

(1913) 07 CAL CK 0006**Calcutta High Court****Case No:** Letters Patent Appeal No. 154 of 1911

Sreenath Dutt

APPELLANT

Vs

Kaser Sheikh

RESPONDENT

Date of Decision: July 2, 1913**Final Decision:** Allowed**Judgement**

Jenkins, C.J.

This is an Appeal by the first Defendant in a suit for declaration that the Plaintiff is not a tenant of the first Defendant but of the second Defendant, and also for refund of the money realised by the first Defendant in execution of a decree for rent obtained by him. It appears that the land in question is situated within the zamindari of the Maharaja of Cossimbazar. On the 19th of August 1871, the first Defendant got a raiyati settlement from Maharani Surnomoyee. On the 8th of April 1880, he sublet the land to one Jamal Sheikh who executed in his favour a registered kabuliyat. Jamal Sheikh died in 1893. Thereafter his representatives continued in occupation of the land on the assumption that the under-raiyati interest created by the kabuliyat of the 8th of April 1880 was heritable. They were accepted as tenants and apparently paid rent to the landlord. In 1907, the first Defendant sued them for rent. The defence taken was that they were not the tenants under the then Plaintiff but held as tenants directly under the Maharaja of Cossimbazar. In support of this contention, reliance was placed by them upon a kabuliyat executed by them on the 26th of July 1896, and it was further alleged that the first Defendant had executed a kabuliyat on the 9th of July 1896, whereby he had ceased to be tenant of this land. The Court which tried the suit for rent overruled this contention and held that the present Plaintiff was a tenant under the first Defendant. A decree for rent was accordingly made on the 1st of June 1907. On the 3rd of July following, the Plaintiff commenced this suit for declaration in substance that the rent decree had been improperly made. He described the first Defendant as the principal Defendant and he also described the Maharaja of Cossimbazar as the pro forma Defendant. The principal Defendant resisted the claim on the ground, amongst others, that the suit

was barred by the principle of res judicata. This defence has been overruled by all the Courts below, and the sole question in controversy now is whether the suit is or is not barred by the principle of res judicata. On behalf of the Respondent reliance has been placed upon the decision of a Full Bench of this Court in the case of Dwarka Nath v. Ram Chand I. L. R. 26 Cal. 428 : s. c. 3 C. W. N. 266 (1899). That case is clearly distinguishable. There A brought a suit for rent against B. B pleaded that he held as a tenant, not under A but under C. The suit was tried on the merits and dismissed. A, thereupon, brought a suit against B and C, for declaration that he was the owner of the land. He further prayed that B might be ejected and in the alternative asked that if B remained in occupation, he might be held liable for damages for use and occupation. It was held that the decision did operate as res judicata in so far as A and B were concerned but not between A and C. A sought relief on the ground that the previous decision was conclusive between the parties: he treated B as trespasser, and so sought to eject him. In the case before us the question which was raised in the suit for rent was whether the kabuliyat alleged to be executed by Jamal Sheikh on the 8th of April 1880 was or was not genuine, and whether the present Plaintiff held as tenant under the first Defendant on the basis of the tenancy created thereby. This was found in favour of the present Defendant. The decision was by a Court of competent jurisdiction--a Court which was competent to try the issue now raised between the parties. It is clear therefore that so far as the first Plaintiff and the first Defendant are concerned, the question is res judicata.

2. It has been finally suggested by the Respondent that the suit may be remanded to the Court of first instance in order that the Plaintiff may obtain relief as against the Maharaja of Cossimbazar. As already stated the Plaintiff treated the Maharaja as pro forma Defendant and never sought any relief against him. It is too late now to ask for a relief which he did not ask for in the suit in the Court of first instance. The result, therefore, is that the Appeal is allowed and the suit dismissed with costs in all the Courts.