(1921) 12 PAT CK 0005

Patna High Court

Case No: None

Kali Dayal		APPELLANT
	Vs	
Umesh Prasad and Others		RESPONDENT

Date of Decision: Dec. 14, 1921

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Evidence Act, 1872 - Section 115

Hon'ble Judges: Dawson Miller, C.J; Coutts, J

Bench: Division Bench

Judgement

Miller, C.J.
This is an appeal under the Letters Patent by the plaintiff from a decision of Das, J. setting aside the decree of the Officiating District Judge of Bhagalpore and restoring that of the Munsif dismissing the suit.

2. The suit was instituted in 1916 by the plaintiff, the auction- purchaser at an execution sale of a holding measuring 35 acres 72 decimals, against the landlords claiming (I) to set aside a rent-decree obtained by the landlords against the previous tenant and (II) declaration that the rent of 11 annas per bigha is payable upon a measurement expressed in bighas according to the Kamarkhole system, viz., 57 bighas 3 cottas, and not as claimed by the landlords according to the Kamarband system, which amounts to 70 bighas The previous tenants were also added as second party defendants, but are not directly interested in the litigation and have taken no part in this appeal. The present appeal is concerned only with the second part of the claim above mentioned, and the question for determination is whether the plaintiff''s suit is barred by the doctrine of res judicata, the issue Laving been determined in a previous litigation between the plaintiff''s predecessors in title and the landlords, who are the first party defendants in this suit.

3. The facts giving rise to the dispute are as follows: In 1911 the landlords brought a suit (No. 496 of 1911) in the Court of the Munsif at Bhagalpore against the second party defendants, who may be referred to as the tenants, claiming (i) recovery of possession of the land in question, which they described as measuring 70 bighas according to the Kamarband system, or alternatively (ii) assessment of a fair rent. Shortly afterwards in 1912 the tenants sued the landlords in Title Suit No. 62 of 1912 in the same Court for a declaration that the same lands, measuring according to the Kumarkhole system 57 bighas 3 cottas, were their lakheraj lands. Those suits were tried together and decided by the same judgment. The tenants'' suit failed and was dismissed. The landlords'' suit also failed in so far as it sought for khas possession, but succeeded on the question of assessment of rent which was assessed at 11 annas per bigha. The judgment did not in terms decide the area in bighas upon which rent should be payable, but in the decree signed in pursuance of the judgment the rent was stated as Rs. 48 annas 2, being 11 annas on 70 bighas, the measurement claimed by the landlords.

4. In 1914 the landlords sued the tenants for rent in Rent Suit No. 11(sic)/3l of 1914, claiming at the rate of 11 annas on 70 bighas or Rs. 48 2 0 altogether. In that suit an issue was raised as to the cumber of bights upon which the rent was payable, the tenants alleging that the area properly assessable to rent was 57 bighas 3 cottas according to the Kamarkhola system and not 70 under the Kamarband system, with a total rental of Rs. 35-1-0 after deducting 6 bighas as not fit for cultivation.

5. That suit, including the said issue, was decided on the 13th May 1915 in favour of the landlord and against the tenants.

6. Subsequently on the 20th July 1915 the holding was brought to sale by the landlords in execution of their decree for costs in the litigation of 1911 and 1912 and was purchased by the plaintiff. The attachment process and the sale certificate in that sale indicated that there was a charge upon the holding for the amount of the rent, decree obtained by the landlords in the Rent Suit No. 111 31 of 1914. The landlords then put in execution that rent-decree and again put the property up for sale. The plaintiff, after an objection by him under Order XXI, Rule 58, of the CPC had been disallowed, deposited the decretal amount under the provisions of Section 170 of the Bengal Tenancy Act, and shortly afterwards in 1916 instituted the present suit claiming, as already stated, to set aside the decree obtained by the landlords in the rent sail of 1914 on the ground of fraud, and asking for a declaration that the proper area of the holding was that arrived at according to the Kamarkhole measurement, viz., 57 bighas and not 70 bighas as previously decided. The sale in execution of the rent decree was then stayed pending the hearing of the suit. In answer to the claim the landlords pleaded, inter alia, that it was barred by the doctrine of res judicata as well as by estoppel, and the 5th and 6th issues framed were stated in general terms thus:

