

(1922) 10 PAT CK 0014
In the Patna High Court
Case No : Appeal Nos. 392-397 of 1920

Chathu Singh and others

APPELLANT

Vs

(Rai) Brij Raj Krishna and others

RESPONDENT

Date of Decision : 25-10-1922

Acts Referred:

Citation : (1922) 10 PAT CK 0014

Final Decision : Dismissed

Judgement

Dawson-Miller, C.J.—In these appeals it seems to me that our decision must be governed by the order of the Division Bench of this Court, dated the 3rd February 1919. The appeals arise out of certain suits which were brought by the respondents against the appellants to set aside certain rent decrees obtained by the appellants against the respondents in the year 1911. The appellants were the mukarraridars of an interest in mauza Raghapur. The respondents were tenants holding under them. The appellants brought rent suits against the respondents claiming rent in respect of certain additional land over and above that which they admittedly held at the rate of Rs. 3-80 per bigha. The respondents defended the suits and put in written statements but when the cases came on for trial they did not appear before the trial Court and the suits were decreed upon the plaintiff's evidence alone. The respondents thereupon applied for review of judgment which was rejected. They then took proceedings under O. 9, R. 13 of the CPC to have the decrees set aside alleging that their absence from the trial was due to the fraud of the landlords, the plaintiffs in the rent suits. The fraud alleged was that the parties in those rent suits had entered into a compromise whereby the tenants agreed to pay not Rs. 3-8-0 per bigha but Rs. 2-8-0 per bigha and agreed to judgment upon these terms; that they prepared a compromise petition which they handed to the landlords who undertook to present it to the Court and obtain a decree upon the terms of that compromise but that when the time came, the landlords fraudulently suppressed the fact that a compromise had been come to and in the absence of the tenants proved their case and obtained judgment. That application under O. 9, R. 13 was heard in due course and

evidence on behalf of both sides was given. The Court rejected the story of the compromise and refused to set aside the decrees. That decision was affirmed on appeal.

2. Subsequently in July 1914 the tenants instituted the suits out of which these appeals arise. They claimed to have the rent decrees set aside on the ground that they were obtained by fraud. They alleged in their plaint the facts as to the compromise which they had relied upon but unsuccessfully, in the application under O. 9, R. 13, and, in addition, they say that in truth and in fact the land in respect of which the rent was claimed has no existence and presumably never did have any existence and further that there never was any settlement by the landlords with the tenants of these lands for which rent was claimed in the rent suits; and the inference they ask the Court to draw from these facts is that the landlords in the rent suits being aware of the non-existence of the lands and also being aware that they never made any settlement of them with the tenants nevertheless deliberately and fraudulently put forward a concocted case before the Court and thereby misled the Court and so obtained judgment and they ask the Court to say that if these facts are proved, the decrees were clearly obtained by fraud perpetrated upon the Court and upon themselves.

3. When the case came for trial before the Munsif it was obvious that the tenants could not hope to succeed upon the plea they had originally put forward in the application under O. 9, R. 13 as to the compromise. That matter had already been decided against them in proceedings between the same parties by a Court of competent jurisdiction and it was not open to them to ask another Court subsequently to determine the same questions and, therefore, that story, which must be treated as entirely false, was abandoned at the trial. They did contend, however, that the land did not exist and that there had been no settlement. With regard to these points, if the matter were open to us, I should have said that it was no longer within the competency of the Court to adjudicate upon them because these questions were in issue in the original rent suits and had been determined between the same parties, although it is true that the tenants did not actually appear at the trial in the rent suits, and it is now well-settled that one cannot ask the Court to come to the conclusion that a fraud has been practised in obtaining a decree merely because it is sought to prove that the evidence put forward on behalf of a successful party in the original suit was not true. It is important to bear in mind that in the rent suits these questions as to whether there was any land and as to whether there was a settlement were in fact matters in issue. We have not seen the pleadings in the rent suits but from the plaints in the present suits it appears clear that the matters were in issue in those suits. In paragraph 6 of the plaint after stating that they never took settlement of these lands and that these lands did not in fact exist, they go on to say that as the defendants' claim in the abovementioned rent suit was false and based on lands which had no existence and as the suit had been filed out of malice. Plaintiffs Nos. 1 to 5 and the father of plaintiffs Nos. 2 to 4 filed a written statement noting the facts therein and also filed sufficient evidence for testing

