

**(1957) 03 PAT CK 0017**  
**In the Patna High Court**  
**Case No : A.F.A.D. No. 52 of 1949**

Mt. Kauleshwari Kuer and Others

APPELLANT

Vs

Surajnath Rai and Others

RESPONDENT

**Date of Decision :** 05-03-1957

**Acts Referred:**

Evidence Act, 1872 — Section 115  
Registration Act, 1908 — Section 17(1), 17(2)  
Transfer of Property Act, 1882 — Section 5

**Citation :** AIR 1957 Patna 456 : (1957) 5 BLJR 319

**Hon'ble Judges :** Ramaswami, C.J.;Kanhaiya Singh, J

**Bench :** Division Bench

**Advocate :** Lalnarain Sinha and S.K. Sarkar, for the Appellant; S.N. Dutt, Radha Raman Sinha and Harians Kumar, for the Respondent

**Final Decision :** Allowed

## Judgement

Kanhaiya Singh, J.—This is a plaintiffs' second appeal arising out of a suit for possession with mesne profits. The following pedigree will show the relationship between the parties:

SUBASH RAI \_\_\_\_\_ | \_\_\_\_\_ | | Ajgaibi Rai Chhatan  
Rai \_\_\_\_\_ | \_\_\_\_\_ | | Ramsaran Rai Dwarika Rai Lalji Rai | \_\_\_\_|  
\_\_\_\_\_ Baldeo Rai | | Ramjatan Rai Ramnandan Rai | | | | |  
Adopted son--Janki Rai | | (Plaintiff) | | \_\_\_\_\_ | \_\_\_\_\_|  
\_\_\_\_\_ | | | Mahesh Rai Brahmdeo Rai | \_\_\_\_\_ (Deft. 7) (Deft. 8)  
\_\_\_\_\_ | \_\_\_\_\_ | | Surajnath Rai Kalapnath Rai (Defdt. 1) |  
\_\_\_\_\_ | \_\_\_\_\_ | | Shutnar Rai Khowari Rai Ramchandra  
Rai (Deft.2) (Deft. 3) (Deft. 4) \_\_\_\_\_ | \_\_\_\_\_ | | Jamuna Rai  
Awadh Rai (Deft. 5) (Deft.6).

The disputed property forms part of the estate of Baldeo Rai deceased. Baldeo Rai was the descendant of Chhatan Rai. The defendants are the descendants of Ajgaibi Rai, full-brother of Chhatan Rai, Both the branches of the family were

separate in mess and" property, and Baldeo Rai was the sole surviving member in the joint family of Chhatan Rai, which was possessed of 24 bighas 17 kathas 3 dhurs of Kasht land, and some zamindari property.

Baldeo Rai had no son, and there is no dispute that on his death the respondents would have succeeded to his estate. But it appears that sometime before 1905 Baldeo Rai adopted Janki Rai (plaintiff since deceased) as his son and got all his properties mutated, in the name of his adopted son. Ramjatan Rai, the ancestor of the defehdants instituted a title suit No. 68 of 1905, for a declaration that Janki Rai had not been taken in adoption by Baldeo Rai, that the adoption was not legal and valid and that his right to succeed to the properties of Baldeo Rai, on the latter's death, was not at all affected.

The suit was eventually compromised and a consent decree was passed incorporating the terms of the compromise. Under this compromise Ramjatan Rai obtained 8 bighas out of the kasht land and half of  $\frac{1}{6}$  proprietary share. He was, however, not given right to immediate possession of the property given to him. The compromise decree provided that Baldeo Rai and his wife would remain in possession of the entire property for there life and Ramjatan Kai: would be entitled to enter into possession of the land, given to him only after their death.

Baldea Rai died in" 1930, and his widow died in 1347 (corresponding to 1940). On her death, a dispute arose between Janki Rai, the adopted son of Baldeo Rai, and the defendants about possession of the property covered by the compromise decree. This led to the initiation of a proceeding u/s 144 of the Criminal P. C., which ended in a compromise on 12-12-40. By this compromise the sons of Ramjatan Rai were permitted to enter into possession of the land given to him under the compromise decree of 1905. It is this land which forms the subject-matter of the present litigation.