5. Is the suit barred by the doctrine of res judicata?

6. Is the suit barred by the principle of estoppel?

7. The learned Munsif considered that the doctrine of res judicata did not apply, but that the plaintiff, having purchased the property with full knowledge of the charge for rent, viz., Rs. 48-2 0, decreed in the Rent Suit No. 111/31 of 1914, could not afterwards turn round and be permitted to question the validity of that decree and further that as the rent had also been settled in the Title Suit No. 496 of 1912, although this might not operate as res judicata, the plaintiff not having been a party to it, it was strong evidence against him and that in any case the principle of estoppel precluded him from raising the question of area and rental. In the event he dismissed the suit with costs.

8. It is manifest that the learned Munsif was labouring under some confusion as to the principles underlying the doctrine of estoppel and res judicata, as has been pointed out by the learned District Judge before whom the case went on appeal. The learned District Judge came to the conclusion that the Munsif was wrong in applying the doctrine of estoppel and that if there was any estoppel, it was an estoppel by judgment, which is the same thing as res judicata, With this part of his decision I entirely agree. The doctrine of res judicata is sometimes treated in test-books as a branch of the doctrine of estoppel and is referred to as estoppel by judgment. The doctrine of estoppel, properly so-called, is dealt with in Section 115 of the Evidence Act. There is, however, a difference in the principle upon which the two doctrines are based. Res judicata in this country is founded on the principle that there should be an end to litigation as to any issue between the parties when ones that issue has been directly determined between them by a Court of competent jurisdiction, and it affects not only the original parties but all others afterwards claiming under them and litigating under the same title. It bars fresh litigation at the outset. Estoppel is a rule of evidence based on the principle that a man who by his acts or statements has induced another to believe a thing to be true, should not afterwards be heard to deny the truth of that thing to the prejudice of the other who acted upon the belief so induced.

9. In the present case no facts are disclosed which would bring the doctrine of estoppel into operation, but if the plaintiff is bound by the judgments in the previous litigation, then the doctrine of res judicata applies. The learned District Judge considered that if the present suit had been between the landlords and the previous tenants, the latter would have been effectually mat by the plea of res judicata, and with this part of his decision I am again in agreement. He was of opinion, however, that a purchaser at an execution sale who purchased the right, title and interest of the judgment-debtor, was not a person claiming under the latter and was, therefore, not bound by the rule of res judicata and might again in a suit between himself and the landlords re-open the matters already decided between his predecessor-in-title and the landlords. He then found as a fast that the Kamarkhole system of measurement prevailed in the mauzah in which the land in situated and

that the area upon which rent was payable, expressed in bighas, was 57 bighas 3 cottas and not 70 bighas. He accordingly allowed the appeal to that extent, but dismissed that part of the claim which sought to set aside the rent-decree as he found it was not obtained by fraud, and with that we are no longer concerned. From this decision the landlords appealed to this Court, and contended that the claim was barred by the rule of res judicata. The learned Judge before whom the appeal came decided that the plaintiff, as auction-purchaser of the holding sold in execution of a money-decree, was bound by the result of the previous litigation between his predecessors-in-title and the landlords and that the plea of res judicata was a bar to the suit. He accordingly set aside the decree of the District Judge and restored that of the Munsif. From that decision the present appeal is brought by the plaintiff.

