

(1877) 08 AHC CK 0006

Allahabad High Court

Case No: None

Narayan Das and
Others

APPELLANT

Vs

Man Singh

RESPONDENT

Date of Decision: Aug. 3, 1877

Citation: (1875) ILR (All) 480

Hon'ble Judges: Spankie, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

The question whether the bond on which the claim in the present suit is founded was collusive or not was distinctly raised by the pleadings in the suit formerly brought by Man Singh against Tula Ram (now represented by the present plaintiff's), was made an issue for trial, and was determined in that suit adversely to Tula Ram. The lower Appellate Court is of opinion that the finding on that issue in that suit does not preclude a re-adjudication of it in the present suit for two reasons: first, because the determination of the issue in that suit was not required for its disposal; and, secondly, because the finding by which it was determined was imperfect. We are unable to concur in the opinion. It is true that the Munsif might have disposed of the former suit without adjudicating on that issue on the basis of his findings on the other issues tried by him; but it is also true that he was perfectly justified in laying down that particular issue for trial, as it arose out of the pleadings and an adjudication on it might have been necessary, and as his finding thereon rendered his decision in the case more firm and complete. We are not prepared to hold that he was bound to refrain from adjudicating upon it under the circumstances, or that his adjudication thereon can be treated as a nullity. His finding is regarded as imperfect by the lower Appellate Court, because it proceeded on the ground that Tula Ram had failed to prove the authenticity of the bond, rather

than on any absolute proof of fraud. But, if the finding were open to objection either on the score of irrelevancy or error, the objection might have been taken in the appeal preferred by Tula Earn against the decree passed by the Munsif on the 12th December 1873, in Man Singh's favour. Tula Ram appealed to the Zila Judge and to this Court, but never took any such objection, and the finding remained undisturbed. This being so, the question determined by it must in our judgment be deemed to be a *res judicata* not open to re-adjudication. Allowing then the validity of the plea in appeal, we decree the appeal, reverse the decrees of the lower Courts, and dismiss the suit with costs in all Courts.