

PATNA HIGH COURT

Brahmanath Singh

Vs

Chandrakali Kuer

A.F.A.D. No. 1024 of 1958

(Raj Kishore Prasad, J.)

30.08.1960

JUDGMENT

Raj Kishore Prasad, J.

1. This appeal, by the plaintiffs, is from a judgment of reversal, of the learned Subordinate Judge, Patna, who reversed the judgment and decree of the first Court, with respect to plot 1631, and, dismissed the suit in respect thereof.
2. We are concerned in this appeal only with plot 1631, and, not with plot 1632, in respect of which the judgment of the Trial Court was affirmed.
3. The facts, material for the decision of the appeal, are these :
4. There was one Sheobhajan Singh, whose admitted first cousins are the plaintiffs, Sheobhajan Singh was admittedly separate from the plaintiffs. After the death of Sheobhajan Singh, a dispute arose, regarding his properties, between the plaintiffs and his widow, defendant No. 1 in the Land Registration Department. Ultimately, there was a compromise between the parties on the 22nd August, 1941, as will appear from the compromise petition (Ext. 1). Under this compromise (Ext. 1) the land in suit, plot 1631, the admitted owner of which was Sheobhajan Singh, husband of defendant 1, was kept in joint between the plaintiffs and defendant 1, and, in the said plot, defendant 1 got 2/3rd, and, the plaintiffs got the remaining 1/3rd share. The plaintiffs brought the present suit for a declaration of their title to and partition of their 1/3rd share in plot 1631.
5. The suit was contested by defendant 1 on various grounds. One of them was that the compromise (Ext. 1) was fraudulent and not binding on her. This compromise, however, has been held by the court of appeal below to be valid and binding on her, and, it has further been found that it was acted upon by the parties. This finding of the court of appeal below is not disputed.
6. In the present appeal, therefore, we are concerned only with the effect of this compromise (Ext. 1).

7. The compromise (Ext. 1), however, was attacked also on the ground that it was inadmissible in evidence, because, it was unregistered, and, the court of appeal below upheld this objection, and, it further held that the plaintiff's had failed to prove their unity of title and possession. On these findings, therefore, the plaintiff's suit was dismissed with respect to plot 1631.

8. On second appeal to this Court, the appeal has been argued on behalf of the plaintiff's-appellants by Mr. Narbadeshwar Prasad Singh, a young, junior. Advocate of this Court. He has, however, argued the appeal with great ability and thoroughness, and, I think, he must be complemented on his performance.

9. The points urged by him are : (1) that the court of appeal below was in error in holding that the compromise, Ext. 1, was not admissible in evidence, as it was not registered, because it required no registration, and, as such, it was admissible in evidence. In support of his contention, he relied upon a Bench decision of the Allahabad High Court in *Baldeo Singh v. Udal Singh*¹, that, assuming that the compromise (Ext. 1) was not registered, as required by law, even then as it was acted upon, and, the parties derived advantage thereunder, it amounted to part-performance, and, therefore, they cannot now resile from it, and, as such, defendant 1 also cannot go behind it. In support of his contention, he relied on a decision of the Privy Council in *Mahomed Miisa v. Aghore Kumar Ganguli*², and, (3) that because the compromise (Ext. 1) was acted upon by defendant 1 also, she was estopped from challenging the right of the plaintiff's to 1/3rd share in the disputed plot 1631, under this compromise. In support of his contention, he relied on a decision of Mr. Justice Das (as he then was), of this Court, sitting singly, in *Mangal Das v. Bhageraii Sao*³,

10. Mr. Lalnarain Sinha, the learned Government Advocate, who appeared for defendant respondent I, however, combated the above contentions of the appellants, and, submitted, in reply, (1) that the unregistered compromise, Ext. 1, has rightly been held to be inadmissible in evidence, as the decision of the court of appeal below is supported by a Full Bench decision of the Allahabad High Court in *Ramgopal v. Tulshi Ram*⁴, and also by a Single Judge decision of this Court in *Ghamandi Misser v. Jagarnath Misser*⁵, (ii) that the compromise (Ext. 1) required registration under Section 17 (1)(b) of the Registration Act, and, as it is admittedly unregistered, it cannot confer any right on the plaintiff's, and, if defendant 1 acted upon it, and, derived any benefit thereunder, it was of no avail to the plaintiff's, and, therefore, they could not claim any right thereunder. In support of this contention, he relied on two decisions of the Privy Council in (a) *G.H.C. Ariff v. Jadunath Majumdar Bahadur*⁶, and (b) *Maritime Electric Co. Ltd. v. General Dairies. Ltd.*⁷, and, (iii) that when the compromise (Ext. 1), which was required by law to be registered, is not a registered document, it had no legal effect in the eye of law, and, as such, it cannot operate as an estoppel, as there could be no estoppel against a statute. In support of his argument, he relied on the above mentioned decision of the Privy Council in *Maritime Electric Co. Ltd.*'s case, AIR 1937 PC 114 (supra).