the defendants" allegations. It is obvious, therefore, that the allegations upon which the plaintiffs in the present suits Bought to have the rent decrees set aside were matters which had been put in issue in the original rent suits and, as already stated, if I were free to decide this case for myself, I should come to the conclusion that whatever the findings of the Court in the present suits as to the settlement or as to the existence of the land when the present suits were brought, it was not competent to the Court to discuss these questions and upon coming to a conclusion contrary to the landlords to decide that the original decrees had been obtained by fraud. The learned Munsif, however, in a judgment which rather treated the onus of proving the settlement and the existence of the lands as resting upon the landlords came to the conclusion that it had not been proved that the land in fact existed or that any settlements such as those deposed to in the rent suits had been made and relying rather upon the absence of evidence on the part of the landlords, he came eventually to a conclusion of fact in favour of the non-existence of the land and the absence of any settlements with the tenants and in the result he arrived at the conclusion that the decrees in the rent suits must have been obtained by fraud.

4. The matter then went on appeal to the Subordinate Judge, who was of opinion that the mere fact that the existence of the lands and the settlements with the tenants had not been proved to the satisfaction of the Munsif could not by any stretch of imagination be construed into a finding that the suits were entirely false and the original decrees obtained by fraud. In his opinion, it merely amounted to this that the Munsif had arrived at a conclusion different from the one arrived at in the previous litigation by the Court which passed the rent decrees.

5. The matter then went on second appeal to a Division Bench of this Court and came before the late Mr. Justice Atkinson and Mr. Justice Manuk. In their opinion, the Subordinate Judge was wrong if he accepted the facts found by the Munsif in coming to the conclusion that fraud had not been proved. They said:

All that remains for us to consider is whether the learned Munsif, having found as a fact that no lands existed in respect of which a letting could have been made, and also that no contract was ever made to support the creation of a tenancy as between the landlord and tenants, was justified in law in setting aside the rent decrees obtained as against the plaintiffs without contest in the rent suits of 1911. Clearly he was. The evidence adduced in this case was such as, in our opinion, would have justified the Munsif in arriving in law at the conclusion that he did.

6. Having arrived at that opinion they did not decide the case themselves but sent it back to the lower appellate Court for a finding as to the actual facts, that is to say, whether the lower appellate Court agreed with the findings of fact come to by the Munsif. The reason for this was that the Subordinate Judge in first appeal originally had not thought it necessary to come to an independent finding on the facts having arrived at the conclusion that accepting the facts found by

the Munsif no fraud had been proved. The learned Judges of this Court thereupon set aside the decision of the Subordinate Judge and remanded the case to the Court of the Subordinate Judge again for final adjudication and disposal according to law on the facts and the merits.

7. There can be no doubt to my mind, whether I am prepared to agree with it or not is another matter, that the finding of this Court in second appeal was that upon the facts found by the Munsif, the Court was perfectly justified in arriving at a conclusion that there was fraud. That was a question of law and, in so far as that question was determined by two Judges of this Court of co-ordinate jurisdiction in a final judgment which set aside the decision of the lower Court, I think we must hold ourselves bound by that decision and cannot go behind it. Had it merely been a case of keeping the appeal pending in this Court and remanding the case for further findings on an issue not decided we should no doubt have been entitled, when the matter came up for final consideration, to disregard the reasons given for remanding the case but the present decision appears to me to be one which we cannot ignore. It is, as I have said a decision on a point of law by a Court of co-ordinate jurisdiction and it is final in so far as it sets aside the decision of the lower appellate Court and lays down the law to be followed by that Court on remand.

8. The matter then went back to the Subordinate Judge, who after discussing the evidence came to the conclusion that he saw no reason to differ from the findings arrived at by the learned Munsif. Although the judgment was not perhaps beyond criticism as again it rather placed the onus upon the landlords still he does come to a clear conclusion that the findings of fact of the learned Munsif were justified, and in these circumstances it seems to me that we are bound to give effect to the decision of this Court on the previous occasion and hold that there must be judgment for the tenants. The appeals will, therefore, be dismissed with costs.

Ross, J.

9. I agree.