**(1919) 01 CAL CK 0048**

**Calcutta High Court**

**Case No:** None

| | | |
|---|---|---|
| Sonaullah Sarkar | | APPELLANT |
| | Vs | |
| Durga Kanta Mozumdar | | RESPONDENT |

**Date of Decision:** Jan. 15, 1919

**Citation:** 50 Ind. Cas. 598

**Hon'ble Judges:** Walmsley, J; Ernest Fletcher, J

**Bench:** Division Bench

**Judgement**

1. This appeal is preferred by the defendant against a decision of the Subordinate Judge of Rajshahye, dated the 23rd January 1917, confirming a decision of the Munsif at Boalia. The suit was brought for ejectment and the circumstances giving rise to the suit are these. The plaintiff brought a former suit against the defendant claiming rent from him on the footing that the defendant was a bhag tenant. That suit failed. The plaintiff, therefore, has brought this suit to eject the defendant. It is urged that the present suit cannot be brought having regard to the fact that the decision in the rent suit was res judicata, Of course a decision in a rent suit may be res judicata as to matters actually decided therein. The question, therefore, is as to what was decided in the rent suit. The learned Judge in the Court below has found that the matter is not res judicata, Therefore, the first thing to be seen is what was the issue and what was the decision in the rent suit. We have got the judgment of the lower Appellate Court which is the final Court in the rent suit, and the Judge states in the course of his judgment that only one question arose for decision by him in that appeal and that was this, namely, did the defendant hold the land in question in bhag tenancy under the plaintiff, and the learned Judge answered that question in this way: I hold upon the evidence produced and in the circumstances of the case noted above that the plaintiff had failed to establish that the defendant holds the land in question in bhag tenancy under him." That is what was raised and what was decided. The present defendant contends, however, that the matter which was incidentally gone into and decided in his favour was the essential portion of the decision and that. therefore, the plaintiff is precluded from setting up his title in the

present case. That, I think, is not right. This question of title was not necessary to be gone into in the former case and it was only incidentally considered by the learned Judge. The learned Judge''s remark that in the circumstances noted above and the finding of fact corresponds to the terms of the question which the learned Judge proposed to answer, namely, whether the relationship of landlord and tenant subsists between the plaintiff and the defendant?. I am of opinion that the learned Judge in the Court below came to a correct conclusion, when he decided that this matter is not res judicata and that the present plaintiff is not estopped from setting up his title in the present suit. In this view the present appeal fails and must be dismissed with costs.

Walmsley, J.

2. I agree.