

(1950) 02 CAL CK 0020

Calcutta High Court

Case No: Letters Patent Appeal No. 1 of 1949 from Appeal from Appellate Decree No. 234 of 1945

Biswanath Bagchi

APPELLANT

Vs

Jitendra Nath Sarkar

RESPONDENT

Date of Decision: Feb. 8, 1950

Citation: (1951) 1 ILR (Cal) 383

Hon'ble Judges: Das, J; Das Gupta, J

Bench: Division Bench

Advocate: Satindra Nath Roy Choudhury, for Hiralal Chakravarti, for the Appellant; Jnanendra Nath Baksi, for Anilendra Nath Roy Choudhury, for the Respondent

Final Decision: Dismissed

Judgement

Das, J.

This appeal is on behalf of the Plaintiffs against the decision of our learned brother Sen J. dismissing the Plaintiffs' suit on the ground of res judicata. The question of res judicata is founded on a decision in a previous suit for rent, being Rent Suit No. 32 of 1942. In that suit Defendant No. 1, Jitendra Nath Sarkar, claimed rent for first two quarters of 1348 B.S. on the strength of a deed of sale executed by one Sitala Bala who in her turn had acquired title under a conveyance executed by her mother Katyayani who had a limited interest of a Hindu widow. In that suit for rent the tenant pleaded that the Plaintiff of the rent suit, Jitendra Nath Sarkar, had no right to recover rent on the ground that the deed of sale by Katyayani to Sitala Bala was not for legal necessity and was inoperative after the death of Katyayani which took place on Magh 10,, 1347 B.S. The pro forma Defendants in that rent suit were the Bagchis, who were the co-sharer landlords of the holding in suit and who were also the reversioners to the estate of Katyayani's husband. The decision in the rent suit was based on the follow-finding:

Having regard to these considerations I hold that both the kabdlids, Exte. 2 and 2A, are valid documents and that Plaintiff has a moiety share in the nishkar in suit,

under which the two jamds for which claim has been laid stand. I, therefore, find that there is a relationship of landlord and tenant between the parties.

2. The right of Jitendra Nath Sarkar to recover rent for the period under claim in the rent-suit was specifically based on the validity of the conveyance by Katyayani to Sitala Bala. In the present suit the Plaintiffs seek to challenge the Defendants' title on the ground that the self-same deed is not supported by legal necessity and has become inoperative on Katyayani's death and that the Plaintiff's are entitled to recover possession on declaration of title. It cannot be disputed that the decision in the present suit on the question of title was directly and specifically decided in the rent-suit.

3. Mr. Roy Choudhury appearing for the Appellants contends that that finding was unnecessary because, on an assumed state of facts, namely, that the reversioners did not avoid the deed of sale by Katyayani to Sitala Bala, a decision of this question would have been uncalled for.

4. In my opinion, in order to see whether the previous decision is *res judicata* or not one has to see what the actual basis of the decision was. Judged by this test, the decision in the rent suit clearly decided the question of title which is now in controversy between the parties.

5. Mr. Roy Choudhury drew our attention to the decision of the Judicial Committee in the case of *Run Bahadur Singh v. Lucho Koer* (1884) ILR 11 Cal. 301 : L.R. 12 IndAp 23. That decision proceeded on two grounds. In the first place the decision in the previous rent suit, which was involved as supporting a plea of *res judicata*, was passed by a rent court which was not competent to try the later suit. In the second place the previous decision proceeded on the ground that the question of title which was in issue in the later title suit was not directly and substantially in issue in the earlier suit; because in the previous rent suit the issue as framed by the Munsiff was not on the question of title but on the question whether or not the husband of the Plaintiff in the earlier suit for rent was realising the share of the rent claimed by him. As such, the question of title, which was not directly and substantially in issue in the previous suit for rent, was not specifically decided.

6. Mr. Roy Choudhury also relied on the decision of this Court in the case of *Narendranath Samaddar v. Anandachandra Shaha* (1933) ILR 60 Cal. 1307. In this case also the previous decision was by a court which was not competent to try a later suit. Moreover, referring to the judgment of the earlier rent suit which was relied on as *res judicata*, the trial court found that the question of the validity of the *kabuliyat* was not directly in issue. This decision, therefore, is no authority for the proposition contended for on behalf of the Appellants.

7. Mr. Roy Choudhury also contends that in the previous suit for rent the Plaintiffs were *pro forma* Defendants and against the ultimate decree passed in the rent suit they had no right of appeal. In view of the pleas raised by the Plaintiffs who were

pro forma Defendants in that suit and the actual decision reached in that suit, I do not see why the Plaintiffs were not competent to prefer an appeal. The right that was decreed in favour of Jitendra Nath Sarkar was in derogation of their claim to the 16 annas rent and the adjudication which was made gave them a right of appeal.

8. On this ground it must be held that the decision of our learned brother Sen J. is correct and this appeal must stand dismissed with costs.

Das Gupta J.

9. I agree.