11. Before, however, I deal with the above grounds of attack, urged by the appellants, to the decree appealed from, it is necessary, first, to know the necessary provisions of the Indian Registration Act, concerning compulsory registration of documents, and, secondly, to know the nature of the impugned compromise petition (Ext. 1), which is the basis of the claim of the plaintiff's.

12. The material provisions of the Indian Registration Act (Act 16 of 1908), hereinafter referred to as 'the Act', are Sections 17(1)(b) and 49 of the Act. These two sections are to the following effect :

"17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI of 1864. or the Indian Registration Act. 1866. or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely :-

X X X X X

(b) other non-testamentary instruments which purport or operate to Create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested, or contingent, of the value of one hundred rupees and upwards, to or in immoveable property".

X X X X X

"49. No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall -

(a) affect any immoveable property comprised therein, or

(b) X X X X X

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered :

Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter 11 of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument." There can be no doubt that the strictest construction should be placed on the prohibitory and penal sections of the Registration Act which impose serious disqualifications for non-observance of registration. Section 17 of the Act, being a disabling section, must be construed strictly. There can also, therefore, be no doubt that unless a document is clearly brought within the purview of Section 17, its non-registration is no bar in its being admitted in evidence. The criterion for purposes of registration is what is expressed on the face of the document.

13. The Act refers to documents and the present section establishes the necessity for registration with regard to certain classes of documents defined in the section.

14. The section is made effective by Section 49, which provides that any document required to be registered under this section shall not, unless it has been registered, affect any immoveable property comprised therein or be received as evidence of any transaction affecting such property, while Section 50 secures that registered documents shall, as regards the property they comprised, take effect against every unregistered document relating to the, same property. It will be observed from these provisions how wide and general is the scope of the Act.

15. The real purpose of registration is to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be affected unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration.

16. It is important to observe that Section 49 does not say that an unregistered document which required to be registered shall not be received in evidence. It says, as evidence of any transaction affecting the property, it may be received in evidence for a collateral purpose even if that purpose indirectly does affect the property. Clause (a) of Section 49 refers to the document which is the transaction itself, while clause (c) of Section 49 refers to another document which is not the transaction itself, but which is being used as evidence of the transaction. The two parts of Section 49 deal with different subjects. The first part apparently presupposes; that the document itself is the transaction or the mode in which it is carried out. The second part of the section seems to relate to cases where the document itself is not the transaction but is only a record of transaction or being itself a transaction contains a reference to or a recital of another transaction which affects the immovable property comprised therein. The distinction, therefore, between clause (a) and clause (c) of Section 49 of the Act is clear. Clause (c), as such, refers to a document which is not the transaction itself, but which is being used as evidence of the transaction. Clause (c) uses the expression "as evidence" and, not "in evidence". It is, therefore, permissible to use an unregistered document for a collateral purpose, that is, a purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. This is now expressly enacted in the proviso added to Section 49 of the Act by the Amending Act 21 of 1929.

17. It should, however, be borne in mind that the necessity for registration must be determined at the date of the instrument, and not by subsequent events. When it is necessary to determine whether an instrument, other than a deed of gift, purports or operates to create an interest of the value of Rs. 100 or upwards in immovable property within the meaning of clause (b) of Section 17 of the Act, the test of value for registration is the consideration stated in the instrument : See Mulla's Indian Registration Act, 5th Edition, 1950.

18. The words "create, declare, assign, limit or extinguish," occur in clause (b) of Sub-Section (1) of Section 17 of the Act. The question is what is the meaning of these words ? West, J. of the Bombay High Court, while dealing with section 17(1) (b) of the Act. in construing a document before him, in *Sakha Ram Krishnaji v. Madan Krishnaji*⁸, said :

"Here..... the document is not itself one which declares a right in immovable property, in the sense probably intended by Section 17. There 'declare' is placed along with 'create', 'assign', 'limit or 'extinguish' a 'right, title or interest', and these words imply a definite change of legal relation to the property by an expression of will embodied in the document referred to. I think this is equally the case with the word 'declare'. It implies a declaration of will, not a mere statement of fact, and thus a deed of partition, which causes of change of legal relation to the property divided amongst all the parties to it is a declaration in the intended sense; but a letter containing an admission, direct or inferential, that a partition once took place, does not 'declare' a

right within the meaning of the section."

