(1868) 06 CAL CK 0026

Calcutta High Court

Case No: Regular Appeal No. 29 of 1968

Chowdhari Nilkanth Prasad Singh		APPELLANT
	Vs	
Dignarayan Singh		RESPONDENT

Date of Decision: June 26, 1868

Judgement

L.S. Jackson, J.

The principal defendant raised two issues in bar at the hearing of the suit. First, that the Court was precluded from entertaining it u/s 2 of the Civil Procedure Code; secondly, that the suit was barred by limitation. The Principal Sudder Ameen appears to have selected for trial the issue of limitation, and he gives no judgment on the other issue in bar. He held that the plaintiffs'' suit was barred, inasmuch as no possession of the lands in dispute within 12 years was made out to his satisfaction. Against this decision the plaintiffs have appealed, and the defendant, Dignarayan Singh, on his part, has tendered an objection u/s 348, on the ground that the suit should have been thrown out u/s 2 of Act VIII of 1859.

2. We first heard the argument upon the objection last mentioned, and it appears to us, that although the objection cannot be maintained precisely in the form which it bears, yet, in effect, the plaintiffs'' suit must fail, on the ground that it involves a material issue of fact which has been already determined by a competent Court, between the same parties, and which issue disposes of the present suit. The finding of the Court, in the former case, may, in our opinion, be used as evidence, and as conclusive evidence against the plaintiff in this suit.

3. We have been much pressed on the side of the appellant with the contention, that the previous decree, being merely a decree in a suit for rent against the plaintiffs'' lessee, was not evidence against the plaintiff, and we are referred to, the case of Musst. Edun v. Musst. Bechun, decided by a Bench of three Judges, (2 Ind. Jur., N. S., and 8 W. R. 175).

4. It seems to me that the decision in that case was based mainly on the consideration that the Court, which had given the previous decision relied upon, was not a Court of concurrent jurisdiction with that in which the later suit was brought. That was a decision in a rent suit in the Collector''s Court under Act X of 1859, the Collector''s Court being a Court limited in its jurisdiction and competent to determine the matter immediately before it, but not competent finally to determine the other questions which arose incidentally in the case.

5. This is not the case here, for the previous decision was given in a suit in the Civil Court, originally a suit between the plaintiff and his lessee, but in which a third party, the appellant before us, who claimed the whole title to the land in question, was allowed to intervene, whereon by the direction of the High Court on special appeal, an issue was ordered to be tried as between the intervener and the plaintiff, namely, " Whether the whole interest, which the plaintiffs'' predecessor in estate may have had in these mouzas, had not passed out of them by deeds of sale, compromise, or otherwise, prior to the date of the pottah, to Ahlad Singh."

6. The very issue, which is intended to be decided in the case, was thus raised between the same parties and in a Court competent to decide this question. It is true that the original object of the suit was to recover rent, but by the intervention of a third party, the question of title was gone into, not u/s 77 of Act X of 1859[1], and in a Court restricted in its jurisdiction, but in a Court competent to decide that question finally. It would, perhaps, suffice for us to stop here, and to say that the question of title involved in the present suit being one which has been already raised and determined between the same parties by a Court of competent jurisdiction, the plaintiffs must necessarily fail. But, as the parties may question our decision, on this point, we have thought it advisable to enquire further, if the Court below was right on the point which it did decide, viz., of limitation, and having the evidence before us, and having heard that evidence, we have no hesitation in affirming its judgment.

7. It seems to us that there is nothing like any evidence to show that the plaintiffs were in possession within 12 years; on the contrary, the decision in the suit above referred to, goes to show that at the period of Ahlad Singh''s lease, the plaintiffs were not in possession of the land, and we see no reason to believe that they ever got into possession afterwards.

8. We think it right to state, that Baboo Chandra Madhab Ghose proposed to submit to us certain documents, and what he called " the history of the previous litigation," commencing from the year 1828, but, having ascertained from him that the documents in question do not contain any evidence of possession within 12 years, and that they are not corroborative of the evidence of the witnesses as to that possession, we decline going into that mass of documents. We think, therefore, for these reasons and for those referred to above, that the plaintiffs'' suit has been rightly dismissed, and that this appeal also must be dismissed with costs.

[1]If in actions for rent a third claimant appeal, he is to be made a party be the suit.

[Sec. 77:--When in any suit between a landholder and a ryot or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the ryot or under-tenant is disputed, and such right is claimed by or on behalf of a third person, on the ground that such third person, or a person through whom he claims, has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always, that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision.]