

(1920) 07 CAL CK 0006

Calcutta High Court

Case No: None

Haripada Ghose and Others

APPELLANT

Vs

Nirod Krishna Ghose and Others

RESPONDENT

Date of Decision: July 29, 1920**Acts Referred:**

- Transfer of Property Act, 1882 - Section 118

Citation: AIR 1921 Cal 383 : 61 Ind. Cas. 687**Hon'ble Judges:** Asutosh Mookerjee, Acting C.J.; Ennest Fletcher, J**Bench:** Division Bench

Judgement

1. This an appeal by the plaintiffs in a suit for recover of possession of land on declaration of title. The subject matter of the litigation was held by the plaintiffs as tenants under the principal defendants. In 1911 two of the plaintiff who were at the time infants, represented by their mother as guardian-ad-litem, brought a suit for recovery of arrears of rent against the tenant in actual occupation of the land The tenant pleaded that the superior and lords of the plaintiffs, that is, the present principal defendants, had collected rent from him. Thereupon the superior lands I made parties to the rent suit. A compromise was subsequently made between the tenant-defendant and the superior land lords defendants. The result of the compromise was that the land for which the plaintiffs had claimed rent, was surrendered by them to their superior landlords who gave them other lands in exchange. The exchange was accomplished in fast, the plaintiffs took possession of the lands given to them and the principal defendants entered into possession of the lands for which rent had been claimed in the previous litigation. The plaintiffs now seek to recover from the principal defendants the lands which they gave away in the circumstances just explained. The substantial question in controversy between the parties now is as to the legal effect of the compromise in the previous suit.

2. It is plain that, as the value of the disputed property exceeds one hundred rupees in value, u/s 118 of the Transfer of Property Act, read with Section 54, the exchange

could have been validly effected, only by a registered instrument. The plaintiffs contend that as no registered instrument was executed title in the disputed lands did not, by virtue of the compromise, pass to them from the principal defendants, nor did the title in respect of the land for which rent was claimed in the prior suit pass from them to the principal defendants. This view is supported by the decision in *Birbhadra nath v. Kalpataru Panda* 1 C.L.J. 388 and is not contrary to the decision of the Judicial Committee in the case of *Hemanta Kumari Debi v. Midnapore Zemindari Co.* 53 Ind. Cas. 531 : 47 C. 485 : 37 M.L.J. 525 : 17 A.L.J. 1117 : 24 C.W.N. 177 : (1920) M.W.N. 66 : 27 M.L.T. 42 : 11 L.W. 301 : 46 I.A. 240 : (sic) bem. L.R. 488 (P.C.). The land now in dispute was not the subject-matter of that litigation and, although the suit was dismissed on compromise, the terms of the compromise were not set out in the decree. In such circumstances, *prima facie*, the plaintiffs are entitled to a decree.

3. But the respondents have urged that the plaintiffs should not be permitted to succeed in this litigation on equitable grounds and have placed reliance upon the decision of this Court in the case of *Sarat Chandra Ghose v. Sham Chand Singh Roy* 14 Ind. Cas. 701 : 39 C. 663 16 (sic) and the rule recognised by the Judicial Committee in the case of [Mahomed Musa Vs. Aghore Kumar Ganguli](#). The principle invoked by the respondent has been frequently applied in this Court. That principle is that, when, in pursuance of an agreement to transfer property, the intended transferee has taken possession, though the requisite legal documents have not been executed and registers the position is the same as if the documents had been executed, provided that specific performance can be obtained between the parties to the agreement in the same Court and at the same time as the subsequent legal question falls to be determined. Illustrations of the application of this doctrine will be found in a long line of cases in this Court from *Bibi Jawahir Kumari v. Chatterput Singh* 2 C.L.J. 343, to *Syam Kishore De v. Umesh Chandra* 55 Ind. Cas. 154 : 31 C.L.J. 75 : 24 C.W.N. 463, In the case last-mentioned, it was pointed out that the result may be reached either by the application of the rule in *Walsh v. Lonsdale* (1832) 21 Ch. D. 9 : 52 L.J. Ch. 2 : 46 L.T. 858 : 31 W.R. 109 or of the doctrine of part performance enunciated in *Maddison 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, which was followed by the Judicial Committee in [Mahomed Musa Vs. Aghore Kumar Ganguli](#).

4. This aspect of the matter does not appear to have been put forward in the Courts below and the appellants have contended that the case should be remanded for fresh investigation. We have, however, after careful consideration, come to the conclusion that it is not necessary to prolong the litigation further. No doubt, at the time when the compromise was entered into on behalf of the plaintiffs, they were infants, and the case was settled by leave of the Court obtained on their behalf by their mother who acted as the guardian ad litem. But it is also clear that, since attainment of majority the plaintiffs have elected to abide by the transaction. In such circumstances, we are of opinion that the plaintiffs should not be allowed to succeed

in this litigation, followed by the inevitable result that the defendants would be driven to institute another suit for recovery of possession of the lands which they gave in exchange.

5. The result is, that we affirm the decree of dismissal made by the lower Appellate Court, but we direct each party to pay his own costs of the litigation in all the Courts.

Fletcher, J.

6. I agree.