

(1905) 06 CAL CK 0024
In the Calcutta High Court
Case No : Appeal from Order No. 152 of 1904

Ambica Churn Das

APPELLANT

Vs

Kala Chandra Das

RESPONDENT

Date of Decision : 15-06-1905

Acts Referred:

Citation : (1905) 06 CAL CK 0024

Judgement

1. This appeal arises out of a suit for recovery of rent. The property in respect of which the rent is claimed belonged to one Chand Mohun Das, and his nephew Dhiraj Narain Das. Chand Mohun left a son Nobin, and the Plaintiff is said to be the adopted son of Nobin. He obtained letters of administration in respect of the estates of both Chand Mohun and Dhiraj Narain, and brought this suit for rent against the Defendant, a raiyat, holding certain lands in the estate. The Defendant denied the relationship of landlord and tenant, and also denied that the Plaintiff was the adopted son of Nobin, and averred that the letters of administration had been obtained by misrepresentation of facts. He also said that the Plaintiff had been dispossessed by the zemindar within whose estate the property was situated, that he (Defendant) had been paying rent to the zemindar direct, and that, therefore, the Plaintiff was not entitled to recover the rent claimed. The Munsif gave the Plaintiff a decree. He held, among other matters, that the letters of administration obtained by the Plaintiff conferred upon him a representative title, and gave him a right to sue for rent, and that the Defendant was not entitled to raise any defence as to the Plaintiff's representative character until the letters of administration were revoked by a competent Court. The Defendant appealed to the District Judge and that officer has remanded the case to the Munsif for retrial upon two questions; first, whether the notice as to the Plaintiff's succession, such as is contemplated by secs. 15 and 16 of the Bengal Tenancy Act, has been given to the Collector; and, secondly, whether the letters of administration were obtained by fraud. The first observation that we have to make upon this order of remand made by the District Judge is that it is in violation of the provisions of sec. 562, C.C.P. It will be observed that the

decree of the Court of first instance did not proceed upon any preliminary point such that the lower Appellate Court having reversed that decree, might remand the case for retrial. The Munsif, it will be found, raised all the necessary issues in the case, went fully into the matters raised between the parties and gave judgment in favour of the Plaintiff; and it is, therefore, obvious that, if the lower Appellate Court thought that a determination of any particular question was necessary, in the circumstances of the case, it might have made an order such as is contemplated by sec. 566 of the Code. We think that upon (sic) single ground, the order of remand (sic) by the lower Appellate Court (sic) sustained.

2. In the next place, we have (sic) that no objection as to the secs. 15 and 16 of the Be Act was raised in the instance. But however as it would appear (sic) of the lower Appellate for the Plaintiff offer (sic) showing that such notice was given to the Collector, and the District Judge ought to have received such evidence and not to have sent the case back to the Court of first instance for the same purpose.

3. Then, as regards the question of fraud in obtaining the letters of administration, we observe, on an examination of the written statement put in by the Defendant, that no question of fraud or collusion, such as is contemplated by sec. 44 of the Evidence Act, and which might entitle the Defendant to go into evidence for the purpose of proving such fraud or collusion in connection with the letters of administration, was raised in the defence. All that was stated in the written statement was that the letters of administration were obtained upon a misrepresentation of the fact that the Plaintiff was the adopted son of Nobin. That, in our opinion, was not sufficient to entitle the Defendant to go into evidence for the purpose of proving that the letters of administration were invalid in law, supposing that such letters of administration could be regarded as an order within the meaning of the said sec. 44 of the Evidence Act. Under sec. 4 of (sic) Probate and Administration Act, "the (sic) or administrator, as the case (sic) be, of a deceased person, is his (sic) for all purposes, and property of the deceased person (sic) as such." Then turning (sic) the said Act, we find it "probate or letters of (sic) have effect over all (sic)veable or immoveable, throughout the Province is granted and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding properly which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such properly to the person to whom such probate or letters of administration shall have been granted." So that, the Plaintiff under the letters of administration granted to him fully represents the estate of the deceased, and if the Defendant pays the debts due from him to the Plaintiff, it will afford him full indemnity against the claim of any other person who might hereafter prove a superior title to the estate. It will be observed that the Munsif found that the Defendant holds the land in the tenure now in the hands of the Plaintiff as administrator of the estate of the deceased and that he (Defendant) owes the rent claimed. And we do not understand how such a defence as was raised in the written statement, namely, that the Plaintiff

was not the adoptive son of Nobin, and that the letters of administration were obtained by misrepresentation of the true facts, could be successfully made so long as the letters were not revoked by a competent Court.

4. The learned Judge refers in his judgment, to two cases, namely, those of *Rajib Panda v. Lakshan Mahapatra* ILR 27. 11 (1899) and *Pundit Prayag Raj v. Goukaran Pershad Tewari* 6 C.W.N. 787 (1902) in support of the view that he has expressed. Now, on turning to the first-mentioned case, it will be found that the facts were very different from those with which we are concerned in the present case. There, a compromise decree had been made between the parties and subsequently a suit was brought by one of the two parties for possession of certain lands comprised within the compromise decree. The Defendant pleaded that that decree was a fraudulent one and the question was raised whether, having regard to the provisions of sec. 44 of the Evidence Act, the Defendant was at liberty to show that the decree had been obtained by fraud; and it was held by a Division Bench of this Court that it was open to him to go into evidence upon the said question. In the other case, it would appear that probate had been granted to an universal legatee by mistake, but the said probate was afterwards revoked upon an application made to the Probate Court. In the meantime the person who had obtained probate entered into certain mortgage transactions without the permission of the District Judge; and the question was raised whether such transactions were valid; and it was held that they were invalid. In our judgment, neither of the two cases quoted by the District Judge has real application to the facts of the present case. Here the position of the parties is this : The Plaintiff, by reason of the letters of administration that have been granted to him, fully represents the estate of the deceased. The Defendant holds lands in the property now in the hands of the Plaintiff. He owes the rent claimed and any payment made by him to the Plaintiff under the decree which was pronounced by the Court of first instance will afford the Defendant full indemnity against the claim of any other party. In these circumstances we do not think that the question whether the Plaintiff was the adopted son of Nobin or whether the letters of administration were rightly granted to him could be successfully raised by the Defendant in this case.

5. Upon these grounds, we think the order of remand made by the lower Appellate Court should be set aside, and the case sent back to that Court with directions that it do proceed to determine the appeal before it in accordance with the observations that we have made. We need hardly say that the Judge ought to receive the evidence which the Plaintiff may adduce showing that the notice as contemplated by secs. 15 and 16 of the Bengal Tenancy Act was given to the Collector, and if he be satisfied upon the evidence that may be adduced, that the said notice was given he will proceed to give judgment in favour of the Plaintiff affirming that of the Court of first instance. Costs will abide the result. We assess the hearing fee at five gold mohurs.