10. It was contended by the learned Counsel on his behalf, in the first place, that the auction-purchaser who buys in execution of a money-decree is not bound as between himself and the landlord by any previous litigation between the landlord and the tenants whose interest he has purchased, and secondly, that the only decision pleaded in the written statement as a bar was the judgment in Suits No. 496 of 1911 and No. 62 of 1912, which were tried together, and that the question of the proper measurement of the land was left undecided in that judgment notwithstanding the decree. It is convenient to dispose of the second point first, It is not disputed that a direct issue was raised upon the question of measurement in the rent suit of 1914, which was decided in the landlords'' favour and against the tenants on the 13th May 1915 before the plaintiff acquired his interest, but it is said this judgment was not pleaded as a bar. We have not seen the pleadings in the suit, as they form on part of the record before us on appeal. But if the appellant wished to rely upon those documents, it was his duty under the rules to have provided translations of them for the Court, which he has not done. We are unable, therefore, to say how far his instructions are accurate when he says that the only decision pleaded as res judicata was that come to in the litigation of 1911 and 1912. It appears, however, from the judgments of both the Munsif and the District Judge in the present case, which are before us, that not only the judgment in those suits but also the judgment in the Rent Suit No. 111/31 of 1914, where the point was determined, were relied upon and dealt with as supporting the defendants'' plea and the issue framed, was as already stated, in general terms and not confined to any particular judgment. It seems clear, therefore, whatever the exact form of the pleading may have been, that the judgment in the rent suit was relied upon without objection at the trial and on appeal before the District Judge, and when the matter came before Mr. Justice Das, it does not appear from his judgment that the point was ever taken that the judgment in the rent suit could not be relied upon. Had objection been taken to the evidence of the decision in the rent suit at any stage of the proceedings, a formal amendment of the written statement, if in fact it was defective, would doubtless have been allowed and even at this late stage I should be inclined in the circumstances mentioned to allow such an amendment, if I thought it

necessary, as by so doing the nature of the suit would in no way be altered, nor would any further evidence be necessary to determine the real issue between the parties, I do not, however, consider such a course necessary. The High Court Rules in Chapter IX specify the papers which shall be printed in the paper-book in first appeals and in second appeals where the value exceeds Rs. 50. These include, inter alia, the plaint and written statement, In a second appeal not exceeding Rs. 50 in value, which this is, the paper-book which is prepared by the Court free of charge to the parties does not contain the pleadings, but under Rule 35 the appellant must, before the hearing of the appeal, serve on the respondent a copy or translation of any document upon the construction of which, he considers the determination of the appeal depends and provide another copy or translation for the use of the Bench and if he fails to do so, he shall not without special leave of the Bench refer to such document at the hearing. The appellant throughout the case has raised no objection until now that the judgment in the rent suit should not be taken into consideration, and has allowed the plea raised in the written statement to be treated as if it were properly framed so as to admit of evidence of that judgment. If in fact it is defective, an amendment would cure the defect and in view of the attitude of the appellant, who even now has not provided a translation of the document he relies upon I think leave to refer to it should be refused''

11. The other point raised by the appellant depends on whether the previous tenants whose interest the appellant purchased at the execution sale are parties under whom he claims within the meaning of Section 11 of the Civil Procedure Code. The appellant relies upon a dictum of Lord Justice James in pronouncing the judgment of the Judicial Committee in Anundoo Moyee Dossee v. Dhonendro Chunder Mookerjee 14 M.I.A. 101 : 16 W.R.P.C.19, 8 B.L.R. 122 : 2 Suth, P.C.J. 457 : 2 ser. P.C.J. 698 : 20 E.R. 1871. That appeal was determined on the facts in favour of the respondent, it being found that the mortgage relied on by the appellant as the foundation of his title was made after the attachment of the property in pursuance of a decree in execution of which the respondent purchased. It was, therefore, unnecessary to determine what the rights of the parties would have been if the attachment had been posterior to the mortgage. Their Lordships, however, expressed the opinion that, even in the latter case, the execution purchaser, who took without notice of the encumbrance, thinking he had an absolute title, and who held possession for twelve years as absolute owner, was not in the same position as the mortgagor or a person claiming under a voluntary alienation from him. On the assumption that no notice of the mortgage was proved, their Lordships thought that the possession of the purchaser was the possession of a person claiming to be owner and that he could plead the Limitation Regulations by which he could set up a title by adverse possession against the mortgagee. This dictum, however, does not decide that the execution purchaser in all cases acquires a better title than the previous owner. It seems to me it is merely an exception to the general rule and should not be extended so as to destroy the effect of the rule in all cases of a sale in

execution of a decree. Other exceptions may arise by Statute, as in the case of sales in execution of a rent decree under the Bengal Tenancy Act, or under the law merchant in England in the case of sales in market overt But I apprehend that the general rule is that no man can transfer to another a better title than he himself possesses.

