

**(1901) 01 CAL CK 0003**  
**In the Calcutta High Court**

|                                     |            |
|-------------------------------------|------------|
| Blshnu Priya Chowdhurani and Others | APPELLANT  |
| Vs                                  |            |
| Bhaba Sundarl Debya                 | RESPONDENT |

---

**Date of Decision :** 16-01-1901

**Acts Referred:**

Contract Act, 1872 — Section 23, 24

**Citation :** (1901) ILR (Cal) 318

**Hon'ble Judges :** Brett, J; Banerjee, J

**Bench :** Division Bench

---

## Judgement

1. Two questions have been raised in this appeal: First, whether the Lower Appellate Court was right in holding that the stipulation in the kabuliat relied upon by the plaintiff for the delivery of certain articles to the plaintiff's landlord by the defendants, or in default for compensating the plaintiff for any damage she might sustain, was not in the nature of a stipulation for paying an abwab; and second, whether the Court of Appeal below was right in holding that the issue whether the aforesaid stipulation was legally enforceable or not was res judicata, and concluded in favour of the plaintiff by the decision in a previous suit, namely, suit No. 492 of 1868 of the Court of the Muneif of Goas.

2. If the second question is answered in the affirmative, the first question will not arise, as it will not be open to the Court to consider it. We shall, therefore, deal with the second question first.

3. It is not disputed that the former suit was one between the same parties, and the question now arising for determination was directly in issue and was expressly determined in favour of the plaintiff in the former suit. But the learned Counsel for the defendant-appellants contends that notwithstanding that circumstance, the decision in the former suit cannot operate as res judicata for three reasons: First, because the Court of the Munsif of Goas was not competent in 1868, when the former suit was brought, to entertain a suit for rent like the present, and the decision of that Court was not a decision of a Court of competent jurisdiction; secondly, because the question raised is a question of

law, and no previous decision on such a question could operate as *res judicata*; and thirdly, because there has been a change in the law since the decision in the previous suit by the enactment of Sections 23 and 24 of the Indian Contract Act. We shall examine these three reasons separately.

4. It is true that under the law as it stood in 1868, the Court of the Munsif of Goas had no jurisdiction to try a suit for arrears of rent, but the claim in the previous suit was not one for arrears of rent, nor is the claim in the present suit, so far as it relates to the amount of compensation under the stipulation in question, a claim for arrears of rent. The *kabuliat* specifies the amount of rent separately, and the stipulation in question is quite distinct from that for the payment of rent. It is a stipulation by which the *durputnidar* undertakes to deliver to the *putnidar*'s landlord, the *zemindar*, certain articles, and covenants further that if the articles are not delivered as agreed upon, the *durputnidar* shall become liable to pay to the *putnidar* the sum which she may have to pay to the *zemindar* in consequence of the *durputnidar*'s default. The liability of the defendants, therefore, to pay to the plaintiff the money in question does not arise merely upon their default to deliver the articles to the plaintiff's landlord. It arises only upon the plaintiff being made liable to render compensation to her landlord, the *zemindar*, in consequence of the defendants' default. The stipulation, therefore, is clearly one for compensating the plaintiff for breach of contract by the defendants, and the Court of the Munsif of Goas was the Court competent to entertain a suit for compensation for such a breach of contract. The decision of the Munsif of Goas in the previous suit was, therefore, in our opinion a decision of a competent Court, and the first ground upon which we are asked to hold that it cannot operate as *res judicata* is not a good ground.

5. Then in support of the second argument, namely, that the previous decision cannot operate as *res judicata*, because it is a decision upon a question of law, reliance is placed on the cases of *Parthasaradi Ayyangar v. Chinna Krisha Ayyangar* I. L. R. (1882) Mad. 304 and *Chamanlal v. Bapubhai* I. L. R. (1897) 22 Bom. 669. The last mentioned case is, in our opinion, clearly distinguishable from the present. There what was held was this, that a previous decision, in a suit between the same parties, that arrears for twelve years could be awarded, could not operate as *res judicata* in the sense that the Court is bound for ever to decide that a claim for arrears of rent for twelve years is good. That may be so. In fact to hold that a matter is *res judicata* upon a question like that would be to hold that a decision between any two parties will have the effect of altering the law of the land in regard to a certain class of suits between those parties. That, however, is not the case here. The question before us is not a pure question of law. It is a mixed question of law and fact. The question is not the general question whether a stipulation for the payment of *abwab* between the parties to the present suit is rendered valid by reason of a previous decision between the same parties; but the question is whether a particular stipulation contained in a particular *kabuliat* having been held to be valid as between the parties, it is open to the Court subsequently to try the issue whether that particular stipulation is

valid or not; and to that question we think the answer ought to be in the negative. The view we take is in accordance with the decision in the case of Rai Chun Ghose v. Kumud Mohon Dutta Chaudhuri 1 C.W.N. 687. It is also supported by the cases of Gowri Koer v. Audh Koer I. L. R. (1884) Cal. 1087 and Phundo v. Janginath I. L. R. (1893) All. 327; as for the case of Parthasaradi Ayyangar v. Chinna Krishna Ayyangar I. L. R. (1882) Mad. 304 if it goes further than the case of Chamanlal v. Bapubhai I. L. R. (1897) 22 Bom. 669 with all respect for the learned Judges who decided it, we must dissent from the view therein expressed, and follow the decision of our own Court to which reference has already been made.

6. As to the third reason, it is enough to say that there has been no change in the law on the point under consideration by the enactment of the Indian Contract Act; the law on the point having always been what is laid down in Sections 23 and 24 of that Act.

7. The reasons then upon which it is sought to be shown that the previous decision ought not to operate as *res judicata* are, in our opinion, unsound; and the decision in the previous case must, therefore, be held to operate as *res judicata* and to conclude the question in favour of the plaintiff-respondent. That being so, it is not necessary for us, nor is it open to the Court, to go into the first question raised in this appeal.

8. The decree of the Lower Appellate Court must therefore be affirmed and this appeal dismissed with costs.