

(1924) 12 CAL CK 0015

Calcutta High Court

Case No: None

Nritya Gopal Mitra

APPELLANT

Vs

Jorit Monjari Dasi and Others

RESPONDENT

Date of Decision: Dec. 22, 1924

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1(2)

Citation: 87 Ind. Cas. 770

Hon'ble Judges: Ewart Greaves, J; Chakravarti, J

Bench: Division Bench

Judgement

Chakravarti, J.

This second appeal is on behalf of the defendants and arises out of a suit for possession of land, decreed by the District Judge of Murshidabad on the 19th April 1922.

2. The facts shortly stated are these. The plaintiff sued the defendants as trespassers with reference to the lands which admittedly comprised the holding of a tenant Khetra Nath Pal under the plaintiff and the defendants are in possession of those lauds as purchasers of the holding which was not transferable by custom, The defence mainly, was, that the entire holding had not been sold and, therefore, the plaintiff could not treat the holding as abandoned.

3. The learned Munsif decreed the suit "but his judgment was reversed on appeal by Mr. Ross, the Additional District Judge and the suit was dismissed on the 25th November 1921.

4. The plaintiff filed an application for re-view of that judgment and a notice was issued by the learned Judge who had dismissed the suit.

5. Mr. Nelson the successor-in-office of Mr. Ross heard the parties and admitted the application for review and re-heard the appeal and set aside the decree of his

predecessor and in the result the plaintiff's suit was again decreed with costs.

6. The present second appeal is against this judgment.

7. The first point raised by the learned Vakild for the appellant was, that the learned District Judge was in error in admitting a review of the judgment of his predecessor because the grounds for the review did not come within the purview of Order XLVII, Rule 1, Clause (2).

8. The learned Vakild for the respondent submitted that there was no appeal to this Court on the ground that the review was not in accordance with the provisions of O.XLVII, Rule 1(1). He submitted further that the appeal was limited to the grounds set out in Order XLVII, Rule 7 and it was further argued that this review was admitted on the ground of "for other sufficient reason" and that a review granted on such a ground was not open to correction by appeal.

9. We do not think that the objection, raised by the learned Vakild for the respondent is sound. Order XLVII, Rule 7, expressly provides that when an application for review is granted the party dissatisfied with the order may appeal against that order or may take the same objection in an appeal filed against the final decree.

10. Rule 7 read with Rules 1 and 4 appears that it is open to the Appellate Court to examine the ground upon which the review was admitted and if the ground for the review does not come within the words of Order XLVII, Rule 1 then the Appellate Court is competent" to hold that the review was improperly admitted under Rule 4 (1) but should have been rejected. This is clear" from the case of Chhajju Ram v. Neki 72 Ind. Cas. 566 : 49 I.A. 144 : 30 M.L.T. 295 : 26 C.W.N 697 : 41 P.L.R. (P.C.) 1922 : 3 P.L.T. 435 : AIR(1922) (P.C.) 112 : 16 L.W 37 : 17 P.W.R. 1922 : 3 L. 127 : 43 M.L.J. 332 : 24 Bom. L.R. 1238 : 4 U.P.L.R. (P.C.) 99 : 36 C.L.J. 459 (P.C.) and this was the ground which was pointed by their Lordships, their interference in that case when they say that there could be no re-hearing for the purpose of seeing whether a different conclusion on the merits should be adopted.

11. In this view we think the review was really granted for re-consideration of the evidence in the case and in fact the learned District Judge has reversed the findings of fact by his predecessor.

12. Although the judgment of the District Judge which was set aside in review is not quite satisfactory still we think that as, the review was not permissible on the grounds upon which it was admitted, we should not allow the last judgment to stand. If the previous judgment was not open to review it must stand. The result is that the judgment and decree of the District Judge dated 19th April 1922 is set aside and that of the District Judge dated 25th November 1921 is restored. In the circumstance we allow only the costs of this appeal. The parties must bear their costs in the Courts below.

Greaves, J.

13. I agree.