs, executors and administrators),

AND

Hereinafter Individually & Separately referred to as "a Party" OR "Each Party" OR "A Party of the First Part or the Second Part or, the

Memorandum of Family Arrangement

Third Part etc. as the case may be" and "Collectively" referred to as "The Parties" or "All the Parties":

WHEREAS

(A) All the Parties herein are brothers and sisters of each other (Except the Party of the First Part, who is their Mother), and

(B) All the Parties are legal heirs to the self-acquired movable & immovable properties of Late SHRI XXX , who expired on 4th July 2016, leaving behind him his Last Will And Testament dated 5th April 2002, and

(C) When the Last will & Testament of Late Mr. XXX, was read out on the 18th July 2016 to All the Parties by Mr. NNN, younger brother of the deceased, it was revealed that there were some deficiencies in so far as the bequeathing of the Estate of the Late Mr. XXX, in as much as the directions as to demise of certain Plots of Land and/ or bequeathing of amounts lying in some Bank Accounts had inadvertently remained to be mentioned in the Last Will & Testament.

A Notarized Copy of the said Last Will And Testament dated 5th April 2002, is annexed hereto as forming integral part of this Memorandum of Family Arrangements, and marked as "Annexure -I", and

(D) In the aforesaid premises, "All the Parties" unanimously decided to modify the distribution of the estate & the properties of Late Mr. AAA, in a fair and more equitable manner taking in to account the expressed intention of the deceased in terms of the said Annexure-I, and need to take a pragmatic view of settling remaining properties not adverted to in the said Annexure-I; and

(E) "All the Parties" hereto had discussed the entire matter at a Meeting held at the residence of Mrs. AAA on 4th September 2016 and had unanimously agreed to division and distribution of the entire properties, both movable and immovable, left behind by the deceased Late Mr. XXX, who expired on 4th July 2016, in a more realistic, equitable and just manner, amicably, amongst themselves so as to avoid any future conflict and disputes or litigation amongst themselves and thereby save hardship and trouble, achieve harmony and maintain good family ties and family reputation, which was cherished by the Late SHRI XXX , and

(F) "All the Parties" hereto have had, pursuant to oral agreement as aforesaid, implemented those decisions within a week (7 days) of the meeting held on 4th September 2016 and more particularly specified in the Annexures II to VII hereto and forming integral part of this Memorandum of Family Arrangements, and

Now, therefore, this memorandum of family arrangements, merely records the said agreed distribution of movable & immovable properties of late Mr. XXX, amongst "all the parties", as agreed upon orally in the meeting held on 4th September 2016, and implemented pursuant thereto, for the purposes of facilitating/ assisting mutation in government or other official records with respect to those properties more specifically described in the Annexures-II to VII hereto, And

Memorandum of Family Arrangement

NOW, THEREFORE, THIS MEMORANDUM of FAMILY ARRANGEMENTS RECORDS, AS AIDE MEMOIRE, THE SAID ORAL AGREEMENT, WHICH HAS ALREADY BEEN DULY IMPLEMENTED, AS BELOW:

1. It was agreed by and between "All the Parties" hereto that Immovable properties more specifically described in the Annexure-II shall stand in the name of 'each party' as indicated in the Annexure-II forming part of this Agreement, as shown below:

AA. AGRICULTURE LAND:

The entire piece and parcel of Agriculture Land, located in Village, Taluka, District,State, recorded at no. R. no., block no. admeasuring eleven (11) Acres [A certified / notarized True Copy of the Property Card AND a Copy of Village Map showing Survey No. And Area, as Certified by the Talathi / Tahsildar are annexed hereto and collectively marked as "Annexure-III (Colly)].

The Map shows Four (4) segments of total Agriculture Land in different colours indicating equal part, namely:

- That part shown in RED colour is of the Party of the SECOND Part,
- That part shown in Blue colour is of the Party of the THIRD Part,
- That part shown in YELLOW colour is of the Party of the FOURTH Part,
- That part shown in GREEN colour is of the Party of the FIFTH Part,

BB. TENANTED PROPERTIES/OWNERSHIP PROPERTY:

(a) SHOP at No.1, (address) , which was a Rented Property in the name of Late SHRI XXX, [Tenancy Rights as evidenced by Land Lord's Rent Receipt / Confirmatory Letter as per Annexure –IV]

(b) HOUSE PROPERTY –At Block no....., Room no. ..., (address) [Tenancy Rights as evidenced by Land Lord's Rent Receipt / Confirmatory Letter as per Annexure –V]

(c) OWNERSHIP Rights in Plot no. ..., Survey No. (Address)

Area, admeasuringSq. Mtr, Purchased by Late SHRI XXX, in MMM Co-OP. Housing Society LTD. (Proposed), (address), as evidenced by the Share Certificate, a True Copy whereof is annexed hereto and marked as "Annexure-VI.

