

1909  
 PURNA  
 CHANDRA  
 NANDAN  
 v.  
 TARACK  
 NATH  
 CHANDRA.

because his employers failed to perform their part of the agreement. We think the remedy of the parties, if they have any, lies in the Civil Court. For these reasons, the Rule is made absolute. We set aside the order of the Presidency Magistrate.

*Rule absolute.*

E. H. M.

## APPELLATE CIVIL.

*Before Mr. Justice Cox and Mr. Justice Chatterjee.*

1909  
 June 7.

JAGADBANDHU SAHA

v.

RADHA KRISHNA PAL.\*

*Estoppel—Sale—Mortgage—Unregistered Sale-deed and Mortgage-bond—Transfer of Property Act (IV of 1882) s. 54—Suit for possession and mesne profits.*

The principle of estoppel cannot be invoked to defeat the plain provisions of a statute.

*Begam v. Muhammad Yakub (1), Ram Baksh v. Mughlani Khanam (2) and Karalia Nanuōnai v. Mansukhram (3) distinguished.*

SECOND APPEAL by the plaintiff, Jagadbandhu Saha.

The plaintiff brought the suit for the recovery of khas possession from the defendants 1 and 2 on the allegation that, the transfer of the lands having failed through the neglect of the defendants 1 and 2 to get the *kobala* (executed in their favour for Rs. 100) registered, the plaintiff was entitled to recover possession of the land with mesne profits, after deducting the sum of Rs. 10, the earnest money, deposited by the defendant.

The Munsif gave a decree as prayed for, but the Subordinate Judge on appeal considered that the equities on the defendants' side preponderated over those of the plaintiff's, and the plaintiff was estopped by his conduct from recovering possession. He

\* Appeal from Appellate Decree, No. 2557 of 1907, against the decree of Hari Lal Mukerjee, Subordinate Judge of Tipperah, dated Aug. 28, 1907, modifying the decree of Ashutosh Chatterjee, Munsif of Chandpur, dated Dec. 10, 1906.

(1) (1894) I. L. R. 6 All. 344.

(2) (1903) I. L. R. 26 All. 266.

(3) (1900) I. L. R. 24 Bom. 400.

accordingly modified the decree for the unpaid balance of the consideration money and directed that the same should be charged on the disputed land. Against this judgment the plaintiff appealed to the High Court.

*Babu Basanta Coomar Bose*, for the appellant.

*Babu Romesh Chandra Sen* (for *Dr. Preo Nath Sen*), for the respondents.

1909  
 JAGAD-  
 BANDHU  
 SAHA  
 v.  
 RADHA  
 KRISHNA  
 PAL.

COXE AND CHATTERJEE JJ. In this case the plaintiff attempted to sell certain land to the defendants for Rs. 110, and put them in possession. They then attempted to mortgage the same land back to him with some other lands for Rs. 100. Neither the sale-deed nor the mortgage-bond was registered, and the plaintiff brought this suit for recovery of possession on return of the sum of Rs. 10 paid to him by the defendants as part consideration. The Munsif gave him a decree for khas possession and mesne profits subject to the deduction of the sum of Rs. 10 with interest. On appeal, the learned Subordinate Judge considered that the equities on the defendants' side preponderated over those on the plaintiff's, and that the plaintiff was estopped by his conduct from recovering possession. He accordingly gave the plaintiff a decree for the unpaid balance of the consideration money, and directed that this should be a charge on the disputed land.

The plaintiff appeals to this Court and relies on section 54 of the Transfer of Property Act, which lays down that in the case of land worth Rs. 100 and upwards sale can be made only by a registered instrument. If in the case of such property sale can be made only by a registered instrument, it appears to us to follow that where a registered instrument is not executed there is no sale; and if that is the case here, the plaintiff's title is not extinguished and he is entitled to recover possession of the property. The learned pleader for the appellant has cited a number of cases in support of his argument, but the words of the section are in themselves so simple

1909  
 JAGAD-  
 BANDHU  
 SAHA  
 v.  
 RADHA  
 KRISHNA  
 PAL.

and unambiguous that we do not think it necessary to refer to those cases in detail.

On the other hand, it is argued that the plaintiff is estopped by his conduct, having received Rs. 10 as part-payment and put the defendants in possession. But you cannot invoke the principle of estoppel to defeat the plain provisions of a statute, and we cannot evade the effect of section 54 by holding that the plaintiff is estopped from pleading it. The learned pleader for the respondents has relied on two cases decided in the Allahabad High Court, namely, *Begam v. Muhammad Yakub* (1) and *Ram Bakhsh v. Mughlani Khanam* (2). Those cases were different from the one which is now under our consideration, and we do not think that they bind us in any way to hold that the attempted transfer to the defendants in this case was a valid sale. Another case referred to is *Karalia Nanubhai v. Mansukhram* (3). In that case the conveyance was ultimately registered and, therefore, under section 47 of the Registration Act, took effect from the date of sale. That case, therefore, is quite distinguishable from the present one.

In our opinion, the decision of the Munsif is perfectly correct, and this appeal will, therefore, be allowed and that decision restored with costs.

*Appeal allowed.*

S. A. A. A.

(1) (1894) I. L. R. 16 All. 544.

(2) (1903) I. L. R. 26 All. 266.

(3) (1900) I. L. R. 24 Bom. 400.