On 17-2-1943, Janki Rai raised this action to re- -cover possession of the property in the hands of the respondents. His case was that the compromise decree passed in Title Suit No. 68 of 1905 was illegal and invalid and did not confer any title on Ram-jatan Rai and his descendants, because it was void both for want of consideration and want of registration. His further case was that the compromise in the proceeding u/s 144 of the Criminal P. C. was brought about by coercion and did not operate as estoppel a"gainst him. Janki Rai died during the pendency of the suit, and his widow, Mst. Kauleshwari Kuer, and his two sons, Dudhnath Rai and Sukhdeo Rai, were substituted in his place; they are the present appellants.

2. The defence was that Janki Rai was not the adopted son of Baldeo Rai, that the disputed property had been given to the defendants by virtue of the consent decree of 1905 and that they had acquired a good title to the disputed land and were entitled in, law to retain possession of the same,

3. I may mention here that Mahesh Rai and Brahmdeo Rai, nephews of Ramjatan Rai deceased, had instituted another title suit against Janki Rai impleading also

the sons and grandsons of Ramjatan Rai as defendants for a declaration that Janki Rai was not the adopted son of Baldeo Rai and that they were entitled to two-third share of the properties of Baldeo Rai.

4. Both the suits were tried analogously by the Additional Subordinate Judge of Arrah. He held that Baldeo Rai had adopted Janki Rai as his son, that the adoption was legal and valid and that the defendants, though the next heirs of Baldeo Rai, were therefore not entitled to succeed to his estate. He further found that the compromise entered into by Janki Rai and Ramjatan Rai in Title Suit No. 68 of 1905 was valid and operated to confer a good title upon the defendants. He also held that this compromise decree was binding upon Janki Rai.

On these findings, he dismissed both the suits. There was no appeal from the decision in the title suit brought by Mahesh Rai and others, From the decision in the suit of Janki Rai, however, an appeal was taken to the District Judge by his heirs who had been substituted in his place. By his judgment dated 18-9-48, the learned District Judge affirmed the findings of the learned Additional Subordinate Judge and dismissed the appeal. Thereupon, the plaintiffs have come up in Second Appeal against that decision.

5. Both the Courts have concurrently found that Janki Rai was the adopted son of Baldeo and inherited his properties by survivorship. The only material question which was canvassed in the Courts below and has also been raised in this Second Appeal is whether the defendants-respondents acquired any valid title to the disputed land by virtue of the compromise decree in Title Suit No. 68 of 1905. The defendants were admittedly not in possession of the disputed land prior to 1940. The plaintiff (sic) instituted this suit on 17-2-43, that is, within twelve years of their dispossession. Therefore, they will be entitled to possession of the disputed land if under the compromise decree of 1905 the defendants acquired no valid title to it.

6. Mr. Lalnarain Sinha appearing on behalf of the appellants contended, firstly, that the compromise decree of 1905 was void for want of consideration and cannot be given effect to, and, secondly, that the alienation of the property to the defendants by this compromise without consideration amounted to a gift which was unenforceable at law, as it was not effected by registered instrument. On the other hand, Mr. S. N. Dutt appearing for the respondents contended that the compromise entered into by the ancestors of the parties to the suit in 1905 was not an alienation but that it was "a family arrangement for the settlement of disputes and for peace and harmony .

Mr. Lalnarain Sinha pointed out that the compromise cannot be supported on the ground of family arrangement, because the defendants' ancestor Ramjatan Rai had no semblance of right and the suit that he had instituted involved no question of title to or interest in the property and that at any rate there was no consideration at all flowing from Ramjatan for the arrangement by which he got the disputed land. In order to appreciate their arguments, it will be necessary to

know the nature and the scope of the compromise and the circumstances connected therewith. The decree passed in Title Suit No. 68 of 1905, Exhibit F-II, incorporates the terms of the compromise which are as follows :

"3. With the consent of the parties this case was referred to arbitration. Before the arbitrators the plaintiff and the principal defendants Nos. 1 and 2 filed a compromise petition that they, both the parties, effect a compromise of their own free will to the following effect : "We of our free will give 8 bighas kasht land out of 24 bighas 17 kathas 3 dhurs of ancestral kasht land and half of 1 anna 6 pies of malkana interest to Jatan Rai plaintiff. We shall not mortgage or transfer, the property which we give to the plaintiff Jatan Rai to anybody else. If we do so, it shall be null and void in Court. So long as we and our wives shall remain alive shall keep 8 bighas of kasht land malkana interest in our possession which we have given to Jatan Rai. After ours as well as our wives death Jatan Rai shall take possession thereof; within the boundary limits to which neither we nor our heirs have or shall have any objection. The plaintiff has got no concern with any other property save and except the property which has been given to him nor his heir will put forward any claim. If he does so, it shall be illegal."