This statement of the law was approved by the Privy Council in *Bageshwari Charan Singh v. Jagarnath Kuari*⁹, where Viscount Dunedin, who-delivered the opinion of the Board, at p. 279 (of ILR Pat) , said :

"Though the word 'declare' might be given a wider meaning, they are satisfied that the view originally taken by West, J., is right. The distinction is between a mere recital of a fact and something which in itself creates a title." The word "declare" in Section 17(1)(b), therefore, is ejusdem generis with the words "create..... assign or limit" with which it is in contiguity.

19. From the above authorities, therefore, it, is plain that the expressions "create", "assign", "limit" or "extinguish" imply a definite change of legal relation to a property by an expression of will embodied in the document and the expression "declare", therefore, must also import a similar meaning. No doubt, the word "declare" might be given a wider meaning, but, here, it implies a declaration of will, not a mere statement of fact. The distinction, as such, is between a mere recital of a fact and something which in itself creates a title.

20. The above, therefore, is the true scope and meaning of the words "create, declare, assign, limit or extinguish", which occur in clause (b), of Sub-Section (1) of Section 17 of the Act.

21. Let us now ascertain the true nature of the disputed compromise petition (exhibit 1), which has been relied upon by the plaintiffs, in support of their claim.

22. It is not disputed, rather it was specifically admitted by the learned counsel for the parties-appearing before me, that Sheobhajan Singh, husband of defendant 1, died in a state of separation-from his admitted cousins, the plaintiffs. It follows, therefore, that at the time of the death of Sheobhajan Singh the only legal heir of Sheobhajan was his widow, defendant 1, and not at all the plaintiffs, who could not claim any right whatsoever in the properties of Sheobhajan Singh after his death as long as his widow was alive. This position in law was admitted by both sides.

23. What then happened was this : After the death of Sheobhajan Singh his widow, defendant 1, applied for mutation of her name in respect of alt the properties left by her husband In the Land Registration Department in place of her deceased husband. The plaintiffs also made a similar application in the Land Registration Department for mutation of their names in place of the deceased Sheobhajan Singh, alleging that he died leaving behind no heir except the plaintiffs, and they denied that defendant 1 was his widow. This dispute-between the parties ultimately ended in a compromise between them, the terms of which were reduced into writing, and that compromise petition-(Exhibit 1) is the subject of controversy between' the parties in this litigation. By this compromise the plaintiffs recognised defendant as the widow of their deceased cousin Sheobhajan Singh. and, in lieu of the concession made by the plaintiffs in favor of defendant 1, the plaintiffs were given one-third share in the properties of Sheobhajan Singh, mentioned in the compromise petition itself, whereas, defendant 1, the widow of Sheobhajan, was to own the remaining two-thirds share only. The disputed plot 1631 was left

final between the parties under this compromise, and, 'the house in dispute, which admittedly stood on plot 1631, the land in suit, was also included in the compromise petition (Exhibit 1), and, it is not disputed that the inclusion of this house in the compromise way extraneous to the scope of the mutation proceeding and foreign to the enquiry in the Land Registration proceeding.

24. The question of want of registration of the compromise petition (Exhibit 1) was raised, in this Court chiefly on the ground that it being a document of title, as it itself created a title in favour of the plaintiffs, it was compulsorily registrable under Section 17(1)(b) of the Act, and, as it was unregistered, it was inadmissible in evidence.

25. On the foregoing facts, therefore, it is reasonably clear, and there can be no doubt, that the plaintiffs had no antecedent, or any pre-existing or vested right, whatsoever, in the properties of Sheobhajan Singh, which they could claim, at or after the death of Sheobhajan Singh, in preference to and to the exclusion of his widow. Whatever right, therefore, the plaintiffs acquired was under the compromise petition itself, and, as such, this compromise petition was the foundation of their right a document of their title, and, accordingly, if the impugned compromise petition (Exhibit 1) is found to be inadmissible in evidence for want of registration, the plaintiffs must be non-suited.

26. After having ascertained the true meaning and scope of Section 17(1)(b) of the Act, and, also of the disputed compromise petition (Exhibit I), I will now proceed to decide the three questions raised in the appeal.

Re : (1) :

27. Here it was argued, on behalf of the appellants, that the compromise petition in question was really a family arrangement, in the nature of a *bona fide* settlement of family dispute, and, the statement in the said compromise petition that the plaintiffs had one-third share in the properties of Sheobhajan Singh, did not create any right in them, it merely acknowledged as a fact that they had such a right, and, such a share, and, therefore, there was no necessity for registration. In support of this contention reliance was placed on the decision of the Allahabad High Court in AIR 1921 Allahabad 248, but, in my opinion, it has no application to the facts of the present case.

