
(1886) 12 AHC CK 0007
In the Allahabad High Court

Dinu and Others	Vs	APPELLANT
Kudrat and Others		RESPONDENT

Date of Decision : 10-12-1886

Acts Referred:

Citation : (1887) ILR (All) 155

Hon'ble Judges : Tyrrell, J; John Edge, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Edge, Kt., C.J.—This is a suit brought to assert a joint interest in land. The defence to the suit was estoppel u/s 13 of the Civil Procedure Code. The respondents, in 1884, brought a suit against the appellants in respect of the same land, in which they then claimed exclusive possession and, alternatively, joint possession. The questions raised in that suit having been brought into issue and evidence having been taken, the action was dismissed by the Munsif on grounds with which we would probably not agree if that suit had been made the subject of appeal. The Munsif, in dismissing the suit, did not reserve to the respondents the right to bring a fresh action. In the present suit we cannot go into the question whether the former suit was properly dismissed or not. It is sufficient to say that the judgment in that suit has not been appealed, and that it is a bar to the respondents' claim in this action. We allow the appeal with costs, setting aside the decrees of the Courts below.

Tyrrell, J. 2. I fully concur, and would only add that this suit is exactly similar to Ganesh v. Kalka Prasad I. L. R. 5 All. 595. The ruling in that case has been questioned subsequently by Mr. Justice MAHMOOD--Muhammad Salim v. Nabian Bibi I. L. R. All. 282 -who dissented from the law as laid down therein. But the learned Judge did not discern that the case of Ganesh v. Kalka Prasad I. L. R. All. 595 was essentially distinguished from the three cases he had to determine. In Ganesh v. Kalka Prasad the Court had heard the parties, framed issues after taking evidence, and proceeded to judgment. In the cases before MAHMOOD, J.,

the plaintiff was non-suited on the preliminary ground of misjoinder. The radical principle of the cases is insisted on in the Privy Council ruling in *Watson v. The Collector of Rajshahye* 13 I. A. 160 and in conformity with their Lordships' views expressed in that case, as well as with the plain provisions of the present CPC on this question, it was held in *Ganesh v. Kalka Prasad* I. L. R. All 595 as we have held in this appeal to-day, that the decree in the former suit, which was allowed to become final, bars the second suit.