
(1879) 06 CAL CK 0004
In the Calcutta High Court

Dhunput Sing

APPELLANT

Vs

Sham Soonder Mitter and Others

RESPONDENT

Date of Decision : 12-06-1879

Acts Referred:

Citation : (1880) ILR (Cal) 291

Hon'ble Judges : Tottenham, J;Mitter, J

Bench : Division Bench

Judgement

Tottenham, J.—The plaintiff is the owner of a fractional share of a zemindari called Lot Rasaba, which is let in patni, the names of the pro forma defendants 1 to 3 being registered in the zemindar's sherista as the patni talukdars. The plaintiff also had a share (four annas) in this patni. For his share of the arrears of rent of the patni in respect of the years 1280 to 1282 (1873 to 1875), deducting the quota of the rent payable by himself, the plaintiff brought against the aforesaid defendants the suit No. 8 of 1877. The pro forma defendant No. 4 intervened in that suit, alleging that he had acquired by purchase a six-anna share of the patni in question, and therefore the suit shall have been brought against him also. He was made a defendant before the suit was finally disposed of. The plaintiff, it is alleged, came to know that the remaining share of the aforesaid defendants 1 to 3 had been purchased by the principal defendant in this case, viz., Sham Soonder Mitter. The plaintiff at first applied to make Sham Soonder party to that suit, but his application was refused. Then he made another application to withdraw from it with leave to institute a fresh action. This application was also refused, and a decree was passed against the persons who are the pro forma defendants Nos. 1 to 4 in this suit;

2. The plaintiff has brought this suit to recover arrears of rent and the roadcross of the years 1281 (1874) and 1282 (1875) from Sham Soonder, the principal defendant, in proportion to the share purchased by him, alleging that ho does not wish to enforce the decree passed in the suit No. 8 against the defendants whose interest the principal defendant, Sham Soonder, has purchased.

3. The Munsif decreed the claim, but on Sham Soonder's appeal the District Judge has reversed that decree, and has dismissed the suit, holding that, under the circumstances stated above, a second suit is untenable.

4. It is contended before us in this second appeal that the decision of the District Judge is erroneous in law. We think this contention is valid.

5. In support of the view of the law taken by the lower Appellate Court, the learned pleader for the respondent Sham Soonder relied Upon two decisions of this Court--Nuthoo Lall Chowdhry v. Shoukee Lall (10 B.L.R., 200), and Hemendro Coomar Mullick v. Rajendro Lall Moonshee (I.L.R. Cal. 353). These cases are quite distinguishable: they have laid it down that in the case of a joint contract or joint wrong-doing, a decree obtained against one of the promisors or wrong-doers is a bar to any fresh suit against the others. The ground upon which this decision rests is, that in both these cases the obligation or liability of the joint promisors or wrong-doers is single and undivided. Therefore there is one cause of action, and as soon as it is sued upon and a decree obtained, it is satisfied and exhausted. But these cases also show that the same rule of law does not apply where the obligation is joint and several. In this latter case, it has been held that a decree obtained against one of the promisors without satisfaction is no bar to a suit against another.

6. In this case, the relative position of the principal defendant, Sham Soonder, to the defendants whose interest he has purchased, does not resemble that which exists between joint contractors, but rather resembles that which exists between persons who have made themselves severally liable to perform a particular contract.

7. If Sham Soonder had been sued along with his predecessors in title in the suit No. 8 of 1877, the plaintiff could not have obtained a joint decree against them all. The zemindar has the right either to sue the registered talukdar, or the purchaser of it, but he cannot make them jointly liable. That being so, we are of opinion that the present suit is not barred by reason of the decree passed in the suit No. 8 of 1877, provided that the claim be not fully satisfied under that decree. It will be for the Court to take care that the plaintiff be not allowed to realize the same amount under two decrees. We, therefore, reverse the decision of the lower Appellate Court, and remand the case to that Court for the trial of the remaining issues. Costs to abide the results.