

(1918) 05 CAL CK 0037
In the Calcutta High Court

Beni Madhab Chackrabutty and Others	APPELLANT
Vs	
Bhola Nath Majila and Others	RESPONDENT

Date of Decision : 02-05-1918

Acts Referred:

Citation : AIR 1919 Cal 1013 : 47 Ind. Cas. 8

Hon'ble Judges : Smither, J; Fletcher, J

Bench : Division Bench

Judgement

1. This is an appeal by the defendant No. 1 against the decision of the learned Districts Judge of Burdwan, dated the 29th October 1914, affirming the decision of the Munsif of Kalna. The plaintiff sought in this case for a declaration that a kabuliyatt dated the 26th Srabon 1308 filed by the defendant No. 1 in rent suit No. 7 of 1909, and the rent decree passed thereon are null and void and inoperative and that the annual jama of Rs. 17 created by the said kabuliyat or the decree is false and fictitious, and further that the plaintiff is not bound to pay any rent to the defendant No. 1 in respect of the said annual jama of Rs. 17. Before us the case has been argued on two grounds: First of all limitation and secondly, res judicata. Taking the second point first it appears that the present appellant, the defendant No. 1, brought a suit against the plaintiff in this case to recover rent on the basis of the kabuliyat, and it is quite clear from the findings in that case that the kabuliyat was held on a judicial determination to be effective and valid and to have been properly executed; and the matters referred to by the plaintiff in this suit could have been made the grounds of attack in the rent suit. It is said that there is some rule that in a rent suit no matter is res judicata excepting whether the relationship of landlord and tenant exists. It depends on what were the issues raised between the parties and decided in the rent suit. It is quite clear that in a case of this nature exactly the same points as have been adjudicated on in the rent suit arise, and it is not competent to maintain the present suit as against the defendant No. 1. In that respect, we may cite the decision of Sir Lawrence Jenkins, reported as Sreenath Dutt v. Kaser Sheikh 20 Ind. Cas. 344 : 18 C.W.N. It is quite clear that the relief granted by

the lower Court to the plaintiff against the defendant No. 1 cannot be supported.

2. The question of limitation, we need not enter into.

3. The appeal of the defendant No. 1 must accordingly be allowed and the decree, passed against him by the lower Courts, set aside and the suit dismissed against him. The plaintiff will pay to the defendant No. 1 his costs in this appeal.

No. 2987 of 1915,

4. This appeal will be governed by the judgment in Second Appeal No. 190 of 1915 just now disposed of. It is accordingly decreed in the terms of the said judgment.