(1914) 03 CAL CK 0024

Calcutta High Court

Case No: None

Midnapore Zemindary Co. Ltd.	APPELLANT
Vs	
Nitya Kali Dasi	RESPONDENT

Date of Decision: March 18, 1914

Citation: AIR 1914 Cal 693 : 24 Ind. Cas. 243

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

Bench: Division Bench

Judgement

1. This is an appeal by the plaintiffs in a suit for recovery of arrears of rent for the years 1311, 1312, 1313 and the first three quarters of 1314 at an annual rate of Rs. 61-6-17 gandas. The defendant resists the claim on the ground that as the plaintiffs have dispossessed her from some land comprised in the holding,- the entire rent has been suspended., The Court of first instance decreed the suit in part. Upon appeal the District Judge has given the plaintiffs a decree for 1311 and has dismissed the claim in respect of the other years.

2. On the 19th September 1906 nearly a year and a half before the institution of this suit on the 4th February 1908 the defendant had instituted a suit against the plaintiffs for recovery of certain specified lands, on the allegation that they were included in her tenancy and that the landlords had unlawfully deprived her of their possession. It is not necessary for our present purpose to set out in detail the history of that title suit. It is sufficient to state that before the present suit was heard by the Court of first instance on the 2nd March 1909, a judgment had been pronounced in the title suit by the District Judge, Mr, Pittar, on the 11th June 1908. That judgment was used as evidence both by the Court of first instance and the Court of Appeal below in the present litigation. Subsequently, on appeal preferred to this Court against the judgment of Mr. Pittar, his decree was set aside and the case was remanded for re-consideration. On the 2nd January 1912, the title suit was after remand decided by another District Judge, Mr. Panton. This judgment, it is hardly necessary to state, was not in existence when the present suit was heard

either in the Court of first instance or in the Court of appeal below. An application has been made on behalf of the plaintiffs -appellants-for leave to produce in this Court the judgment of Mr. Panton by which the title suit has been finally decided. It has been contended that the question which arises for decision in the present litigation has been decided in the title suit and that such decision operates as res judicata. We are of opinion that the judgment can be properly received in evidence on the principle explained in the case of Balkishan v. Kishan Lal 11 A. 148 : A.W.N.(1889) 42 : 13. Ind. Jnr. 309. On behalf of the respondents, reliance has been placed upon the observation in the case of Abdul Majid v. Jew Narain Mahto 16 C. 233. in support of the argument that the doctrine of res judicata applies only to Courts of first instance. In our opinion this view is unsound and is not supported by the language either of Section 13 of the Code of 1882 or of Section 11 of the Code of 1908. We are in full agreement with the conclusion reached by Mr. Justice Mahmood in Balkishan v. Kishan Lal 11 A. 148 : A.W.N.(1889) 42 : 13. Ind. Jnr. 309. and are not prepared to accept the dictum in Abdul Majid v. Jew Narain Mahto 16 C. 233. We are further of opinion that the changes introduced into Section 11 of the Code of 1908, do not affect the validity of that decision. On the other hand, explanation (1) of Section 11 of the Code of 1908, which lays down that the expression former suit" shall denote a suit which has been decided prior to the suit in question, whether or not it was instituted prior thereto, tends to confirm the view that if the same question is in controversy between the same parties in two distinct litigations instituted one after the other, but simultaneously pending, the final decision in the later suit, if given earlier, operates, as res judicata in the earlier suit whose final stage is reached later. This principle, taken along with the doctrine that the rule of res judicata is applicable to all the stages of a suit till it is finally terminated, amply justifies the view adopted in Balkishan v. Kishan Lal 11 A. 148 : A.W.N.(1889) 42 : 13. Ind. Jnr. 309. Substantially to the same effect are the decisions of Ramlal v. Chhab Nath 12 A. 578 : A.W.N. (1890) 183., Beni Madho v. Indar Sahai 3 Ind. Cas. 7 : 32 A. 67 : 6 A.L.J. 991., Guru-rajammah v. Venkatakrishnamma, Chetti 24 M. 350. and Nur Muhammad v. Jamun 153 P.B. 1890. We consequently hold that the judgment of Mr. Panton, against which no appeal has been preferred to this Court and which has consequently finally terminated the title suit, must, be received in evidence in this Court.

