Jogesh Chandra Mukerjee Vs Rai Beharilal Mitra Bahadur and Others

Court: Calcutta High Court

Date of Decision: Aug. 15, 1933

Citation: 153 Ind. Cas. 313

Hon'ble Judges: Guha, J; Bartley, J

Bench: Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for recovery of possessions of the lands specified in Schedule (aha) and for confirmation of possession

of the lands of Schedule (ga) of the plaint, on declaration of his title to the same The plaintiff''s claim in suit was based upon the solenamas in terms

of which a previous suit, No. 63 of 1913, was disposed of as between the plaintiff''s father and the two sets of landlords, representing the entire

interest in the lands in suit. The contesting defendants, defendants Nos. 1 4 and 5 in the suit, resisted the claim of the plaintiff as made in the suit.

Defendant No. 1 was the landlord, while defendants Nos. 2, 4 and 5 were persons claiming to be in possession of the lands in suit, holding the

same under the landlords'' The solenama on which the plaintiff''s title was based, and under which the plaintiff claimed howla right in the lands in suit

were characterised by the defendants as documents fraudulently obtained by the plaintiff''s father they were not acted upon and given effect to and

they would not create any howla right in favour of the plaintiff''s father. It was asserted that the lands were in the landlord''s has possession and

from 1298 B.S. defendants Nos. 4 and 5 have been holding the same as tenants under the landlords. On the pleadings of the parties, various issues

were raised for trial in the suit; and the most material of those issues for the purpose of this appeal are Issues Nos. 9 and 6 raised in the case:

Is the solenama alleged to have been entered into in T.S. No. 63 of 1913. of this Court, between The plaintiffs father and the zemindar defendants,

legally admissible in evidence in this suit? Is it bona fide, valid or binding between the parties? Is the suit barred by the principle of res judicata?

2. The Court of first instance gave its decision in favour of the plaintiff. The plaintiff''s hoivla right to the lands in suit was declared and the plaintiff

was held entitled to khas possession of Schedule (gha) lands; and his possession in regard to (ga) schedule lands was confirmed. On appeal by the

contesting defendants, the decision and decree passed by the trial Court in favour of the plaintiff were reversed. The plaintiff''s suit was dismissed

by the Court of appeal below. The plaintiff has appealed to this Court. In view of the nature of the controversy between the parties it is

unnecessary at the outset to refer to the facts and circumstances relating to the solenamas filed in Suit No. 63 of 1913, brought by the plaintiff''s

father against the landlords, the Chakrabarties, and against Hari Charan and Ledu, amongst others. The plaintiff''s claim in that suit was based on

osat howla and ram howla right and it was asserted that the entry in the Record of Rights showing that the lands were the malik''s khas lands was

incorrect. The Chakrabarti defendants in that suit alleged that the lands appertained to a different estate altogether, thus denying the title of the

landlord defendants in the suit. Hari Charan and Ledu, defendants Nos. 4 and 5 in the present litigation were made defendants in the Suit of 1913,

and as pro forma defendants on the allegation that they had manufacl ured a kabuliyat from a cosharer landlord. The suit was dismissed, so fur as

Hari Charan and Ledu were concerned, on the ground that the plaintiff in Suit No. 63 of 1913 had no cause of action against them. The plaintiff''s

suit so far as it was directed against the Chakrabarti defendants was dismissed, and the dismissal of the suit against the Chakrabartis appears to

have been finally upheld by this Court. on February 4, 1919. As has been already indicated, the solenamas were filed in Court determining the

rights of parties so far as the plaintiff and landlord defendants in Suit No. 63 of 1913, were concerned. The howla right of the plaintiff in that suit

was to be declared in the lands in suit. It was specifically stated in the solenamas that the lands ""shall continue to be in possession of the plaintiff in

howla right under the zamindar defendant."" It was provided is the solenamas that u separate kabuliyats were not executed the petition of

compromise ""shall be operative against the plaintiff as a kabuliyat."" The trial Court in its judgment, dated Sep tember 10, 1914, stated that the

sollnama will govern the plaintiff and defendants Nos. 1 to 3, representing zamindary in terests at the time. It was distinctly I mentioned that.

as regards defendants Nos. 1 to 3 it is ordered that the compromise made, be recorded and a decree be drawn up in terms of the same, so far as

they relate to the subject-matter of this suit.

3. It may be mentioned in this connection that the subject-matter of suit No. 63 of 1913, so far as the lands claimed in the suit was the same as the

subject-matter of the present litigation. A. decree followed upon the judgment; and in the decree drawn up in the suit which was signed on

September 18, 1914, by the Subordinate Judge who tried suit No. 63 of 1913, it was ordered that the plaintiff"s osat houia and him howla right be

declared as provided by the solenamas:

The plaintiff shall remain bound by the terms of the solenamas filed by defendants Nos. 1 to 3.

4. There were appeals to the District Judge and to this Court, directed against the decision of the trial Court, but there is no indication whatsoever

in the judgments of the Appellate Courts that the rights of parties recognized by the solenamas between the plaintiff in the suit and the landlord

defendants, was challenged or controverted. The compromise between the parties concerned had been recorded by the tidal Court, and there is

nothing contained in the judgment of the District Judge or in the judgment of this Court, which bears the interpretation that the compromise arrived

at by the parties was not to be treated as valid and binding, as between the parties to the same. It is no doubt true that the terms of the

compromise were not in accordance with this decision of the Court, dismissing the plaintiff"s suit as against the Chakrabarti defendants. Keeping

the above position in view could ""it be said that the compromise was not recorded and was not given effect to either by the District Judge or by

this Court, as the final"" Court of appeal? In our judgment, in view of the fact that the compromise was recorded in so many words by the Court of

first instance, in which it was filed and there being nothing in the judgments of the appellate Courts which in any way affected the rights of parties as

recognized by the"" landlords in favour of the plaintiff"s father, it could not be said that the compromise was not recorded, and that it was not given

effect to by the appellate Courts. The question of compromise being given effect to by the appellate Courts could not arise, seeing that the parties

to the compromise did of in any way attempt to challenge the same.

