

(1909) 03 CAL CK 0013

Calcutta High Court

Case No: None

Tangor Majhi and Others

APPELLANT

Vs

Jaladhar Deari and Others

RESPONDENT

Date of Decision: March 29, 1909

Judgement

1. We remanded this case to the lower appellate Court for a finding whether the suit of Panchanan (No. 236 of 1902) was collusive and whether the decree in that suit was obtained by collusion and in fraud of the rights of the plaintiffs in this suit. The finding of the lower appellate Court to both questions is in the negative. We must in second appeal accept that finding, and it makes no difference that that finding has been arrived at by the lower appellate Court on a remand from this Court. That does not, as the learned pleader for the plaintiffs suggested, make it an appeal from an original order so far as that finding is concerned.

2. Accepting that finding it is obvious that the plaintiff's suit cannot succeed as regards Panchanan's share, viz., one-quarter of the two annas of the jalkar. The learned pleader for the appellants raised the contention that the decree in Panchanan's suit affected the rights of all the four brothers; that the decree only could be looked at and that the effect of that suit upon the present suit must be in accordance with the decree. With this we cannot agree. The suit of Panchanan was expressly confined to his share in the estate. If by consent the decree went beyond the scope of that suit and purported to deal with the rights of the defendants his brothers, that cannot affect the plaintiffs in this suit. The transfer to them took place while the suit of Panchanan was pending and they must be taken to have accepted the lease on the understanding that that suit might be successful, i.e., that Panchanan might be found to have a right to a fourth share in the property as against their transferor Keshab Lal. They could not reasonably be said to have the same expectation as regards the rights of the other brothers which were not within the scope of that suit and could be dealt within the decree only by consent of parties.

3. We accordingly allow this appeal in part and modify the decree of the lower appellate Court. The plaintiffs will be entitled to a decree only as regards three-fourths of the two annas of the jalkar leased to them. The appellants must pay to the respondents half their costs of this appeal. We allow only one hearing fee.