
(1878) 01 CAL CK 0016

Calcutta High Court

Case No: None

Birchunder Manickya

APPELLANT

Vs

Hurrish Chunder Dass

RESPONDENT

Date of Decision: Jan. 9, 1878

Hon'ble Judges: Richard Garth, C.J; Birch, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that, in this case, the lower Court is in error, through misconstruing the meaning of the Full Bench decision--Beer Chunder Munick Bahadoor v. Ramkishen Shaw 14 B.L.R. 370 : 23 W.R. 128.

2. The plaintiff sued the defendant for rent due for the year 1279 at the same rate which had been decreed to him for the previous year 1278, in a suit which he had brought against the same defendant for rent of the same property, and the plaintiff relied upon that former decree as almost conclusive evidence of the proper amount due to him from the defendant.

3. It seems that this decree for the rent of 1278 was obtained by the plaintiff ex parte, the defendant not appearing at the trial; and it is admitted that no execution had ever been taken out by the plaintiff upon the decree, and that his right to take out execution had been barred by limitation.

4. The Court of first instance held that this former decree was evidence against the defendant in the present suit, and gave judgment for the plaintiff for the same amount, namely, Rs. 74.

5. The Officiating Judge on appeal reversed the Munsif's judgment, on the ground that as no stops had been taken by the plaintiff to execute the decree for the rent of 1278, and the period of limitation had been allowed to elapse, the decree itself became inoperative, and could not be kept alive for purposes of evidence any more than for purposes of execution. This view was supported by the case of Ram

Soondar Teware v. Sreenath Dewasi 14 B.L.R. 371 note : 10 W.R. 215; and when this case came up to the High Court on special appeal, the point thus decided by the Judge was referred to a Full Bench; and the Full Bench decision upon it is in the case of Maharajah Beer Chunder Manick Bahadoor v. Ram Kishen Shaw 14 B.L.R. 370 : 23 W.R. 128 and is in these words: Couch, C.J. says: "We are of opinion that the decree is admissible in evidence. The question of its value when admitted is to be determined by the lower Courts. The defendant has alleged that it was obtained fraudulently. It does not appear that he gave any evidence of this, and it will be for the Court to say whether there is any evidence of that allegation. The decree of the Officiating Judge must be reversed, and the suit remanded to him for rehearing."

6. The case then went back to the Officiating Judge, and he found, apparently upon no other grounds than that the decree had been obtained *ex parte*, and that no evidence had been given on the part of the defendant at the former trial, that the decree was of no value, and ought to be disregarded.

7. The case was then remanded by the lower Court to the Munsif to try the question of amount *de novo* without reference to the former decree; and this has resulted, after a long litigation, in the plaintiff recovering Rs. 49, being a much smaller sum than was adjudged to him by the former decree.

8. Now in dealing with the decree in this way, we consider that the Judge was practically ignoring the true meaning of the High Court's judgment.

9. The High Court were perfectly aware that the former decree, was made *ex parte*. They knew that the decree had passed without any evidence on the part of the defendant, if that fact had been sufficient to invalidate the decree, or to render it of no value for the purposes of evidence in the present suit, they would of course have said so, and would not have remanded the case to the Officiating Judge for re-trial.

10. What the Full Bench judgment, in our view of the matter, really meant was this; that an *ex parte* decree is *prima facie* for purposes of evidence as good as any other decree, and as binding between the parties upon the matter decided by it. But that if the defendant could show, as he said he was prepared to do, that the former decree was obtained by fraud, or that it was irregular, or contrary to natural justice or the like, the *ex parte* decree, although of force between the parties in the suit in which it was given, might be properly considered as of no value for the purposes of evidence in any other suit.

11. It seems clear that this was the meaning of the Full Bench, because while they knew that the former decree had been obtained *ex parte*, and therefore evidently considered that fact alone as insufficient to destroy the value of the decree for purposes of evidence, they say that the defendant alleged that the decree had been obtained by fraud, and that it must be for the Court below to say whether that allegation was proved.

12. But when the case came again before the Officiating Judge, it does not appear that the defendant gave any evidence of fraud, or that he made any attempt to show that the decree in the former suit had been obtained otherwise than honestly and properly. The Judge pronounced the decree to have no value as evidence, merely because it had not been contested by the defendant.

13. In this we consider he was quite wrong: a decree obtained ex parte is in the absence of fraud or irregularity, as binding, for all purposes, as a decree in a contested suit. If it were not so, a defendant in a rent-suit might always by not appearing, and allowing judgment to pass against him without resistance, prevent the plaintiff from ever obtaining a definitive judgment as to what is the proper amount of rent due from him to his landlord.

14. If a defendant does not think it worth while to contest the suit, but allows the plaintiff's evidence, and the judgment passed upon it, to go unquestioned, he has no right afterwards to dispute the correctness or the value of the judgment, merely because he chose to absent himself from the trial.

15. Of course if any fresh circumstances had arisen since the former decree was made, which would justify on the one hand an abatement, or on the other hand an enhancement, of the rent decreed in the former suit, the Court would be bound to take such circumstances into consideration. But no evidence of this kind was adduced by the defendant in the present case. The only materials which were brought forward, upon which the judgment of the Court below ultimately proceeded, consisted of evidence which the defendant might and could have brought forward, if he had so pleased, in the former suit, and which he offered no excuse for not producing on that occasion.

16. We think, therefore, that the principle upon which we decided the case of *Nobo Doorga Dossee v. Foyz Buksh Chowdry* ILR 1 Calc. 202 : 24 W.R. 403 and which has been acted upon by this Court in other cases applies with equal force here.

17. We consider, for the reasons given by the learned Judge in the Court below, that no notice of enhancement was necessary before bringing this suit, and we think that the Munsif was right in the first instance in adjudging to the plaintiff the same rate of rent as was decreed to him in the former suit.

18. The decree will therefore be altered in that respect; but, as this long series of litigation has arisen from the misconception of the Full Bench judgment by the Officiating Judge, we think that each of the parties should pay their own costs of the proceedings subsequent to that judgment.