This compromise was entirely outside the scope of the suit and unrelated to the matters in controversy. The plaint of that suit is Exhibit N-I. It will appear from the plaint that there was no dispute at all between the parties with regard to any property. Both Ramjatan and Baldeo were separate in all respects, and the family of one had nothing to do with the family of the other. Baldeo had taken Janki in adoption, and Ramjatan felt aggrieved on that account. It is manifest that so long as Baldeo was alive Ramjatan had no semblance of claim to his property. He could not raise any objection legitimately to the adoption, good or bad. (sic) rested his case purely on imaginary grounds. The case set forth in the plaint was that Janki was not adopted by Baldeo and that he could not be adopted according to law. The reliefs that he claimed were also peculiar. The reliefs were :

""In the first instance the guardianship of defendant may be declared illegal.

Secondly such other relief as the plaintiff be found entitled to may be granted to him. Costs in Court with future interest may be awarded to the plaintiff as against the defendants."

It will appear that the plaint was liable to be rejected as there was no cause of action and there was no question which could be legally agitated in that action. There was, however, a compromise between the parties, and by this compromise the plaintiffs got certain property out of the property constituting the estate of Baldeo; the latter got nothing from Ramjatan. It was entirely a one-sided affair. The title was admittedly on the side of Baldeo, and the property was given to Ramjatan who had no title at all nor an interest of any sort therein. The property was given by Baldeo and his adopted son to Ramjatan in the following words :

"We of our free will give 8 bighas kasht land out of 24 bighas 17 kathas 3 dhurs of ancestral kasht land and half of 1 anna 6 pies of malkhana interest to Jatan

Rai plaintiff."

On the basis of these facts Mr. Lalnarain Sinha contends that such a transaction is nothing but gift, though it is incorporated in the decree of a Court and is clothed in the form of a family arrangement. Mr. S. N. Dutt contends, however, that the existence of a family dispute or a doubtful claim is not essential to the validity of a family arrangement and that a compromise entered into for the purposes of family peace and harmony, though there was no existing dispute may be supported as a family settlement. This takes me to the consideration of what is family arrangement. The idea of family arrangement is borrowed from English Law. The law in England is expounded in Halsbury's Laws of England, Edn. 2 by Lord Hailsham, Volume 15. The family arrangement is defined in paragraph 2 at page 2 as follows :

"A family arrangement is a transaction between members of the same family which is for the benefit of the family generally, as, for example, one which tends to the preservation of the family property, to the peace or security- of the family and the avoiding of family, disputes and litigation, or to the saving of the honour of the family."

The leading case on which both parties relied is the case of Williams v. Williams (1867) 2 Ch A 294 (A). In that case a man named John- Williams died in 1831, possessed of real estates of socage, gavelkind, and borough English tenure, and also of lease-holds, stock in trade, and other personal property, leaving a wife and two sons, John and Samuel. He made a will by which, after certain provisions for his wife, he gave all his property to his two sons equally, but this will was not admitted to pro bate, being in complete; At an interview between the brothers shortly after the will had been refused probate, the elder brother declared that the in validity of the will should make no difference, and that the property should be "not mine or thine, but ours".

No agreement in writing was made, but for twenty years after the death of their rather the property was treated and dealt with as the common property of the two brothers, and they continued to carry on their tannery business on the same premises as heretofore. Their widowed- mother lived with them until her death, and she never insisted on her rights in her husband's property. The two brothers managed their work and carried on their business peacefully together until 1851 when differences arose between them which culminated in a suit for division of the property.

