Purna Chandra Sarbajna and Others Vs Rasik Chandra Chakrabarti and Others

Court: Calcutta High Court

Date of Decision: July 23, 1910

Citation: 9 Ind. Cas. 568

Hon'ble Judges: Mookerjee, J; Carnduff, J

Bench: Division Bench

Judgement

1. This is an appeal on behalf of the defendants in an action for rent. The plaintiffs claim rent in respect of the years 1310, 1311, 1312 and three

quarters of the year 1313. The answer of the defendants to the claim is that by reason of their eviction by their landlords from a substantial portion

of the lands of their tenancy, there has been a suspension of the entire rent and consequently the suit ought to be dismissed. The Subordinate Judge

in the Court below has overruled this objection on the ground that although the tenants-appellants had been originally evicted from a substantial

part of the lands of their tenancy, yet the plaintiffs have subsequently taken effective steps to restore them to possession of all the lands comprised

in their lease. In this view, he has made a decree in favour of the plaintiffs.

2. The defendants have now appealed to this Court, and on their behalf it has been contended that the steps taken by the plaintiffs to restore them

to possession of the lands of their tenancy are entirely ineffectual and that consequently the plaintiffs are not entitled to recover any portion of the

rent payable under the lease. In answer to this argument, two contradictory positions have been taken up on behalf of the plaintiffs-respondents.

Babu Dwarka Nath Chakrabarti, who has appeared on behalf of some of the landlords who are interested to the extent of one-fourth in the

superior right, has argued that there has not been in the eye of the law any eviction at all of the tenants-defendants. Babu Joy Gopal Ghosha, on the

other hand, who has appeared on behalf of the landlords entitled to three-fourths of the superior interest, has conceded that, as found by this Court

in a previous litigation between the parties, there was an eviction of the defendants from a substantial portion of the lands of their tenancy, but he

has argued that they have been subsequently restored to possession of those lands. In our opinion, there is no force in either of these contentions.

3. In so far as the contention advanced by Babu Dwarka Nath Chakrabarti is concerned, it practically invites us to reverse the previous decision of

this Court between these very parties as erroneous. In 1896, the plaintiffs-respondents commenced an action against these defendants for recovery

of rent in respect of the disputed property for the years 1299 to 1302. It was then contended by the defendants that the claim was unsustainable,

because there had been an eviction of them from a substantial portion of the lands of their tenancy at the instance of the landlord. This objection

was successful, and the judgment of this Court on that occasion has been reported Harro Kumari v. Puma Chandra 28 C. 188]. It was held by Sir

Francis Maclean, C.J., and Mr. Justice Banerjee, that there had been an eviction, as a result whereof the entire rent had been suspended. The

consequence was that the claim for rent was dismissed. It is now sought to be argued that although that decision might operate as res judicata in so

far as the facts found by this Court are concerned, the decision does not operate as res judicata in so far as any inference of law was drawn from

the facts found. The broad contention of the respondents in substance is that a decision erroneous in law cannot under any circumstances operate

as res judicata. This contention is not sustainable on principle* and is clearly opposed to a long series of authorities which were reviewed in the

case of Aghore Nath Mukherjee v. Srimati Kamini Debi 11 C.L.J. 461 : 6 Ind. Cas. 554 where it was pointed out by this Court that although the

true limits of the rule of res judicata might be difficult to formulate, two principles were well-settled. In one class of cases, the parties may seek to

litigate again the same cause of action as had been decided between them in a prior suit. In another class, the dispute may relate to matters which

have been already in controversy and have formed the subject of consideration in the previous suit, although the cause of action in the subsequent

suit may be distinct. In the former class of cases, the application of the rule of res judicata is obviously justifiable on principle. In the latter class of

cases, the estoppel ought to be limited to matters distinctly put in issue and determined in the prior action, and it should further be restricted to

questions of fact or mixed questions of fact and law, for if it was extended to pure questions of law, a Court might find itself in the position that, so

far as certain parties are concerned it, is irrevocably bound to adhere to a proposition of law erroneously laid down in a previous suit. Tested in the

light of this principle, it is obvious that the argument addressed to us on behalf of the respondents is entirely unsustainable. The question whether

there has been an eviction or not, must depend upon the particular circumstances of each case. In England the question would have to be decided

by a Jury under proper directions from the Court, Upton v. Townend (1855) 17 C.B. 30 : 104 R.R. 562 : 25 L.J.C.P. 45 : 1 Jur. (N.S.) 1089 : 4

W.R. 56; Henderson v. Mears (1859) 28 L.J.Q.B. 305 : 1 F & F. 636 : 5 Jur. (N.S.) 709 : 7 W.R. 554. In this country where cases are tried by