3. We have next, to consider the precise effect of that judgment. It appears that in the title suit the present defendant, who was the plaintiff, contended that he had been dispossessed of certain specified lands by her landlord, although those lands are comprised within the ambit of her tenancy. Mr. Panton has investigated that claim and held that the plaintiff in that suit had failed to establish that the disputed lands were included in her tenancy. This decision is conclusive between the parties. It , must not be laid down, however, as a comprehensive rule of law that, because a tenant has failed in a suit for recovery of possession of certain lands alleged to be comprised in his folding as against his landlords, the defence of eviction and

consequent suspension of rent is not available to him. Oases may easily be imagined, where, notwithstanding the failure of the tenant in a suit for recovery of possession, such defence may still be available to him. To take one illustration. A suit by the tenant for recovery of possession may fail on the ground that the claim is barred by limitation : this would not bar the defence of eviction and consequent suspension of rent in answer to a claim for rent. Here, however, the case is of an entirely different description. The tenant specified certain lands in the plaint in the title suit and asserted that those lands were included in her tenancy. The District Judge has negatived that claim. This is a determination that the title of the tenant to the lands specified has not been proved. Consequently, in any other litigation between the same parties, it is not open to the tenant to plead that the lands described in the plaint of the former suit are included within her tenancy. To this extent, the decree in the suit first decided must be deemed conclusive between the parties. But this does not dispose of the controversy in this litigation. In answer to the claim, the defendant urged in her written statement, in perfectly general terms, that there had been eviction and consequent suspension of rent. She did not specify the lands from which she had been evicted, though she might and should have been called upon to specify them. The fact remains that the plaintiffs did not invite her to specify the lands from which she alleged in her written statement she had been dispossessed. Reference has, however, been made to passages from the judgments of the Courts below to show that although the written statement was general in its terms, the case before the Courts below was that the defendant had been dispossessed from precisely the same lands she sought to recover in the title suit. We are not prepared to restrict the full effect of the written statement, and we are of opinion ''that the defendant should have an opportunity to establish in support of her case, that she has been dispossessed from some laud of her, tenancy, though she can no longer plead that the lands from which she has been dispossessed are the specific lands mentioned in the title suit. It is still open to the defendant to establish, if she can, that she has been dispossessed by her landlords of lands other than those comprised in the title suit. For this purpose, it is plain that the defendant must in the first place, specify the lands, if any, other than those included in the title suit, from which she has been dispossessed, and, in the second place, a local investigation is necessary to determine the situation of the lands comprised in the tenancy of the defendant as also of those from which shralleges she has been dispossessed.

4. The result is that this appeal is allowed in part : that is, only in so far as the decree of the District Judge dismisses the claim for rent for 1312, 1313 and a part of 1314. The case will be remanded to the Court of first instance for re-trial on the lines indicated. At the re-trial, all such questions as arise between the parties on the pleadings will be open for adjudication inclusive of.the question whether the eviction, if any, has been of such a character as to justify the suspension of rent as laid down in the cases of Rasseswari v. Surendra Mohun 6 Ind. Cas. 105 : 11 C.L.J.

601. Chandra Kanta v. Rama Nath 6 Ind. Cas. 478 : 11 C.L.J. 591. Puma Chandra Sarbajna v. Rasik Chandra Chkrabarti 9 Ind. Cas. 568 : 13 C.L.J. 119. and Godai Molla v. Aminuddi Howladar 21 Ind. Cas. 957 : 18 C.L.J. 509. or does not justify entire suspension of rent on the principle recognised in Rai Charon Sar Mazumdar v. Administrator-General of 2 Ind. Cas. 169 : 36 C. 856 : 9 C.L.J. 578 :. 13 C.W.N. 853. and Meenakshi Sundara Nachiar v. Chidambaram Chetty 15 Ind. Cas. 23 M.L.J. 119711 : : 12 M.L.T. 124 : (1912) M.W.N. 813. The decree of the District Judge in respect of the rent for 1311 has not been challenged in this Court and will accordingly stand confirmed. The plaintiffs will pay the defendant her costs throughout this litigation, except the costs in the Court of first instance which will abide the result of the retrial.