*** It was agreed by and between "All the Parties" hereto that Tenanted Properties at (a) & (b) above would be that of the Party of the FIFTH Part, And the OWNERSHIP Rights in Plot no. .., would be taken over by the process of bidding and the Party quoting highest bid from among Party of the Second Part, the Third Part, the Fourth Part And the Fifth Part shall have the Share Certificate no.Datedtransferred in his name (with the consent of all the Parties hereto) and thereupon that Party should pay one-fourth amount to the other Parties bidding this Property.

Memorandum of Family Arrangement

2. It was agreed by and between "All the Parties" hereto that the Movable properties more specifically described in the Annexure-VII, shall be taken by Each Party as indicated in the said Annexure-VII, as summarized below:

AA. SHARE CERTIFICATES –VARIOUS COMPANIES:

It was agreed that all the Shares in various Companies Listed in Annexure-VII should be transferred in the name of the Party of the First Part,

BB. CASH AMOUNT:

The Party of the First Part, AAA, shall receive ` 40,000=00 [Rupees Forty Thousand Only] and Parties of the Sixth & Seventh Part, FFF & GGG shall receive each ` 20,000=00 [Rupees Twenty Thousand Only] And that total amount of ` 80,000=00 [Rupees Eighty Thousand Only] shall be contributed in equal share by each party of the Second, Third, Fourth And Fifth Part (BBB, CCC, DDD, EEE) And accordingly, each party has discharged its obligation and the Parties of the First Part, Party of the Sixth & Seventh Part do admit having received such amounts as on the date of signing of these presents.

3. It was agreed by and between " All The Parties" hereto that Each Party hereto shall extend all active and full co-operation to each other Party in giving written consent, statement, jab-jabani (~~पत्र-पत्र~~) before any Government or other Public or Private Authority, file Affidavits, wherever necessary, give signatures when required by any Party so as to effectuate smooth transition / transmission / mutation of any or all properties, movable or immovable in the manner already agreed upon and shall ensure every assistance without demur for achieving the said purpose and object.

4. It was also agreed by and between " All The Parties" hereto that Each Party hereto would sign an Affidavit - Declaration indicating clearly that Each Party has already received such Property, movable and / or Immovable, and nothing more or nothing less, than what was earlier Agreed, and thereafter each Party shall keep every other Party indemnified against any claim in respect any other property not belonging to it, and such Declaration shall be binding on any person claiming through or behalf of that Party; and accordingly, Each Party has separately signed such Affidavit –Declaration, which are annexed hereto as Annexure VIII to Annexure XIV.

5. Each Party has had agreed to execute / sign this Memorandum of Family Arrangements with his or her free will, full consent without any pressure or threat and being in sound state of health and mind, clearly understanding that the Family Arrangements as implemented in accordance with oral agreement are fully, truly and completely binding on Each Party and also on any one claiming through him/her; and further that this Memorandum of Family Arrangements shall be deemed to be irrevocable and irreversible and that no Party to this Memorandum shall call in question the correctness, legality or propriety of the Family Arrangements in any manner whatsoever before any Authority or in any Court of law at any time after its execution by All the Parties hereto.

Memorandum of Family Arrangement

6. The Annexure I to VII are annexed hereto and each annexure has been initialled /signed by Each Party to this Memorandum of Family Arrangements; and Annexure VIII TO XIV are executed by Each Party being Affidavit-declaration and all these Annexure I TO XIV and each one of them forms an integral part of this Memorandum of Family Arrangements executed on the day and the year first herein above written.

7. The Original Copy of this Memorandum of Family Arrangements shall be retained with the Party of the First Part, Mrs. AAA, and a True Copy, duly Notarized, shall be provided to Each Party executing these presents.

8. IN WITNESS WHEREOF Each Party hereto has set and subscribed his/her respective hand the Day and the Year first herein above written:

SIGNED AND DELIVERED by the)

Withinnamed Party of the FIRST PART, AAA

WITNESSES:

In the presence of)

In the presence of.....)

SIGNED AND DELIVERED by the)

Withinnamed Party of the SECOND PART, BBB

WITNESSES:

In the presence of)

In the presence of)

SIGNED AND DELIVERED by the)

Withinnamed Party of the THIRD PART, CCC

WITNESSES:

In the presence of)

In the presence of)

SIGNED AND DELIVERED by the)

Withinnamed Party of the FOURTH PART, DDD

WITNESSES:

In the presence of)

In the presence of)

SIGNED AND DELIVERED by the)

Withinnamed Party of the FIFTH PART, EEE

WITNESSES:

In the presence of)

In the presence of)

Memorandum of Family Arrangement

SIGNED AND DELIVERED by the)

Withinnamed Party of the SIXTH PART, FFF

WITNESSES:

In the presence of)

In the presence of)

SIGNED AND DELIVERED by the)

Withinnamed Party of the SEVENTH PART, GGG

WITNESSES:

In the presence of)

In the presence of)

ANNEXURE-I

A Notarized Copy of the Last Will & Testament dated 5th April 2002 of Late SHRI XXX , is annexed hereto as forming integral part of this Agreement of Family Arrangement, and marked as "Annexure -I",

ANNEXURE-II

• OWNERSHIP Rights in Plot no. ..., Survey No.(address) AdmeasuringSq. Mtr, Purchased by Late SHRI XXX, in MMM Co-OP. Housing Society LTD. (Proposed), (address) , as evidenced by the Share Certificate, a True Copy whereof is annexed hereto and marked as " Annexure-VI.