5. The learned Additional District Judge has characterised the solenama in Suit No. 63 of 1913 as ""mere frauds,"" and he has held that they could

not confer any title op Protap, the father of the plaintiff in the present case. It appears to us that the landlord defendants having suffered a

compromise decree to be passed in Suit No. 63 of 1913, by which he acknowledged the title of the plaintiffs father to the lands in suit in the

manner mentioned therein he could not be allowed to raise the question of the compromise decree being invalid or not binding on him. The

Chakrabarti defendants were not bound by the compromise decree, and they are not parties to the present litigation; but as between the plaintiff

and the landlord defendants the terms of compromise must be held to be binding and operative on the question of title of the plaintiff to the lands in

suit. The compromise decree was not challenged by any one, much less by the landlord defendant at any previous stage as fraudulent, and it was

not established in this case to be in any way fraudulent excepting that in the course of argument it was sought to be made out that the compromise

was in fraud of third parties, and therefore invalid and inoperative. It may be taken to be well established that a, party to a decree, even if it were a

collusive decree, was bound by it, and neither of the parties to the compromise decree, even though it were collusive, could escape its

consequence. It may be open to a third party affected by a, collusive decree to challenge the same, but not any other parties to the decree. In the

case before us the Chakrabarti defendants whose interest was affected by the compromise decree, are not the parties challenging the same: it is the

landlord who entered into the compromises with the plaintiff"s father, who wants to resile from it. As indicated above, we are unable to give effect

to the defense raised by the landlord defendant in the suit out of which this appeal has arisen, that the compromise decree in Suit No. 63 of 1913

was not binding and operative as between him and the plaintiff.

6. The question of the effect of non-registration of the solenamas filed in Suit No. 63 of 1913, was raised, on behalf of the contesting defendants in

the suit. It was contended that a permanent tenure, in the shape of a howla could not be created in favour of the plaintiff by a solenama which was

not registered. It is necessary to consider in this connection that the solenamas filed in Court relate to the subject-matter of the litigation in which

they were filed; and a decree was passed incorporating the terms of the solenamas. If the decree related to the subject-matter of the suit, as it

undoubtedly did, it is difficult to appreciate how the solenamas required registration in the matter of recognizing the title of the plaintiff to the lands

in suit, as a howla right. The decree passed in the suit of 1913 did not operate to create a howla lease, but it merely declared the howla right in the

lands in suit. On the recitals contained in the solenamas filed in Court there can be no doubt that there was no present demise; the lands were in the

possession of the plaintiff in the suit, as mentioned in the solenamas, and they were to remain in his possession as before. There was no peimanent

tenancy created by the solenamas; there was the pre-existing tenancy and it was recognized by the landlord according to the decree passed by the

Court which incorporated the terms of solenamas filed by the parties concerned. The decree passed in terms of compromise evidenced by

solenamas filed in Court, which related to the subject-matter of the litigation, did not require registration to be valid and operative in law, and there

is, therefore, no substance in the contention raised on behalf of the defendants that the solenanas creating a howla required registration, and non-

registration of the solenamas made it impossible for the plaintiff to assert his title to the lands as appertaining to a howla.

7. The plaintiff in the suit, has, in our judgment, succeeded in establishing his title to the lands, by virtue of the compromise decree passed in Suit

No. 63 of 1913, and it was not open to the landlord defendants to question that title. The question was raised on behalf of defendants Nos. 4 and

5 that the dismissal of Suit No. 63 of 1913, so far as it was directed against them, operated as a bar to the plaintiff"s claim in this suit, so far as

they were concerned. The plea of res judicata appears to have been raised on behalf of defendants Nos. 4 and 5. As has been mentioned above,

the Suit, No. 63 of 1913 was dismissed so far as those defendants were concerned, for want of cause of action against them. No issue was raised

as between the plaintiff in the suit of 1913 and these defendants, and there was no decision which could operate as res judicata against the plaintiff

in the present suit. We are, therefore, unable to appreciate how the question of res judicata could be raised on behalf of defendants Nos. 4 and 5,

seeing that Suit No. 63 of 1913 was dismissed so far as they were concerned for want of cause of action. It appears, however, that defendants

Nos. 1 and 5 claimed to be in possession of the lands in suit from 1298 B.S., holding the same as tenants by virtue of settlement obtained from the

landlords. This part of the case requires investigation by the Court of Appeal below; and the case has, therefore, to be sent back to the lower

Appellate Court for a decision of the question whether defendants Nos. 4 and 5 had such a title in them to be on the lands in suit, as could stand in

the way of the plaintiff"s recovering possession of the same as claimed in the suit.

8. In the result the appeal is allowed. The decision of the Court of Appeal dismissing the plaintiff"s suit is set aside. The plaintiff is held to have

established his howla right in the lands in suit as against the landlord defendants, and is entitled to a decree to that extent, the plaintiff"s howla right

to the lands in suit being declared as a consequence of the decision arrived at by us on the question of title as between the plaintiff and the landlord

defendants in the suit. The case is remanded to the lower Appellate Court for decision on the question as to whether the plaintiff is entitled to

recover possession of the lands in suit from defendants Nos. 4 and 5. The decision on remand is to be given on the materials already on the

record. The appeal is allowed the case is remanded. The plaintiff-appellant is entitled to his costs against the landlord defendants in the suit in all the

Courts. Costs as between the plaintiff and defendants Nos. 4 and 5 in the suit will abide the result on remand.