

(1880) 05 CAL CK 0005

Calcutta High Court

Case No: None

Sonamonne Dassee
and Others

APPELLANT

Vs

Hazir Gazi

RESPONDENT

Date of Decision: May 8, 1880

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 13

Citation: (1881) ILR (Cal) 31

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

There must be a remand in this case. The Judge has given to the judgment previously obtained against Nadir Gazi an effect as regards the brother and co-sharer Hazir, which, in our opinion, Section 13 of the CPC does not warrant. That section provides:--" No Court shall try any suit or issue in which the matter directly and substantially in issue having been directly and substantially in issue in a former suit in a Court of competent jurisdiction, between the same parties, or between parties under whom they or any of them claim, litigating Under the same title, has been heard and finally decided by such Court"; and expl. 5, which is referred to, says--" where persons litigate bond fide in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating." Now, we are not prepared to say that the explanation has this meaning, that a judgment obtained, against a co-sharer in the property is binding against another co-sharer in the property, and clearly it would not be so where the first suit did not purport to have been litigated bond, fide in respect of a right claimed in common by two persons. In addition to that, the judgment relied upon in the present case was obtained long before the enactment of the present Code, and we are not at all

prepared to say that expl. 5 of Section 13 would apply to a judgment under the Code now repealed. These considerations very seriously affect the judgment of the lower Appellate Court upon the facts. We think, therefore, that the case must go back for a new trial. The costs will follow the result.