28. In that case, what happened was this : A mutation petition was filed in the Land Registration Court by the six nephews of the deceased recorded proprietor. There was no dispute that each of the nephews had an equal right at and on the death of their uncle. After his death three of the nephews, on behalf of themselves and their minor brothers, applied for the entry of the names of all the five nephews in respect of the estate left by their deceased uncle in equal shares. An objection, however, was filed by one of the nephews claiming a half share in the said property on certain grounds. A settlement was eventually arrived at between them in pursuance of which a compromise petition was filed in the mutation proceeding stating that the parties had arrived at a settlement among themselves fixing the shares which each was to get in the property of the deceased and asked that mutation of their names might be effected in accordance therewith. In those circumstances, it was held, by Kanhaiya Lal, J., Piggott, J., taking a contrary view, that the above-mentioned compromise petition in that case was a mere step of judicial procedure, and did not require registration, relying on a decision of the Privy Council in *Bindesri Naik v. Ganga Saran Sahu*¹⁰, in which it was held that a mutation proceeding is a proceeding in which evidence

can be taken and the rights of parties determined in a summary manner unless adjusted out of Court, and the provisions of Section 17 of the Registration Act do not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties, or of orders made by the Court. Kanhaiya Lal, J., therefore, held that the petition of compromise, in that case, contained nothing more than a mere recital of the oral settlement effected out of Court, and, as such, it should not have been excluded by the lower appellate Court from consideration in determining whether such a settlement had taken place.

29. Piggott, J., however, took a contrary view. He said that where parties approach the Revenue Court with a petition which, at the time, they hope, will serve as a document of title, that is to say, as an authoritative admission by each party, as against the other, of the title of the other party, to whatever share has been agreed upon amongst them, any petition so drafted as to satisfy these conditions becomes a document purporting to declare the rights of the parties concerned in immovable property, and if that property is worth more than Rs. 100, it requires registration, and, in the absence of registration it is not admissible in evidence and is of no effect as a document of title.

30. I express my respectful agreement with the above observation of Piggott, J., which, if I may say so with respect, is the correct position in law, and, also the true construction of the compromise of that case also. His Lordship, however, held that the compromise petition before him was in the nature of a *bona fide* settlement of family disputes, and, therefore, it did not require registration although it related to immoveable property. His Lordship, therefore, agreed, on a different ground, with Kanhaiya Lal, J., in remanding the appeal, although he disagreed with him in his view of the law.

31. It is well settled that where it has not been shown that a party to an arrangement had any competing title of 'his own in respect of the properties in dispute, there can be no basis for a valid family settlement between the parties which would bind the revision : *Ramayya v. Lakshmayya*¹¹,

32. The true test, therefore, to apply to a transaction like the present, in order to decide, whether it was in the nature of a *bona fide* settlement of family disputes, as contended by the appellants, so as not to require registration, is whether the plaintiffs derived title, from the widow of Sheobhajan Singh, under the compromise itself, or, whether they had an antecedent right of their own, in the estate of the deceased Sheobhajan Singh.

33. In the present case, it is reasonably clear that the plaintiffs had no antecedent title whatsoever of their own to the properties of the deceased Sheobhajan Singh, and, that whatever title they claimed was acquired under the compromise from the widow of Sheobhajan Singh, who gave one-third share, in the properties in suit, out of her own 16 annas interest in them. Since, therefore, it has not been shown that the plaintiffs had any competing title of their own in respect of the properties in dispute in the Land Registration proceeding, there could be no basis for a valid family settlement between the parties.

34. With regard to the above-mentioned Allahabad case, AIR 1921 Allahabad 248, I express my respectful dissent to the view expressed by Kanhaiya Lal, J., in the said case, that the compromise petition filed in the mutation proceeding in that case, did not require registration. However, be that as it may, one thing at least is clear, from the facts of the aforesaid Allahabad

case, that there, admittedly, the parties to that litigation, being admitted nephews, had antecedent rights, on the death of their uncle, in his properties, and, were entitled to equal shares in them, which were varied, or limited by the compromise in the mutation proceeding, but here the plaintiffs had no antecedent rights of their own at all in the properties, which were the subject-matter of the mutation proceeding, or, in the house, which was included in the compromise, or, in the lands in suit, and, had no preexisting right, or, any title, whatsoever, in the estate of Sheobhajan Singh, and, whatever right they acquired, they acquired under the compromise itself, from his widow, defendant 1, and, therefore, there is no manner of doubt that the compromise itself created a right in the plaintiffs, and, it alone was the foundation and document of their title.

