(1916) 08 CAL CK 0001

Calcutta High Court

Case No: None

Bepin Behary Mozumdar and Others		APPELLANT
	Vs	
Jogendra Chandra Ghosh and Another		RESPONDENT

Date of Decision: Aug. 29, 1916

Citation: 36 Ind. Cas. 641

Hon'ble Judges: Cuming, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. We are invited in this Rule to direct u/s 10 of the Civil Procedure code, 1908, that a suit for rent in the Court of the (Subordinate Judge of Khulna be stayed daring the pendency of an appeal in this Court. The petitioners were defendants in a suit for rent instituted against them by the opposite party on the 6th May 191 J. in the Court of the Subordinate Judge of Khulna for settlement of fair rent and for recovery of arrears of the years 1314--17 B.S. The claim was resisted on various rounds amongst which we may mention one, namely that the plaintiffs had evicted defendants from the lands of Mauza Ula claimed by the defendants as include in their tenure. The plaintiffs did no admit that Mama Ula was so included am apparently maintained that they themselves were lawfully in possession of those lands The Subordinate Judge tried the suit of evidence, overruled the plea of suspension of rent by reason of eviction, and made modified decree in favour of the plaintiffs, in his opinion the defendants were equitably entitled to certain deductions. The Subordinate Judge, however, stated at the conclusion of his judgment that the decision with respect to Ula will not be binding as between the vendees and the question whether Ula appertains to the tenure of the defendants of not was left open as between them. This declaration was incorporated in the decree made on the 23rd April 1914. On the 9th June 1914, the defendants lodged an appeal in this Court against the decree and tools as one of the grounds of objection in the memorandum of appeal that the decision as to the title to Ula was contrary to the evidence on the record. The appeal

has not yet been heard. Meanwhile the opposite party have on the 12th April 1915 instituted a suit in the Court of the Subordinate Judge of Khulna for recovery of the arrears of the years 1318--21 The defendants resist the claim, on the ground amongst others that during the years in suit they have been unlawfully kept out of the lands of village Ula. There can be no question that the title to Ula arises in the present as in the previous suit, and as the question was not conclusively determined in the previous suit, it must be investigated on fresh materials in the present proceeding. The defendants contend on these facts that the second suit must be stayed u/s 10.

2. Section 10 is in these terms: "No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by the Governor-General in Council and having like jurisdiction, or before His Majesty in Council."

3. It is plain that if Section 10 is otherwise applicable, its operation is not excluded by the fact that the previously instituted suit has reached the stage of an appeal. This is clear from the use of the expression. Before His Majesty in Council," and this view was expressly adopted in the case of Chinnakaruppan Chetty A.L.M.S.S. v. M.V.M. Meyappa Chetty 30 Ind. Cas. 753 : 18 M.L.T. 400 : (1915) M.W.N. 844 where it was pointed out that proceedings on appeal are for many purposes deemed only a continuation of the suit instituted in the first Court Pichuvayyangar v. Seshayyngari 18 M. 214 : 6 M.L.J. 89 (F.B.) and Kristnama Chariar v. Mangammal 26 M. 91 (F.B.). Consequently, the mere fact that the decree in the previously instituted suit is under appeal in this Court, does not enable the plaintiffs to invite us to hold that Section 10 is inapplicable. The question, accordingly, reduces to this is the matter in issue in the subsequently instituted suit for rent also directly and substantially in issue in the previously instituted suit? The suits are between the same parties litigating under the same title and that requirement of the Code is fulfilled. What, then, is the meaning of the expression "the matter in issue." The defendant invite us to hold that the expression is equivalent to "any of the questions in issue." The obvious answer is that if that had been the intention of the framers of the section, appropriate words might have been used to bring out such sense. We ore of opinion that the expression the matter in issue" has reference to the entire subject in controversy between the parties. The object of the section is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. To take one instance: if a mortgage security includes properties in three districts, there would be nothing to prevent a litigious plaintiff from indulging in the luxury of three suits, instituted simultaneously in three different Courts for the same relief, namely, a decree for sale on the basis of his

mortgage. Section 10 effectively bars this possibility a Similarly it debars the plaintiff from seeking to carry on simultaneously two suits for recovery of the same sum of money; as was attempted unsuccessfully in the case of Mohodeo Pramd Sahu v. Gajadhar Prasad Sahu 16 Ind. Cas. 469 : 16 C.W.N. 897. But the section does not go further and does not bar the trial of a suit for rent for a period subsequent to that included in the previously instituted suit for rent; the matters in issue, that is, the subject-matters in controversy are obviously different in the two suits. In the first suit, the matter in controversy is, whether A is entitled to recover from B Rs. 5,000 as rent for the year X. In the second suit, the question in dispute is whether A is entitled to recover from B Rs. 3,000 as rent for the year Y. We are unable to hold that merely because the same question may be involved in the two suits, the matters in issue are identical, so as to attract the operation of Section 10. If the contention of the defendants were to prevail, successive suits for rent or for other sums periodically due would be perpetually tied up. It is further important to note that this result would follow, even if, as has happened in the present case, the decision in the previously instituted suit upon a particular point has been left open, for Section 10, according to the defendants, does not require that the point should have been conclusively determined. It is finally worthy of note that Section 10 when applicable leaves no discretion to the Court and must consequently be applied only to cases clearly within its language and intendment. We are of opinion for the reasons assigned that Section 10 has no application to the present case.

4. The Rule is discharged with costs. We assess the hearing fee at three gold mohurs

5. Let the record be sent down at once.