The younger brother claimed half share in the property on the ground that a family arrangement had been made between them, the other brother denying any such arrangement. The contention raised in that case on behalf of the elder brother was that there was no mutuality in the arrangement, there were no disputed rights, and no compromise of family differences. The case was heard by Lord Chelmsford L. C., and Sir G. J. Turner, L. J. At page 300 Lord Chelmsford, L. C., observed as follows :

"There was here no doubtful right to be compromised, no dispute between the brothers which was to be set at rest, no honour of the family involved, the Appellant was merely prompted by respect for his father's intentions and by his affection for his brother, both most excellent and praiseworthy motives, but scarcely sufficient to constitute such a consideration as would convert an act of kindness into a binding engagement. If, therefore, there had been no consideration for the Appellant's promise to share the freehold property with his brother, I should have been disposed to hold that he could not be bound by it. But it appears to me that there is quite sufficient consideration to prevent its being a mere voluntary agreement, and that the Court will not be disposed to scan with much nicety the amount of the consideration. The borough English property, which belonged to Samuel, was of some, though of trifling value, and was brought by him into the common stock; and in a case of this kind some consideration may perhaps be found in the fact of Samuel leaving his share of the stock in trade in the business and continuing to carry it on instead of breaking up the concern. But there can be no doubt that the widow was a party to the whole arrangement, and the consideration moving from her must be taken into account..... It seems to me that if valuable consideration is required in this case to make the family arrangement binding, it is sufficiently provided by the widow agreeing to become a party to it, and relinquishing her rights for the purpose of carrying it out."

7. At page 304 Sir G. J. Turner, L. J., says :

"But I can see no want of mutuality in the agreement, for if binding on the one side, it would of course be binding on the other side also. Nor do I think there was any want of consideration. The Vice-Chancellor has, and I think correctly, rested this part of the case upon the footing of the cases as to family arrangements. It was strongly argued for the Appellant that this case does not fall within the range of those authorities; that those cases extend no further than to arrangements for the settlement of doubtful or disputed rights, and that in this case there was not, and could not be, any doubtful or disputed right; but this I think, is a very shortsighted view of the cases as to family arrangements. They extend as I apprehend, much farther than is contended for on the part of the Appellant, and apply, as I conceive, not merely to cases in which arrangements are made between them for the preservation of its property. The re-settlement of family estates, upon an arrangement between the father and the eldest son on his attaining twenty-one, may well be considered as a branch of these cases, and certainly this Court does not in such cases inquire into the quantum of consideration".

This case forms the basis of Indian cases and has been followed in several cases in the Calcutta High Court and in Allahabad High Court. In the Allahabad High Court, there was, however, a difference of opinion as to whether the existence of a doubtful-claim is or is not necessary for a valid family arrangement. This difference of opinion was set at rest by a Full Bench decision in the case of Mt.

Dasodia Vs. Gaya Pd. minor through Sadho Ram, . The Full Bench held that the existence of a family dispute is not essential to the validity of a family arrangement, nor such, an arrangement to be valid need necessarily be a compromise of doubtful rights and claims. They, however, laid down that there must be some consideration for the compromise in the shape of avoidance of future discord or for the preservation of the property. Collister, J., who delivered the leading judgment observed as follows :

"A doubtful claim based on the allegation of an antecedent title is not essential for the validity of a family arrangement; such arrangement may bind the parties to it if it is for the benefit of the family or for the maintenance of peace and harmony and the avoidance of future discord or for the preservation of the property. But there must be some kind of consideration before an agreement in respect to the division of family property can be held to be a valid family arrangement."

His Lordship then went on to investigate whether there was any consideration, and it was held that there was consideration for the family arrangement.

8. The case of Williams (A), was quoted with approval by the High Court of Calcutta in the cases of Helen Dasi v. Durga Das Mundal 4 Cal LJ 323 (C); Satya Kumar Banerjee v. Satya Kirpal Banerjee 10 Cal LJ 503 (D) and Sashi Kantha Acharjee and Others Vs. Promode Chandra Roy and Others, . - In the last mentioned case, after a review of various decisions including the Privy Council cases, the learned Judges Mukerji and Guha JJ. observed as follows at page 884 (of ILR Cal): (at p. 612 of AIR).

"On reading these decisions with care, it seems to us that, if there is one principle that follows from all of them unmistakably, it is this, that the arrangement must be concluded with the object of settling bona fide a dispute arising out of conflicting claims to property, which was either existing at the time or was likely to arise in future. Bona fides is the essence of its validity, and from this it follows that there must be either a dispute or at least an apprehension of a dispute, a situation of contest, which is avoided by a policy of giving and taking; or else, all transfers or surrenders will pass under the cloak of a family arrangement."