ANNEXURE-III [COLLY]

[A certified / notarized True Copy of the Property Card AND a Copy of Village Map showing Survey No. And Area, as Certified by the Talathi / Tahsildar are annexed hereto and collectively marked as "ANNEXURE-III (COLLY)].

The Map shows Four (4) segments of total Agriculture Land in different colours indicating equal part, namely:

- That part shown in RED colour is of the Party of the Second Part,
- That part shown in Blue colour is of the Party of the Third Part,
- That part shown in YELLOW colour is of the Party of the Fourth Part,
- That part shown in GREEN colour is of the Party of the Fifth Part,

ANNEXURE-IV

SHOP at No.1, (address), which was a Rented Property in the name of Late XXX, [Tenancy Rights as evidenced by Land Lord's Rent Receipt / Confirmatory Letter as per Annexure -IV]

Memorandum of Family Arrangement

ANNEXURE-V

House Property – At Block no...., Room no. ..., (address) [Tenancy Rights as evidenced by Land Lord's Rent Receipt / Confirmatory Letter as per Annexure – V]

ANNEXURE-VI

House Property –Plot (Address), admeasuring Sq. Mtr Purchased by Late SHRI XXX, in MMM Co-OP. Housing Society LTD. (Proposed), (Address) Share Certificate no.DT.OF MMM Co-OP. Housing Society LTD. (Proposed), a True Copy whereof is annexed hereto and marked as "Annexure-VI,

ANNEXURE-VII

MOVABLE PROPERTIES OF LATE SHRI L XXX:

AA. Share Certificates/ Debentures –Various Companies:

| Sr. No. | Name of The Company | Share/Debenture/Certificate No. |
|---------|---------------------|---------------------------------|
| 1. | | |
| 2. | | |

N.B. All the Shares/Debentures in various Companies, Listed above, shall be transferred In the name of the Party of the First Part, AAA,

BB. CASH AMOUNT:

| Person Receiving | Amount | Contribution by |
|------------------|---|---|
| AAA , | ₹ 40,000=00 [Rupees Forty Thousand Only] | BBB,CCC,DDD,EEE in equal ratio i.e. ₹ 10,000=00 by each one |
| FFF | ₹ 20,000=00 [Rupees Twenty Thousand Only] | BBB, CCC, DDD, EEE in equal ratio i.e. ₹ 5,000=00 by each one |
| GGG | ₹ 20,000=00 [Rupees Twenty Thousand Only] | BBB, CCC, DDD, EEE in equal ratio i.e. ₹ 5,000=00 by each one |

N.B. Each party admits having paid / received the amount as shown in the above table

ANNEXURE-VIII

[ON A Non-Judicial Stamp Paper of ₹ 100/-[Rupees One Hundred Only]

Memorandum of Family Arrangement

AFFIDAVIT -DECLARATION OF DISCLAIMER

AFFIDAVIT DECLARATION OF Mrs. AAA, aged about ..., a housewife, residing at (address, City, State, PIN), hereinafter called the Deponent, on solemn affirmation.

I, the above named deponent, do hereby solemnly affirm and state & declare as under:

1. THAT I have signed this Memorandum of Family Arrangements of my own free will and I fully agree and confirm that what is stated therein is true and correct in accordance with the oral decisions taken at the meeting held on 4th September 2016 by all the parties and implemented in conformity therewith.

2. THAT I agree and confirm that I shall not claim anything more than what has been given to me, and/or received or to be received by me in terms of the Agreed family arrangement.

3. THAT I further agree that this agreement of family arrangement is irrevocable, irreversible & binding not only on me but also on any one claiming through me or on my behalf.

4. THAT I agree to render full co-operation, assistance and support and undertake to sign all or any papers, documents, file further affidavits, and remain present for Deposition of any statement before any government or other competent Authority –public or private— for the purposes of mutation of properties in line with this Memorandum of family arrangement.

Place:

DEPONENT

Date: 15th September 2016

VERIFICATION

I, the above named deponent, do verify that the contents of this Affidavit Declaration in paragraphs 1 to 4 are true to the best of knowledge and belief and nothing material has been concealed.

VERIFIED At (Place) on this 15th Day of September 2016

Place:

DEPONENT

Date: 15th September 2016

BEFORE ME

NOTARY/ SEAL

ANNEXURE-IX to XIV

[ON A Non-Judicial Stamp Paper of ' 100/-[Rupees One Hundred Only]

AFFIDAVIT -DECLARATION OF DISCLAIMER

As per AAA's Affidavit above —

- Similarly worded Affidavits by BBB, CCC, DDD, EEE, FFF, GGG (Six)