35. That, at least, is the distinguishing feature between the Allahabad case and the present case, and, therefore, in my opinion, the Allahabad case cannot apply here, and, it is of no assistance to the appellants. I, therefore, reject the contention of the appellants that the compromise petition, Exhibit 1, in the present case, is in the nature of a family arrangement, and, as such, it required no registration.

36. More to the point, however, is the subsequent Full Bench decision of the Allahabad High Court in AIR 1928 Allahabad 641, relied upon on behalf of the respondents, which in my opinion, should govern the present case. In that case, it was held that if an oral family arrangement is followed immediately or after an interval shorter or longer by a petition in court containing a reference to the arrangement (either a mere reference to the fact of there having been an arrangement or a partial or complete setting out of the terms, with or without a declaration of an acceptance of and intention to be bound by those terms), the question whether the reference was merely for the purpose of informing the court or was dictated by a desire to make formal record of the arrangement to be evidenced by the document, will have to be determined on the facts of each case. In the former case registration is unnecessary. But in the latter case, if the value of the property involved is Rs. 100 or upwards, absence of registration makes the document inadmissible in evidence and is fatal to proof of the arrangement indicated in the document.

37. In the present case, as mentioned before, the compromise petition, Ext. 1, was filed in the mutation proceeding not merely for the purpose of informing the court, but was dictated by a desire to make a formal record of the arrangement to be evidenced by the document, and, the value of the property involved being admittedly above Rs. 100, the absence of registration made the document inadmissible in evidence, and, therefore, was fatal to proof of the arrangement indicated in the document.

38. To the same effect is the decision of Dhavle, J., sitting singly, in AIR 1938 Patna 212, also relied upon by the respondents. In that case also there was a compromise between the parties in a proceeding under Section 145, Criminal Procedure Code, limiting and defining for the future the interests of various tenants concerned, who at one time had been holding the land as tenants-in-common, or as joint tenants. By the compromise the interest created was exclusive of other parties and no party was to have any interest in the land allotted to other parties as distinguished from the previous state of things when the disputed land was held by all the parties either as tenants-in-common or joint tenants. His Lordship, Dhavle, J., held, on those facts, that the compromise deed must be dealt with as a document amounting not merely to a recital of facts, but to something which in itself created a title, and, therefore, as a document of title its

registration under Section 17(1)(b) was essential. I express my cordial assent to the above observation of His Lordship.

39. The present case is very much similar to the facts of the just-mentioned case. Here, before the compromise, the plaintiffs, during the life-time of the widow of Sheobhajan, had no interest whatsoever, nor could they claim any interest in his properties, because of being admittedly his separate cousins. But by virtue of the compromise (Exhibit 1) they got one-third interest in the estate of Sheobhajan Singh, which otherwise they would not have got at all, and, therefore, it is obvious that this compromise petition, Exhibit 1, itself created a title, and, as such, it being a document of title, its registration was essential under Section 17(1)(b).

40. In this connection, I would like to refer to a decision of the Supreme Court in *Mst. Kirpal Kuar v. Bachan Singh*¹², in which the decision of the Privy Council, in *Varada Filial v. Jeevarathnammal*¹³, was relied upon. In the Supreme Court case, just mentioned, there was an agreement between the parties, and, it was shown to be used in evidence to show the nature of possession of one of the parties subsequent to its date. In this connection, A.K. Sarkar, J., who pronounced the unanimous opinion of the court, observed :

"In *Varada Pillai's* case i.e. 46 Ind App 285 , Duraisani had got into possession only after the petition and claimed to retain possession only under the gift mentioned in it. The petition was therefore admissible in evidence to show the nature of her possession. In the present case Harnam Kaur had been in possession before the date of the document and to admit it in evidence to show the nature of her possession subsequent to it would be to treat it as operating to destroy the nature of the previous possession and to convert what had started as adverse possession into a permissive possession, and, therefore, to give effect to the agreement contained in it, which admittedly cannot be done for want of registration. To admit it in evidence for the purpose sought would really amount to getting round the statutory bar imposed by Section 49 of the Registration Act."

41. In *Kashinath Bhaskar v. Bhaskar Vishweshwar*¹⁴, and, *Nani Bai v. Gita Bai*¹⁵, also, although these were not cases of a compromise, the principles of Section 17(1)(b) of the Act were held applicable.

42. In the former case, there was a variation of interest, payable under a mortgage, by a subsequent agreement, and, it was held that the agreement embodied in the document, effected the change, and, therefore, it was the document itself which brought the altered terms into being, and, as such this subsequent agreement limited an interest in immovable property and required registration.

