

(1919) 05 CAL CK 0066
In the Calcutta High Court

Aparna Charan Chabri and Another

APPELLANT

Vs

Gopi Nath Samanta and Others

RESPONDENT

Date of Decision : 28-05-1919

Acts Referred:

Citation : AIR 1919 Cal 596 : 53 Ind. Cas. 567

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—This appeal arises out of a suit for arrears of rent brought by the co sharer landlords. The plaintiffs' case was that the defendants held 4 bighas of land at a rental of 2 aras and 3.5 mans. The defendants alleged that they held the 2 bighas of land only at a jama of 14 huris. The defendants admittedly held their ancestral jote of 2 bighas at the rent admitted by them, The-dispute between the parties was whether they also held another jots which had formerly belonged to one Sharif Patar and which is said to have been purchased by the defendants in 1296. The Munsif held that the defendants held the lands in bath the jamas and were liable for the full amount of the rent claimed. The lower Appellate Court held that the question relating to the purchased jama was res judicata and modified the Munsil's decree and granted the plaintiffs a decree in accordance with the defendants' admission. In deciding this issue of res judicata the lower Appellate Court relied on the judgment in a previous rent suit which had not been put in evidence before the Munsif. In admitting this judgment in evidence the learned District Judge failed to record reasons for its admission in accordance with the provisions of Clause 2 of rule 27 of Order XLI of the Code of Civil Procedure. There is nothing on the record to show that the admission of this evidence was justified. It was not certainly justified under Clause (a), sub-section (1) of that rule, since the document had not been tendered and there was no refusal to admit it in the first Court. As regards Clause (b) the Judicial Committee of the Privy council in the case of Kessow i Issur v. Great Indian, Peninsula Railway company (1) laid down the conditions under which evidence should be admitted for the first time in the Court of Appeal. The legitimate occasion for this

rule is when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, and not where a discovery is made outside the Court of fresh evidence and the application is made to import it. It will be necessary for the case to be sent back to the lower Appellate Court for re hearing, and at the re-hearing the learned District Judge will consider whether this document will be required to be produced and the learned Judge will in the exercise of his discretion decide either to admit or to refuse this document.

Then as regards the question of res judicata the learned District Judge seems to have overlooked a very important point. The plaintiff in the previous suit was not the plaintiff in the present suit but one of his co-sharers. The plaintiffs in the present suit were the pro forma defendants in that suit. But as pro forma defendants, though the decision might be binding upon them as to their claim to any share of the rent for the years for which the rent was claimed in that suit, the decision cannot be binding upon them on matters which were not or could not be in issue between them as pro forma defendants and the principal defendants. They were not responsible for the conduct of the suit and should not be held responsible for their co sharers' act in that suit. The only point in which they were interested was whether their share of the rent for these years had been paid and if they did not think it necessary to enter appearance in that suit in order to insist on their claim, there was no duty cast upon them to take any action in connection with that suit. It is pointed out that the last year for which the rent was claimed in that suit is the first year in which the rent is claimed in the present suit and so far as the claim for that year is concerned, it would appear that the plaintiffs' suit is barred. But as regards suit subsequent years the finding in the previous suit that the defendants did not hold the land of the disputed jama as a part of their ancestral holding is not res judicata as between the plaintiffs and the defendants in the present suit.

As other points were raised on behalf of the respondents in the lower Appellate Court and it left them undecided, the suit will be remanded for the determination of those issues as well as the issue of res judicata as regards the rent of the year 1919. The appeal is accordingly allowed and the suit remanded to the lower Appellate Court for re hearing in accordance with the above directions.

Costs will abide the result.