Judges without the assistance of a Jury, the facts as well as the inferences to be drawn therefrom must be determined by the Judge alone. At the

highest, therefore, the question whether there has been an eviction or not, may be deemed a mixed question of fact and law. Consequently, a

decision in a previous suit between the parties that certain circumstances, found to exist upon the evidence, amount to eviction, operates as res

judicata in a subsequent suit where the self-same question arises for decision. In the case before us, if we were to accede to the contention of the

respondents, we would practically be called upon to review the former decision and to hold that there was no eviction at any time, and

consequently to pronounce an opinion that the previous suit for rent should not have been dismissed. It is manifestly impossible for us to uphold an

argument which leads to a consequence of this description. We may add, however, that even if the question, whether there has* been an eviction

or not, were open for examination, the plaintiffs could not possibly succeed. That there has been, in this case, a clear eviction, and an eviction by

the consent or procurement of the plaintiffs, is incontestable, because the defendants have been deprived of possession of a considerable quantity

of land comprised in their tenancy, by persons to whom the plaintiffs have granted leases in respect of such lands." The conclusion that, under these

circumstances, the entire rent has been suspended is supported by a long series of decisions which have been recognised as good law for over

forty years.--See Gopanund v. Lalla Gobind Pershad 12 W.R. 109; Dhunput Singh v. Mahomed Kazim 24 C. 296; Rasheswari v. Saurendra

Mohun 11 C.L.J. 601 : 5 Ind. Cas. 105 and Chandrakant v. Rama Nath 11 C.L.J. 591 : 6 Ind. Cas. 478; and that the rule is based upon weighty

reasons and is defensible on principle is clear from the case of Rai Charan v. Administrator-General 9 C.L.J. 578 : 36 C, 856 : 2 Ind. Cas. 169.

4. In so far as the argument addressed by Babu Joy Gopal Ghosha is concerned, there is clearly no substance in it. After the adverse decision in

the previous suit, the landlords gave notice to the present appellants that they themselves would no longer collect rents from the tenure-holders with

whom they had wrongfully settled the disputed lands. They also asked the appellants to take possession of the lands and to collect rents. The

notices, however, were obviously and entirely futile. It is clear from the evidence that the tenure-holders with whom the lands have been settled,

have been in occupation, many of them at least, for over twelve years. They are naturally unwilling to quit the lands which they allege to have

improved at considerable cost; they are equally unwilling to attorn to the present defendants; such of them as are willing to attorn to the defendants

at all, are prepared to pay them rent only at the rate mentioned in the leases granted in their favour by the landlords. This is obviously of no

practical benefit to the appellants who are entitled to actual possession of the lands. They are not bound to accept possession through tenure-

holders and to be content with the small amount of rent payable by them. If they were to accept the arrangement proposed by the respondents, the

result would be that the profits to which they are legitimately entitled under the terms of their lease would be substantially reduced; indeed, in the

case of a considerable portion of the land, they would have no profit at all, because the superior landlords have settled with the tenure-holders

lands, in some instances, at the same rate at ""which they had been settled with the present defendants. Under these circumstances, we must hold

that the landlords have not taken any effective steps to restore possession of the lands to the present appellants. The eviction, therefore, which was

found to exist in the previous judgment of this Court, still continues to exist.

5. It has been faintly suggested by one of the learned Vakils for the respondents that since the decision of this Court on the previous occasion, the

appellants have succeeded in recovering possession of some of the disputed lands. The finding of the Court below, however, is to the effect that

the attempt of the appellants in this direction has been infructuous, and we are not prepared to arrive at a different conclusion upon the evidence,

so far as this point is concerned. Even if it be conceded, however, that the appellants have succeeded partially in their effort to recover possession

of a portion of the lands of which they were deprived at the instance of their landlords, it is manifest upon the evidence that they are still out of

possession of a considerable portion of the lands demised to them. In our opinion, it is incontestable that the action of the landlords resulted in a

substantial disturbance of the possession of the appellants and that such disturbance continued during the years in respect of which rent is claimed

in the present action.

6. Finally, it has been argued on behalf of the plaintiffs-respondents that the position is one of great hardship to them, as they are unable to recover

possession from the subsequent tenure holders and thus restore the appellants to possession. The difficulty, however, is entirely of their own

creation, and the steps they have hitherto taken to restore the appellants to possession have not been of any practical character and have certainly

been of no assistance to the tenants whom they had unlawfully evicted. It is not the duty of the Court to advise them as to the steps they might take

to extricate themselves from the difficult situation in which their own act has placed them, but possibly it may be worth their while to buy up the

subordinate interests they deliberately created and by means of which they procured the eviction of the appellants.

7. The result is that the view taken by the Court below cannot be supported. The appeal is, therefore, allowed and the suit dismissed with costs in

both Courts.