This question did not pointedly arise in any case in this High Court. I would respectfully adopt the views of the Calcutta High Court in the case of Basantkumar Basu (E), referred to above. In all the cases there was some contest either existing at the time of making it (arrangement) or likely to arise in future. It is true that the existence of a family dispute is not the essential ingredient of a family arrangement, nor, as pointed out by Sir G. J. Turner, L. J., in the case of Williams (A), the settlement of doubtful or disputed rights is essential to the validity of the family arrangement. The preservation of family peace and the preservation of its property may very well form a good basis for a family arrangement. Nevertheless, there must be a situation of a contest or

apprehension of some dispute in future which is sought to be bona fide resolved by the arrangement.

Even in the Full Bench case of the Allahabad High Court, referred to above, Collister, J., recognised that where there are no doubtful or disputed rights or any family dispute, the family arrangement to be valid must be an arrangement for the benefit of the family or for the maintenance of peace and harmony and the avoidance of future discord or for the preservation of the property. If it were not so then any settlement between two members of a family, whether entered into bona fide or not, whether needed for the benefit of the family or preservation of the property or not, will constitute a family arrangement.

The entire object of the family arrangement is to resolve or settle either some doubtful or disputed rights, either existing or likely to arise or for the maintenance of peace and harmony and preservation of the property. The existence of a doubtful claim or a dispute between the family members may provide a good consideration for the settlement. Where there is no real contest, there is no doubtful right to be compromised, no dispute between the members which was to be set at rest and no question "of preservation of the honour of the family, as in the case of Williams (A), there must be some tangible consideration to validate the arrangement.

In the case of Williams (A), the consideration was that the widow became a willing party to the settlement and relinquished her rights for the purpose of carrying it out. Considering the present case in the light of these principles and in accordance with the definition of "family arrangement" given above, I think, the settlement of 1905 cannot be supported as a family arrangement. There was no dispute at all between Ramjatan and Baldeo; there was no question of preservation of family peace or family property; nor was there any settlement of doubtful right or doubtful claim.

It was a purely imaginary suit based upon grievances which had no foundation in fact. There was no likelihood of any contest arising in future. The transaction between the parties was obviously not for the benefit of the family estate or of all the parties concerned. As laid down in the case of Williams (A), above referred to, the Court will support as a family arrangement any transaction between members of the same family which is generally for the benefit of the family estate or of all the parties concerned. In the instant case, all the benefits went to Ramjatan.

Baldeo derived no benefit from the compromise. It was not a case where any benefit accrued to the family estate generally. This arrangement does not fall under the category of family settlement. Then, the important question is : What was the consideration for this arrangement? On the question of consideration, there is no difference of opinion, There is unanimity of judicial opinion that there must be some consideration for the family arrangement, other than love and affection, the nature of that consideration varying with different cases.

Forbearance-from litigation, bona fide settlement of disputed claims or rights and preservation of peace may constitute a good consideration for a family arrangement.

Where there is a consideration, it is not for the Court to scan with much nicety the amount of the consideration. The quantum of consideration is of little consequence. Where there is a consideration, howsoever small and howsoever disproportionate to the respective claims of the parties," a family arrangement will not be called in question for want of consideration. In the present case there was no consideration at all in any shape or form. There was no question of "give and take". Ramjatan got the land, but Paldeo received nothing from him. Mr. S. N. Dutt contended that the settlement was designed to secure family peace and harmony and avoid litigation.

There is no basis for this argument. No family friction and no differences of any sort existed between the parties at that time. When maintenance of family peace and harmony forms the basis of the arrangement, it implies that there was some trouble existing or anticipated which was calculated to disturb the family peace. But the friction nor disharmony which is sought to be prevented must be real and bona fide and not imaginary.

If it were not so, then a settlement between two members of the family of any claim, howsoever baseless and false, will be regarded as a family arrangement. As laid down by their Lordships of the Privy Council in the case of *Raja Jagaveera Rama Ettappa v. Arumugam Chetti* 45 IA 195: (AIR 1918 PC 173) (F), forbearance from raising a hopeless and groundless dispute of a right cannot form a valid consideration for the abandonment of that right,

""any more than a promise to pay a sovereign in satisfaction of a debt of a guinea is supportable by the consideration that it saves the creditor the trouble of bringing an undefended action for the larger sum",

I am, therefore, unable to accept the argument of Mr. Dutt, In my opinion, the settlement of 1905 cannot be supported on the principle of family arrangement.