43. In the second case, there was a partition in the Mitakshra sense. It was held that such a partition may be effected orally, but if the parties reduce the transaction to a formal document, which is intended to be the evidence of the partition, it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition, and, is thus within the mischief of Section 17(1)(b) of the Act.

44. On the above authorities, therefore, it is manifest that, in the present case, as the disputed compromise petition (Exhibit 1), did not at all contain a mere recital of fact, but, it itself created a title in the plaintiffs, which they did not possess before the compromise, either in fact or in law, at or before the death of Sheebhajan Singh, their admitted separated cousin, it came within the mischief of Section 17(1)(b) of the Act.

45. The compromise speaks for the present. It does not say that this was some past agreement. This compromise by reason of its own force creates the title, claimed here, in the plaintiffs. It does not contain an admission that the agreement had taken place before by which the plaintiffs had been given one-third share. It itself declares a right in the plaintiffs. The compromise caused a definite change of legal relation to the property divided between the parties by an expression of will embodied in it within the meaning of Section 17(1)(b) of the Act, and, as such, it being a document or title, and, the foundation of the right and claim of the plaintiffs, it required registration, and, as such, this document was inadmissible in evidence for want of registration under Section 17 (1) (1)) of the Act, and, accordingly it had rightly been held to be inadmissible in evidence.

46. There is another reason also why the compromise required registration. This compromise also included the house standing on the disputed plot, which was not, and, which could not legally be, the subject-matter of the land registration proceeding, which was concerned only with Land Revenue paying estates. The title of the appellants to the house in suit, which is now in dispute in this suit, was not in dispute then in the Land Registration Proceeding, but was included in the compromise petition, Exhibit 1, stands upon this compromise, but, as it has not been registered, under the provisions of the Registration Act, the Appellants can derive no aid from the terms of the said compromise. For want of its registration, its stipulations are ineffectual in law to create, in favour of the appellants, any right, title or interest to or in, even the house in dispute. It was so held also in *Pranal Annee v. Lakhmi Annee*¹⁶, In this view also, the compromise required to be registered.

47. I would, accordingly, answer the first question by holding that the compromise petition (Exhibit 1), required to be registered under Section 17(1)(b) of the Act, and, as it was not registered, it was inadmissible in evidence.

Re : 2 and 3 :

48. Both these contentions, being interconnected, and, overlapping, may conveniently be dealt with together.

49. It was then argued that, even if this compromise petition (Exhibit 1) be not admissible for want of registration, but, as it was acted upon and, the parties derived benefits thereunder, it amounted to part-performance, and, therefore, they cannot resile from it, and as such defendant 1 also was bound by it, and, she cannot now dispute plaintiffs' one-third share in the land in suit.

50. In support of the above contention, reliance was first placed, on behalf of the appellants, on the observation of Kanhaiya Lal, J., in AIR 1921 Allahabad 248; at page 253, Kanhaiya Lal, J., relying on the decision of the Privy Council, in 42 Ind App 1 : AIR 1914 PC 27, said :

"I may add that even if the petition of compromise required registration, it would still be

admissible in the evidence as collateral evidence of the agreement which the plaintiffs seek to impeach, though it might not operate" to effectuate a valid transfer of rights; and inasmuch it has been acted upon and the parties have enjoyed benefits thereunder irrespective of what might have been or might not have been the respective rights in the property from which they received those benefits, neither party can be allowed to resile from the arrangement then made."

The appellants also then relied on the just mentioned decision of the Privy Council in AIR 1914 PC 27 (Supra).

51. In my opinion, in view of the subsequent decision of the Privy Council, and, also of the Allahabad High Court itself, the above view does not now hold good. I will deal first with the three Privy Council decisions relied upon at the Bar.

(1) AIR 1914 PC 27 :

52. In the first case, AIR 1914 PC 27, the contract had been made when at the relevant date no written conveyance was required, as the Transfer of Property Act of 1882 had not till then been passed. In that case, the object of the suit before Their Lordships was the redemption of two mortgages of 1848 and 1871 before the passing of the Transfer of Property Act in 1882. In those circumstances, it was held that even where the parties to a mortgage settle their claims under it by a compromise by which the mortgage-debts were to be extinguished and the property itself was to be divided among the parties in specific shares and even though the compromise (Razinama) and the decree taken together were considered to be defective or inchoate as elements making up a final and validly concluded agreement for the extinction of the equity of redemption, the acts and the conduct of the parties, founded upon the performance or part performance of such an agreement, were sufficient to cure all such defects; for, equity will support a transaction though clothed imperfectly in those legal forms to which finality attaches after the bargain has been acted upon.

