(1925) 06 CAL CK 0074

Calcutta High Court

Case No: None

Chaudhury Upendranandan Das Mahapatra and Another	APPELLANT
Vs	
Umai Set and Others	RESPONDENT

Date of Decision: June 29, 1925

Citation: 97 Ind. Cas. 702

Hon'ble Judges: Graham, J; Babington Newbould, J

Bench: Division Bench

Judgement

1. The appellants are the proprietors of the estate bearing Touzi No. 598 in. the Midnapore District. Their property including this estate came under the management of the Court of Wards in 1905 and at their instance a Record of Eights was prepared which was finally published in 1911. The plaintiffs-respondents are the owners of a holding of which, according to their case, the proprietors of estates Nos. 597 and 598 are the superior landlords in equal undivided shares. In the Record of Rights of 1911, the plaintiffs'' holding was recorded as appertaining to estate No. 598 only. The appellants then applied u/s 105 of the Bengal Tenancy Act, for settlement of fair and equitable rent of this and other holdings. The application in respect of each holding was numbered as a separate suit and these suits were heard together by the Revenue Officer. At the trial before him the first of the issues which were framed was : "Does Section 188 of the Bengal Tenancy Act operate as a bar to the maintainability of these suits u/s 105?" This issue was decided in favour of the present appellants on the finding that the tenant defendants in those suits had failed to make out their case that the plaintiff (i.e., the Court of Wards manager who sued on behalf of the appellants) was a co-sharer landlord. He decided other issues against the tenant-defendants and fixed rents which were higher than those recorded in the Record of Rights. Appeals were preferred by some of the tenant-defendants but the plaintiff, respondent in the present appeal, did not appeal against the decree against him. These appeals were successful. The Special Judge held that the plaintiff in those suits, when he filed the applications u/s 105,

Bengal Tenancy Act, was a joint landlord with his co-sharers within '' the meaning of Section 188 of that Act and as such was not competent to file the applications singly. After second appeals by the landlords to the High Court were unsuccessful the plaintiffs brought the suit out of which this appeal arises for a declaratory decree that the decree of the Revenue Officer was without jurisdiction and null and void.

2. The first Court held that the present suit was barred u/s 109 of the Bengal Tenancy Act. On appeal this decision was reversed. The learned District Judge held that the present appellants were not the sole landlords of the plaintiffs and were, therefore, incompetent to make the application u/s 105 of the Bengal Tenancy Act and consequently the decision of the Revenue Officer was clearly without jurisdiction and as such not binding.

3. On behalf of the appellants it was contended that the question whether they are sole or joint landlords of the plaintiffs cannot be re-agitated, that the finding that they are joint landlords is erroneous and that the suit is barred by limitation.

4. On behalf of the plaintiffs-respondents a preliminary objection was taken that the appeal was incompetent. This objection was based on the fact that respondents Nos. 4 and 12 died during the pendency of this appeal and their heirs were not substituted. On an examination of the pleadings it appeared that these respondents were not necessary parties to the appeal and the objection was not further pressed.

5. In our opinion the first contention of the appellants must succeed. The Revenue Officer had jurisdiction to decide whether or not the appellants, when they made the application to him u/s 105 of the Bengal Tenancy Act, were joint landlords. His decision on this point not having been questioned by the plaintiffs by appeal is final and binding on the parties to that suit. " It appears to be generally agreed upon that the decision of a Court in favour of the existence of a jurisdictional fact, and, therefore, of its own jurisdiction, cannot be impeached collaterally; and is conclusive of jurisdiction, except against a direct attack." (Hukum Chand on Res judicata, page 438). The plaintiffs in this suit not having directly attacked this decision of the Revenue Officer by an appeal cannot impeach it collaterally by a separate suit. The learned District Judge in his judgment has referred to the Full Bench ruling in Hridyanath Roy v. Ram Chandra Barua Sarma 53 Ind. Cas. 806 : 48 C. 138 : 24 C.W.N. 723 : 31 C.L.J. 482 (F.B.). We are unable to agree that it is not opposed to his decision. The following passage at page 149 Page of 48 C. [Ed.] supports our view:--"When parties are before the Court and present to it a controversy which the Court has authority to decide, a decision not necessarily correct but appropriate to that question is an exercise of judicial power or jurisdiction. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. Were it held that a Court had jurisdiction to render only correct decisions, then each time it made an erroneous ruling or decision, the Court would be without jurisdiction and the ruling itself void. Such is not the law, and it matters not what may be the particular question presented for adjudication,

whether it relates to the jurisdiction of the Court itself or affects substantive rights of the parties litigating, it cannot be held that the ruling or decision is without jurisdiction or is beyond the jurisdiction of the Court." Here a question relating to the jurisdiction of the Revenue Officer was presented for adjudication to him and even if he decided it wrongly, he still had jurisdiction to decide it. That decision is final between the parties and the plaintiffs cannot question it in order to support their plea that the Revenue Officer''s decree was void for want of jurisdiction.

6. Taking this view it is unnecessary to decide the other contentions urged on behalf of the appellants. The appeal is decreed. The judgment and decree of the lower Appellate Court are set aside and the decree of the Munsif dismissing the suit is restored. The appellants will get their costs from the plaintiffs-respondents in this and the lower Appellate Court.