9. If it is not family arrangement, what is the nature of this transaction? I have held above that there is no consideration, for this settlement. Mr. Lalnarain Sinha contended that the transaction involved in the settlement of 1905 was a transaction of gift, and, I think, on a proper construction of the consent decree, this contention is well founded. Baldeo virtually gave away the disputed property to Ramjatan. In my opinion, it was nothing but a gift. Now, u/s 25 of the Contract Act, an agreement made without consideration is void, unless, inter alia, it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a "near relation to each other.

There is no registered instrument in this case. The gift to be valid must be effected by a registered instrument. The fact that this compromise evidencing a

gift was incorporated in a decree of, a Court does not afford immunity from registration. An instrument of gift of Immovable property is compulsorily registrable u/s 17(1)(a) of the Registration Act. Under Sub-section (2) of Section 17 of the Registration Act, as it stood at the time of the settlement, any decree or order of a Court was exempted from registration provided the matter dealt with by the decree fell within Clauses (b) and (c) of Sub-section (1) of Section 17. Sub-section (2) of Section 17 lays down as follows :

"Nothing in Clauses (b) and (c) of Sub-section (1) applies to

\* \* \* (vi) any decree or order of a Court and any award,"

Clause (vi) was amended by the Transfer of Property (Amendment) Supplementary Act, 1929, which came into force on the 1st of April, 1930. The clause, as amended, provides that nothing in Clauses (b) and (c) of Sub-section (1) applies to any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising Immovable property other than that which is the subject-matter of the suit or proceeding. It is settled by authority that this amendment is not retrospective. The present compromise was effected in 1905. It will be observed that so far as Clause (a) of Sub-section (1) of Section 17 is concerned, the amendment did not effect any alteration. The result is that a consent decree purporting to create a gift requires registration u/s 17(1)(a) and is not exempted from registration by Clause (vi), whether this consent decree was given before or after the aforesaid amendment.

10. Mr. Lalnarain Sinha next argued that a family arrangement, if reduced to writing, requires registration and relied upon a Full Bench decision of the Allahabad High Court in the case of Ramgopal Vs. Tulshi Ram and Another .

The Full Bench laid down that a family arrangement can be made orally, and consequently a family arrangement, though dealing with immovable property of the value of Rs. 100 and upwards can be effected by an oral contract. Where the terms were not reduced to the form of a document, registration was not necessary, even though the value was Rs. 100 or upwards. This ruling, is not an authority for the proposition that a family arrangement incorporated in a decree also required registration in 1905 even when the transaction was of the nature mentioned in Clauses (b) and (c) of Sub-section (1) of Section 17 of the Registration Act. I am, therefore, unable to accept this argument.

11. It was contended by Mr. S. N. Dutt that the plaintiffs were estopped from questioning the validity of the compromise which has been now acted upon. This argument is founded upon the compromise effected between the parties in course of the proceeding u/s 144, Criminal Procedure Code. The effect of this compromise was only to affirm the compromise of 1905 and the defendants were allowed to possess the disputed land in terms of the former-compromise. Now, the question is whether this precludes the plaintiffs from asserting their light and claiming possession on the ground of invalidity of the transaction.

In my opinion, this argument is devoid of all force. If the compromise of 1905 was void and conferred no title to the defendants, as held above, the compromise in the proceedings under Section. 144, Criminal Procedure Code, could not make it valid, because an assent to a void instrument was also void. In the case of *In re, A Bankruptcy Notice* (1924) 2 Ch 76 (H), the main question was whether a party could be estopped by a letter of assent acted upon by the recipient from contending that a certain agreement was void for want of registration. Lord Atkin (then Atkin, L. J.), at p. 97, remarked:

"Whatever the principle may be (referring to a contention as regards approbation and reprobation), it appears to me that it does not apply to this case, for it seems to me well established that it is impossible in law for a person to allege any kind of principle which precludes him from alleging the invalidity of that which the statute has, on grounds of general public policy, enacted shall be invalid."

This principle was later approved by their Lordships of the Privy Council in the case of *AIR 1937 114* (Privy Council) . This contention, therefore, must be overruled.

12. For these reasons, the appeal is allowed, the judgment and decree of the Courts below are set aside and the suit is decreed with costs throughout, The plaintiffs will be entitled to mesne profits from the date of dispossession, that is from Asarh, 1348 fasli (corresponding to July 1941) till the delivery of possession. The amount of mesne profits will be determined in subsequent proceeding.

Ramaswami, C.J.

13. I agree.