12. The next case relied an by the appellant was Imrit Kooer v. Lalla Debee Pershad Singh 18 W.R. 200 decided in 1872, in which Sir Richard Couch, C.J., held that the execution purchaser, the defendant in the suit, was not bound by statements made by the judgment-debtor on a previous occasion as he was not in the position of a person who takes a conveyance direct from the parties. It is not quite clear from the judgment how far the learned Chief Justice meant to rule that the doctrine of estoppel would not apply in such a case. There is nothing in the report to show that the statement made by the defendant''s predecessor was one which the plaintiffs had acted upon so as to place themselves in any worse position. Nine years later in 1881, Divendronath Sannial v. Ramkumar Ghose 7 C. 107 : 4 Shome L.R. 236 : 8 I.A. 65 : 10 C.L.R. 281;4 Sar. P.C.L. 213 : 5 IND. jur.376, 3 Ind. Dec. 619. was decided by the Judicial Committee and it was held that the purchaser in execution, "notwithstanding he acquires merely the right, title and interest of the judgment-debtor, acquires that title by operation of law adversely to the judgment debtor, and free from all alienations or incumbrances effected by him subsequently to the attachment of the property sold in execution." It will be observed that the alienations and incumbrances which do not bind the purchaser are expressly limited to those arising after attachment. From the date of attachment the judgment-debtor''s powers of disposal are of no effect as against the purchaser, who by operation of law takes adversely to the judgment debtor at least from the date of attachment. The execution purchaser is, therefore, in a better position than the purchaser by private treaty, but only to the extent to which the law operates in his favour from the date of the attachment. These decisions have been taken in some later cases as authority for the proposition that the execution purchaser was not the representative of the judgment debtor so as to bring him within the rule of estoppel [See Lala Parbhu Lal v. Mylne 14 C. 401 7 lad. Dec. 267 . This view, however, can in my opinion, no longer be supported in face of the judgment of the Judicial Committee delivered by Sir Richard Couch in Mahomed Mozuffer Hossein v. Kishori Mohun Roy 22 C. 909 : 22 I.A. 129 : 5 M.L.J. 101 6 Sar. P.C.J. 583 : 11 Ind. Dec. 602 in which it was laid down that where the principle of estoppel applied as against the judgment-debtor, the execution purchasers were in the same position and were equally bound by it as they purchased only his right, title and interest. More recently in 1909 the Calcutta High Court held in Debendra Nath Sen v. Mirza Abdul Samed Seroji 1 Ind. Cas. 264 : 10 C.L.J.1150 that the purchaser at the execution sale is bound by the same rule of estoppel as the judgment-debtor, on the principle that the former has purchased merely the right, title and interest of the latter and does not consequently occupy a position of greater advantage and that the contrary view

is not supported by authorities nor defensible on principle. If then the execution purchaser as the representative of the judgment-debtor is bound by the doctrine of estoppel in cases where the latter would have been bound, what is his position with regard to the application of the doctrine of res judicata in similar circumstances? No argument has been adduced why we should differentiate the two cases. The representative of the judgment-debtor in the one case seems to me to be on the same footing as the person claiming under him in the other. A. person claims through or under another when he derives his title through that other either by assignment, inheritance or succession or when he holds a subordinate title granted by the other, and except in cases specially provided for by Statute or common law, he can have no better title than the person through or under whom he claims. In my opinion Section 11 of the CPC applies to the facts of this case so as to bar the appellant''s suit, and this appeal should be dismissed with costs.

Coutts, J.

13. I agree.