(1910) 06 CAL CK 0036

Calcutta High Court

Case No: None

Srinarain Singh		APPELLANT
	Vs	
Sundarbati Kumari		RESPONDENT

Date of Decision: June 22, 1910

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 51

Citation: 6 Ind. Cas. 860a

Hon'ble Judges: Sharf-ud-din, J; Holmwood, J

Bench: Division Bench

Judgement

1. The question, which arises in this second appeal, is one of res judicata and it arises in the same form as in the case of Kali Roy v. Pratap Narain 5 C.L.J. 92, where a conflict arose as in this case between the rate of rent allowed by the previous decree and that entered in the record-of-rights.

2. It appears that after the survey and settlement proceedings had been started in 1903, the plaintiff obtained a rent decree in respect of the area admitted by the defendant at the rate of Its. 3-5 a bigha. Now that area was about 4 bighas less than the plaintiff claimed, and the survey authorities found on actual measurement that the true area was 14 bighas and odd as stated by the plaintiff. The defendant''s allegation in the suit was that he had held the land as gotya jote at 8 annas a bigha for a very large number of years.

3. The Munsif in that suit found that the plaintiff had no village papers, they having been burnt in 1310. He also found that the plaintiff''s evidence was on the whole more convincing than the defendants. It is true that they produced rent receipts dating back from 12 years before suit showing 8 annas a biyha, but it was surmised that these were for some lands, which were washed away by the river and that shortly after, the plaintiff''s husband made the settlement of 8 or 9 years ago. It was held that the defendant must pay rent for the years in suit at Rs. 3-5 a biyha. This

decision is certainly res judicata as regards the years in suit and the area admitted, but it does not seem to us to operate as res judicata for all future time, nor to touch the 3 bighas found in excess which must be taken as part of the defendant''s holding-We must take it that the settlement officer found, on proceedings conducted with considerable formality and due publicity, that the defendant had held this jote of 14 bighas and odd at the rate of 8 annas a bigha previous to the somewhat vague settlement found by the learned Munsif for the first time after the settlement proceedings had begun. The presumption under Section. 51 of the Bengal Tenancy Act, therefore, does not arise. Now if we consider the Munsif''s judgment and decree and the Settlement Officer''s record and weight them against each other, it appears clear that the latter has by far the greater weight. Hut this is not sufficient, for although it is now settled law that the decision in a previous rent suit does not as a rule operate as res judicata and the dicta in the case of Bukshi v. Nizam-ud-din 20 C. 505, are far too general to have application in every case, yet a more recent judgment of Mr. Justice Banerjee in Rajendra Nath Ghose v. Tarangini Dasi 1 C.L.J. 248, which is cited with approval by Mookerjee, J., in the latest unreported case on the subject, Second Appeal No. 1773 of 1907 decided on the 7th April 1908, Bepin Behary Das v. tiara Chandra Bairagi 2 Ind. Cas. 11 and upheld in appeal under the Letters Patent by the Chief Justice and Mr. Justice Doss, Hara Chandra Bairagi v. Bepin Behary Das 6 Ind. Cas. 860; goes to show that in establishment of a formal contract, whether written or oral, between the parties, the finding by a rent Court that the rate of rent is as fixed by such contract does operate as res judicata. What Banerjee J., says is this : ''The question whether an issue as to the rate of rent generally is a direct or indirect issue in a suit for arrears of rent, must be determined with reference to the frame of such suit, and cannot be determined upon any general a priori grounds. If the rent is claimed at a certain annual rate of rent on the simple ground of rent having been paid at that rate in the preceding year, it cannot be said that an issue as to the annual rate of rent generally is a direct issue in such a suit. On the other hand, if the rent is claimed at an annual rate alleged to have been stipulated for in a binding contract between the parties, whether written or oral, and the Court proceeded to try the question what is the yearly rent payable according to the contract set up, the general issue must be taken to be a direct one". Now before the Munsif, there was no finding that there was any binding contract beyond the years in suit and the contract set up was not in any way proved before the Munsif who simply accepted it on the oral testimony of the plaintiff who had no documentary evidence to produce, because it seemed more probable than the defendant''s story as stated before him, and because the plaintiff was a female who had great difficulty in getting better evidence. It is obvious that such a decision could not have been intended to cover more than the rent for the years in suit. It is no more res judicata than the acceptance of the defendant''s admission where the plaintiff gives no sufficient evidence. We think we should certainly follow the case of Kali Roy v. Pratap Narain 5 C.L.J. 92 in this case and weighing the effect of the record-of-rights against the judgment of 1903, we find the

former must prevail.

4. The result is that the judgment and decree of the lower appellate Court must be reversed and the plaintiff will get a decree for rent of 14 bighas, 5 cottas and 18 dhurs at the rate of 8 annas a bigha.

5. The appellant is entitled to his costs in all Courts in proportion to the amount disallowed.