(2) AIR 1931 PC 79 :

53. The second case of the Privy Council, is AIR 1931 PC 79 : 58 Ind App 91.

54. In the above case, the earlier decision of the Privy Council, just mentioned, in Mahomed Musa, AIR 1914 PC 27 (supra), was distinguished on the ground that in that case a contract to convey had been made, and that at the relevant date no written conveyance was required, the Transfer of Property Act of 1882 not having been passed. In Ariff's case, AIR 1931 PC 79, under consideration, the verbal agreement was made in 1913, after the Transfer of Property Act. In the present case also, the compromise, in question, was entered into in 1941, after the Indian Registration Act, 1908, (Act 16 of 1908), had been passed.

55. In Ariff's case, AIR 1931 PC 79, above mentioned, by virtue of a verbal agreement in 1913-a permanent lease of a parcel of land was claimed in anticipation of the execution of the lease. The respondent in that case was let into possession in June, 1913, and, shortly, thereafter, erected certain structures on the land with the knowledge and approval of the appellant of that case. No lease, however, was executed. The appellant, then, after serving upon the respondent a notice to quit, instituted a suit 'in ejectment. The Privy Council held that the respondent, having allowed

his right to enforce his contract to become barred, could not resist the appellant's claim to possession by seeking to establish a title, the acquisition of which is forbidden by the statute, he being a lessee, and, therefore, the appellant was entitled to succeed, there being neither any equitable estoppel, nor, did the doctrine of part-performance apply to the case. The Privy Council held that when a statute requires a registered document it amounts to a statutory prohibition of the creation of such a right, as was claimed there by the respondent, otherwise than by a registered instrument. It was, therefore, held that to such a case where acquisition of title is forbidden by the statute, as here, neither any equitable estoppel, nor, the doctrine of part performance applies to such a case.

(3) AIR 1937 PC 114 :

56. In AIR 1937 PC 114, the plea of estoppel raised by the respondents there was negated. In that case, the appellant which was a company, was a "Public Utility" Company within the meaning of the Public Utility Act, and, under that Act, there was a statutory duty to furnish reasonably adequate service and facilities; and the charges it would make and exact were strictly limited by the Act itself. The respondents who carried on a dairy business bought electric energy from the appellants and the latter claimed the amount due for electric energy supplied. There was, however, a mistake by the appellant in the computation of the accounts. The respondents used the amounts, paid to the appellants, as part of their cost of manufacture of cream, etc., for the purpose of fixing the price to be paid for the said cream and they did base thereon, the amount which they paid to their farmers and others for the said cream. The respondents, therefore, pleaded estoppel against the appellants, on the ground that the respondents believing the statements furnished by the appellants to be correct paid their farmers large sums of money more than they would or could have been paid for the said cream. The specific question for determination there was : Can the duty cast by Statute upon both parties to the action, be defeated or avoided by a mere mistake in the computation of account ? Lord Maugham, who delivered the opinion of the Board, while overruling the plea of estoppel, at page 116, said :

"The sections of the Public Utilities Act which are here in question are sections enacted for the benefit of a section of the public, that is, on ground of public policy in a general sense. In such a case and their Lordships do not propose to express any opinion as to statutes which are not within this category where as here the statute imposes a duty of a positive kind, not avoidable by the performance of any formality, for the doing of the very act which the plaintiff seeks to do, it is not open to the defendant to set up an estoppel to prevent it. This conclusion must follow from the circumstance that an estoppel is only a rule of evidence which under certain special circumstances can be invoked by a party to an action; it cannot therefore avail in such a case to release the plaintiff from an obligation to obey such a statute, nor can it enable the defendant to escape from a statutory obligation of such a kind on his part. It is immaterial whether the obligation is onerous or otherwise to the party suing. The duty of each party is to obey the law."

57. Their Lordships laid down that in such a case the approach to the problem should be that

"the Court should first of all determine the nature of the obligation imposed by the Statute and then consider whether the admission of an estoppel would nullify the statutory

provision".

58. In the present case, similar would be the result, because if the plea of estoppel is upheld the statutory provision contained in Section 17(1)(b) of the Act would be nullified.

59. In the Full Bench decision of the Allahabad High Court in AIR 1928 Allahabad 641, also, it was held that a rule of equity can never be put forward to annul a positive enactment and so the doctrine of part-performance cannot override the provisions of the Transfer of Property Act as regards sale, mortgage, exchange, gift and lease, and it will not cure absence of registration.

