

(1924) 05 AHC CK 0095
In the Allahabad High Court

Musammat Kunti and Others

APPELLANT

Vs

Gajraj Tewari

RESPONDENT

Date of Decision : 27-05-1924

Acts Referred:

Citation : (1924) 05 AHC CK 0095

Final Decision : Allowed

Judgement

1. In our view this decision cannot be upheld. The point is one which has been very much" discussed in a variety of forms in which it arises, but the differences of opinion which are alleged to exist are not really differences of principle, or in the view taken of the law, but differences in the application of the principle to the exact set of facts. The moment a decision of a High Court obtains publicity and is believed to lay down the principle that a contract entered into whereby members of the same family, or two branches of the family, or two persons not connected by blood but having interests about which they are not agreed and who came to some sort of compromise in order to avoid further disputes, the moment it is believed that the Courts will not give effect to that class of arrangement when it has been mutually carried into effect, there is certain to be a crop of litigation in which some party seeks to apply the principle of the new decision to himself and to escape from the bargain he has entered into because in the light of subsequent events he has come to regret it: But a Court which deliberately ignores, or attempts to tear up a definite arrangement come to between people sui juris and carried into effect, will find itself sooner or later confronted with a reduction adabsurdum of its own decision. In our view the principle is clearly" marked in all the decisions which have been referred to. Where, [to quote the head-note 42 C-[Ed] from the decision of the Privy Council in Mahomed Mum v. Aghore Kumar Ganguli 28 Ind. Cas. 930 : 42 C. 801 : 17 Bom.L.R. 420 :21 C.L.J. 231 : 28 M.L.J. 548 : 19 C.W.N. 250 : 13 A.L.J. 229 : 17 M.L.T. 143 : 2 L.W. 258 : (1915) M.W.N. 621 : 42 I.A. 1 (P.C.)], the conduct of the parties creates a situation in which the parties stand upon nothing but an engagement which is not final or complete the locus penitential is not excluded, that is to say, where

the parties have given mutual promises but nothing has been done, the consideration is not performed on either side, and the contract remains merely executory, then unless it is clothed in the legal forms which make it binding, it cannot be enforced against either party by the other. For example a compromise to transfer property of over Rs. 100 in value which requires a registered transfer deed, creates no equitable interests in India and confers no legal right. In the absence of a registered deed, no transfer takes place and the absence of a transfer deed and of the other requirements of the statutory law, provide a defence to a suit, for example, for specific performance. Such a case is the case on which the learned Judge in the judgment now under review relied, reported as *Jagrani v. Bisheshar Dube* 35 Ind. Cas. 701 : 14 A.L.J. 449 : 38 A. 366 (F.B.). It was a Full Bench case. The ratio decidendi in that case was, that nothing had taken place except that there was a document, or petition presented to the Revenue Court, and a mutation order made without objection on either side. " The Chief Justice points out in his judgment that the parties setting up the binding character of the arrangement were unable to adduce any evidence showing that the other side had transferred their interests in the property in dispute, or anything except the entry of a name recorded by the mutation officer. As the Chief Justice in that case says, all that the mutation officer had to do was to order the name to be recorded, the parties consented that the names of certain persons be recorded, and that this conferred no title upon them. If the facts of this case had been in accordance with the facts of that case the learned Judge would have been quite right to have held himself bound by the rule laid down in that Full Bench.

2. On the other side of the line may be mentioned a variety of cases, both in the Privy Council, and in this Court of which it may be compendiously stated that they enunciate definitely, and finally the principle, that where parties agreeing not to go to law and not to fight, out their disputes, but by a mutual arrangement, such as is frequently described, because it more frequently happens in families, as a family arrangement," carry into execution their mutual promises so that the original contract by which they decided to terminate the disputes becomes an executed contract on both sides, and nothing remains to be done, the parties continuing each in the enjoyment of the interest which the other agreed that he should take the Courts in India, applying the rule of equity and good conscience, will not permit either party who has bound himself both by the contract and by its performance, to repudiate what he has done, and will also prohibit any person claiming under him from attempting the same thing. We cannot do better than quote, amongst the cases illustrating this principle, a decision to which the learned Judge whose judgment is now under review was himself a party *Rai Bahadur Babu Bahadur Singh Vs. Lala Ram Bahadur and Sri Ram and Others*, The law is there carefully reviewed by my brother Ryves. He bases himself on two authorities of the Privy Council, namely, *Kunhai Lal v. Brij Lal* 47 Ind. Cas. 207 : 40 A. 487 : 22 C.W.N. 914 : 8 L.W. 212 : 24 M.L.T. 236 : 35 M.L.J. 459 : 16 A.L.J. 825 : (1918) M.W.N. 709 : 28 C.L.J. 394 : 5 P.L.W.

294 : 20 Bom. L.R 1048 : 45 I.A. 118 (P.C.) and Hardei v. Bhagwan Singh 50 Ind. Cas. 812 : 24 C.W.N. 105, and he ultimately explains it as being a branch of the law of estoppel. Speaking for myself, as a member of this Court, I am not satisfied that that is the soundest method of putting it (though I do not say it is not a branch of the law of estoppel) because I have noticed in some decisions with which I disagree, that the answer has been suggested that there can be no estoppel against statutory prohibition. I prefer to base it on the principle of mutual performance, or part performance, which I think is sufficient, following the principle laid down in the leading authority of *Meddison v. Alderson* (1883) 8 A.C. 467 : 52 L.J.Q.B. 737 : 49 L.T. 303 : 31 W.R. 820 : 47 J.P. 821, and applied by their Lordships of the Privy Council in the well-known case of *Mahomed Musa v. Aghore Kumar Ganguli* 28 Ind. Cas. 930 : 42 C. 801 : 17 Bom.L.R. 420 : 21 C.L.J. 231 : 28 M.L.J. 548 : 19 C.W.N. 250 : 13 A.L.J. 229 : 17 M.L.T. 143 : 2 L.W. 258 : (1915) M.W.N. 621 : 42 I.A. 1 (P.C.). On a superficial perusal of the learned Judge's judgment in this case it would appear that he was right, but it is pointed out by Mr. Peary Lal Banerji before us that he overlooked the salient finding of fact of the lower Appellate Court which distinguishes this case from the Full Bench case in *Jagrani v. Bisseshar Dube* 35 Ind. Cas. 701 : 14 A.L.J. 449 : 38 A. 366 (F.B.), already referred to. That salient finding of fact is contained in the closing passage of the District Judge's judgment where he dwells upon the conduct of the parties, each of whom had gone into possession of, and possessed as their own; the half share which they had mutually agreed to accept; and that they had been in such possession for nine years without any attempt on either side to dispute the arrangement. He draws attention in his judgment to the fact that the deed of compromise is not on the record but that the admission made on oath in evidence by the plaintiff himself supplied the gap made by its absence. Indeed, having regard to some of the dicta in the Full Bench case in *Jagrani v. Bisheshar Dube* 35 Ind. Cas. 701 : 14 A.L.J. 449 : 38 A. 366 (F.B.), it would appear that the less documents there are to support a claim of this kind the less difficulty the litigant is likely to experience in the lower Court. In our view the appeal succeeds and the decree of the lower Appellate Court must be restored. We accordingly allow this appeal with costs of both the hearings in this Court on the higher scale.