
(1918) 03 PAT CK 0013**Patna High Court****Case No:** Civil Revision No. 339 off 1917

Kishun Deyal Rai

APPELLANT

Vs

Musammat Kulpati
Kuer

RESPONDENT

Date of Decision: March 23, 1918**Final Decision:** Allowed

Judgement

Atkinson, J.

This application comes before us in revision u/s 115 of the CPC against an order of the learned Munsif, dated the 3rd of November 1917, refusing an application for review of a judgment passed by the learned Munsif on the 29th of May 1917. The action was one for rent, and the rent sought to be recovered was in respect of the years 1320 to 1323. The plaintiffs claimed that the rate of rent was Rs. 124 odd per annum; the defendants on the other hand contended that the rate of rent payable was only Rs. 63 odd. The plaintiffs' case was based upon an entry in the Record of Rights, which disclosed that the rent as recorded was Rs. 124 odd. On the other hand there was a proceeding u/s 106 of the Bengal Tenancy Act in which the Settlement Officer found that the rate of rent actually payable was Rs. 63. No appeal appears to have been taken from the order of the Settlement Officer in the section 106 proceeding by either party, and, therefore, the order of the Settlement Officer would appear to be final and conclusive as between the parties to that proceeding. There have been previous rent suits between the same parties. A suit for rent was decreed by the Subordinate Judge in the year 1912 upon the basis of the order of the Settlement Officer. That decree was subsequently set aside by an order of the Calcutta High Court; and their Lordships in that case suggested to the parties that the proper course to adopt would be to have the Settlement Officer's order reviewed; but notwithstanding the intimation that was given by their Lordships neither party did anything to impeach or challenge the order of the Settlement Officer; hence the difficulty that has arisen. With the above suggestion the learned Judges of the Calcutta High Court remanded the case to the Subordinate Judge who on the 12th of February 1916 affirmed the decision of the Munsif awarding a decree to the plaintiffs at the rate of Rs. 124 odd

per annum That decision came before us in second appeal; and while that second appeal was pending, the judgment now complained against was passed on the 29th of May 1917. Our judgment was pronounced on the 11th of July 1917 and by that judgment was confirmed the order of the lower Appellate Court on the ground that it was only a judgment for rent for the years in suit and no more; and that a judgment in a rent suit did not in point of law amount to an estoppel and did not accord with the principles of res judicata unless the rent was payable at a rate stipulated by contract. We also intimated in our judgment that we thought that great weight should be attached to the order made by the Settlement Officer in the section 106 proceeding. After our judgment was pronounced the defendants in the rent suit, who are the present petitioners before us, applied to the learned Munsif to review his order, dated the 29th of May 1917. At the time that the application for review was filed, the learned Munsif who had tried the case had left Arrah and was succeeded by the present Munsif Mr. Syed Hasan, Mr. Syed Hasan considered that in pursuance of the provisions of Order XLVII, rule 2, he, not having been the Judge who tried the suit, had no jurisdiction to entertain the present application for review, as the application presented to him did not come within the four corners of the rule. He held that no new or important matter had been discovered, and that there was no clerical or arithmetical error such as to justify him in interfering with the order of his predecessor. The ground upon which the petitioners based their application for review was that new and important matter had come into existence in the shape of our judgment and that that judgment was material in considering what were the relative rights of the parties. The learned Munsif, however, appears to have failed to appreciate the nature of the new and important matter indicated by Order XLVII, rule 2. Clearly our judgment was a new and important matter which he should have properly considered with a view to ascertaining whether or not it afforded sufficient ground for re-considering the order which had been previously passed on the 29th of May 1917. The learned Munsif has also clearly fallen into an error in two other respects. He has held that the judgment of the Subordinate Judge of the 12th of February 1916 amounts to res judicata so far as that judgment establishes that the rate of rent payable by the defendants is Rs. 124 odd per annum. Clearly in holding that that judgment amounted to res judicata between the landlord on the one hand and the tenants on the other the learned Munsif fell into an error. A decree in a rent suit is not res judicata as to the rate of rent payable for years other than the years covered by the decree. Another error which the learned Munsif has made is as regards the weight to be attached to the order of the Settlement Officer. He considers that it has very little weight because it is founded on a judgment of the Subordinate Judge which was subsequently set aside by the Calcutta High Court. That is obviously an error, because though the Settlement Officer's order may have been based upon an order of the Subordinate Judge which was set aside, yet it has, by lapse of time, crystallised into a binding decree between the parties and, therefore, is entitled to great weight. We think, therefore, that the view which the learned Munsif took of Order XLVII, rule 2, is erroneous and that there was new and important matter in the shape of our judgment which he should have considered having regard to the legal directions contained therein. We feel, therefore, that we must set aside the order of the learned Munsif dated the 3rd of

November 1917 and direct him to re-try the whole case. The original decree of the 29th of May 1917 is also set aside and the learned Munsif is directed to re-hear the whole case, having due regard to the order of the Settlement Officer which has crystallised into a binding decree between the parties; and also bearing in mind that a rent-decree is not res judicata upon the question of the rate of rent payable in respect of years other than those covered by the decree. This application is accordingly allowed with costs, hearing fee one gold mohur.

B.K. Mullick, J.

2. I agree. The question whether a decision as to the rate of rent operates as res judicata depends on the frame of the issue. Here the order of the High Court did not permit the Subordinate Judge to determine anything more than the rent of the years in suit.