60. The decision of S.K. Das, J., as he then was, in 1953 BLJR 214, relied upon by the appellants, on the question of estoppel, has, however, no application to the facts of the present case. The questions which are now being raised here were not raised in that case. There it was not contended that the compromise in that criminal case containing an admission of title required registration. The only question disputed before His Lordship was as to whether the admission of title in the compromise in the criminal case constituted an estoppel under Section 115, Evidence Act. On the facts of that case it was held by His Lordship that although under Section 31, Evidence Act, admissions are not conclusive proof of the matters admitted, yet, an admission, of the plaintiff's title to a piece of land, contained in a compromise, arrived at between the parties, in a criminal case, whereby the defendants got some lands from the plaintiff, constituted an estoppel against them under Section 115, Evidence Act.

61. In the present case, however, the plea of estoppel cannot be urged to get over the statutory bar, as there can be no estoppel against a statute.

62. The principles, which, therefore, emerge from a consideration of the foregoing authorities, may be re-stated, in the following words :

63. The mere fact that mutation has taken place in the Land Registration Department, on the basis of a compromise petition, filed in course of a mutation proceeding, and, that it has been acted upon, and, possession has also been taken under it, cannot, by virtue of what is known as the doctrine of part-performance, cure the absence of registration, if the said compromise petition is compulsorily registrable under Section 17(1)(b) of the Act.

64. Where such a compromise does not contain a mere admission that the agreement, mentioned therein, had taken place before, or, a mere recital of the fact of there having been in the past such an agreement between the parties, and, such a reference is made not merely for the purpose or informing the Court, but, it is a partial or complete setting out of the terms arrived at, dictated by a desire to make a formal record of the agreement to be evidenced by the document, and, cause a change of legal relation to the property divided amongst all the parties to it, and the value of the property involved is Rs. 100 or upwards, it comes within the mischief of Section 17(1)(b) of the Indian Registration Act, and, the absence of registration makes the document inadmissible in evidence and is fatal to the proof of the arrangement indicated in the document. To admit such a document in evidence for the purpose of proving the title, mentioned therein, in immoveable property worth Rs. 100 or upwards, and, to give effect to the agreement, would really amount to

getting round the statutory bar imposed by Section 49 of the Indian Registration Act.

65. The true test, therefore, to apply to a transaction, like a compromise, in order to decide, whether it comes within the purview of Section 17(1)(b) of the Act, is, whether it speaks for the present, and, it does not say that this was some past agreement, and, whether it itself, by reason of its own force, creates the title claimed. If it is intended to be the evidence of the agreement, mentioned therein, and, with that end in view it is reduced to a formal document, it implies a declaration of will embodied in the document, and, as such, it has the effect of declaring the title, mentioned therein, within the meaning of Section 17(1)(b) of the Act.

66. In such a case, no question of equitable estoppel either arises, because a rule of equity can never be put forward to annul a positive enactment, and, the admission of estoppel would nullify the statutory provision.

67. When a Statute requires a ministered document, it amounts to a statutory prohibition of the creation of such a right, otherwise than by a registered instrument. Where, therefore, acquisition of title is forbidden by Statute, neither any equitable estoppel, nor, the doctrine of part-performance applies to such a case.

68. Accordingly, neither the doctrine of part-performance, nor, the rule of equitable estoppel can override the mandatory provisions of Section 17(1)(b) of the Act; except in a case covered by the proviso to Section 49 of the Act.

69. It follows, therefore, that, in the present case also, neither the plea of part-performance, nor, the plea of estoppel can be of any avail to the plaintiffs when the compromise petition (Exhibit 1), which is the foundation of their title, was not registered, and, as such the plaintiffs, on the basis of the said compromise cannot claim any title to the land in suit.

70. For the reasons given above, I would, therefore, answer these two questions in the negative, by holding, that the compromise petition (Exhibit 1), although acted upon, did not constitute an estoppel against defendant 1, nor, the fact that it amounted to part-performance, could be pleaded to get over the bar of non-registration. The Court of appeal below, therefore, has rightly overruled the pleas set up by the plaintiffs and dismissed their suit.

71. In the result the appeal fails, and, is dismissed with costs.
Appeal dismissed.

Cases Referred.

¹ AIR 1921 All 248

² AIR 1914 PC 27

³ 1953 BLJR 214

⁴ AIR 1928 All 641

⁵ AIR 1938 Pat 212

⁶ AIR 1931 PC 79

⁷ AIR 1937 PC 114

⁸ ILR 5 Bam 232

⁹ ILR 11 Pat 272 : 59 Ind App 130

¹⁰25 Ind App 9

¹¹AIR 1942 PC 34 : 69 Ind App 110

¹²AIR 1958 SC 199

¹³40 Ind App 285 : AIR 1919 PC 44

¹⁴AIR 1952 SC 153

¹⁵AIR 1958 SC 706

¹⁶26 Ind App 101 at p. 106