

(1880) 06 CAL CK 0015

Calcutta High Court

Case No: None

Ramdut Singh

APPELLANT

Vs

Ghursobhit Ahir

RESPONDENT

Date of Decision: June 8, 1880

Citation: (1880) ILR (Cal) 923

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

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think this is a very clear case. The plaintiff sues to eject the defendant from the property in question, after giving him a proper notice to quit. The defendant sets up a right of occupancy which has been found against him in both the lower Courts, and the only ground upon which he contends that he is entitled to the judgment of the Court, is this. In a former suit between the same parties, in which the plaintiff sued him for rent due under a written agreement, he (the defendant) set up this same right of occupancy; that suit was dismissed because the plaintiff failed to prove the agreement; and, having failed to do so, the other point with regard to the defendant's right of occupancy was neither tried nor decided; it was of course not necessary under the circumstances to decide it.

2. But the defendant now says that, although that point was neither tried nor decided in the former suit, still, as it might and ought to have been made his ground of defence in that suit, and as he succeeded in that suit, though upon another ground, he is in the same position now, (having regard to expl. ii of Section 13 of Act X of 1877) as if that point had been then decided in his favour.

3. I certainly do not read expl. ii of that Act as meaning anything so unjust or unreasonable. It is intended to apply to a very different state of things. It says, that "any matter which might and ought to have been made a ground of defence or attack in a former suit shall be deemed to have been a matter directly or substantially in issue in such suit." According to my view this explanation is meant to

apply to a case of this kind; where the defendant has a defence, which, if he had so pleased, he might and ought to have brought forward, but as he did not bring it forward, the suit has been decreed against him. The explanation means to say that, under such circumstances, the defendant is as much bound by the adverse decree as if he had set up the defence, and that he is equally estopped from setting up that defence in any future suit under similar circumstances; that appears to me to be the sort of case which expl. ii is intended to meet; it certainly was never intended to enable a party to treat a point as having been decided in his favour in a former suit, which was in fact not so decided, and which it was not necessary for the purposes of the suit to decide at all.

4. The appeal must be dismissed with costs.