

(1877) 09 CAL CK 0006

Calcutta High Court

Case No: None

Gobind Chunder
Koondoo and Others

APPELLANT

Vs

Taruck Chunder Bose
and Others

RESPONDENT

Date of Decision: Sept. 12, 1877

Citation: (1878) ILR (Cal) 146

Hon'ble Judges: Richard Garth, C.J; Markby, J; Macpherson, J; Jackson, J; Ainslie, J

Bench: Full Bench

Judgement

Richard Garth, C.J.

I am of opinion that in this case the plaintiffs are barred by the former judgment. It is to be observed, that the present suit is not to recover khas possession of the property in question. The land is in the occupation of a tenant, and the plaintiffs' only object is to establish their title to it as against the defendant No. 1. We have, therefore, to see whether the right and title which is the subject of claim in this suit was not the very same right and title which was in issue between the same parties, and determined in the former suit. When once it is made clear, that the self-same right and title was substantially in issue in both suits, the precise form in which the suit was brought, or the fact that the plaintiff in the one case was the defendant in the other, becomes immaterial.

2. Now, in this instance, the plaintiff in the former suit is the same person as the defendant No. 1 in this; and he sued to recover from the occupying tenant the rent of the property now in dispute. In that suit one of the plaintiffs (representing and claiming the same right under the same title which is now claimed by all the plaintiff's) intervened as a defendant, and he resisted the then plaintiff's claim to the rent, upon the ground that he (representing the present plaintiffs' interest) was entitled to it as the owner of the property. An issue was, accordingly, framed in that suit, as to whether the then plaintiff (the present defendant No. 1) was entitled to

the rent as owner of the property in question as against the upon defendant who represented the present plaintiffs. This question was contested between them in that suit upon the same title and materials which are now brought forward in the present suit, and the only difference is, that the plaintiff in that suit is the defendant in this.

3. On the other hand, it is argued by the appellant, that the claim in the former suit was for rent against the tenant; that the only issue in that case was whether the plaintiff was entitled to that rent, and that the question of title raised by the intervening defendant was only incidental to the main issue. But as between the plaintiff and the intervening defendant the question, and the only question, was that of title, and as the defendant in that suit chose to intervene and to raise that question between himself and the plaintiff, he, and those whom he represented, must take the consequences of their intervention.

4. Our decision in this case will be found entirely in accordance with the views expressed by the Full Bench in the case of *Hurri Sunkur Mookerjee v. Muktaram Patro* 15 B.L.R. 238 : S.C. 24 W.R. 154.

5. The appeal will be dismissed with costs.