
(1893) 08 CAL CK 0014
In the Calcutta High Court

Dolegobind Chowdhry

APPELLANT

Vs

Dakhyani Debea

RESPONDENT

Date of Decision : 24-08-1893

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 6

Citation : (1894) ILR (Cal) 430

Hon'ble Judges : Norris, J; Banerjee, J

Bench : Division Bench

Judgement

Banerjee, J.—The only question raised in this appeal is, whether a decision in a former suit between the same parties should operate as res judicata upon the issue whether the kobala set up by the defendant as the basis of her title is a bond fide document.

2. The Courts below have held that it operates as res judicata; and the defendant appeals, contending that the Courts below are wrong.

3. We are of opinion that this contention is not correct. It was argued for the defendant-appellant that the decision in the former suit could not operate as res judicata for two reasons, first, because the former suit was one of the Small Cause Court class, and the decision therefore must be taken to be one by a Court not of jurisdiction competent to decide the present suit; and, secondly, because the question of the bona fides of the kobala was not a matter directly and substantially in issue in the former suit, but arose, if at all, only incidentally.

4. The former suit was brought by the present defendant for a declaration of her title to a standing paddy crop which had been attached in execution of a decree, and had been unsuccessfully claimed by the present defendant in the execution proceeding. The present defendant, the plaintiff in that suit, sought to establish her right to the paddy crop, setting out, as the basis of her title to the crop, her title to the land under the kobala now in dispute; she was still in possession of the crop, and had no reason to sue for the recovery of the crop or its value, nor

did she sue for the same. That being the nature of her suit, it could not, u/s 6 of Act XI of 1865, the Small Cause Court Act then in force, have been brought in the Court of Small Causes. The suit was an ordinary civil suit, and the Court which tried that suit was an ordinary Civil Court. In support of the view we take, we may refer to two cases, Shiboo Narain Singh v. Mudden Ally ILR Cal. 608 and Godha v. Naik Ram ILR All. 152. The first branch of the appellant's contention must therefore fail.

5. Then as to the second branch of the argument, it is true that no issue upon the question of the bond fides of the kobala was raised, in so many words, in the former suit; but seeing that in that suit the plaintiff, that is the present defendant, based her claim solely upon the kobala, and seeing that the only ground upon which the Court found against her was that the kobala was not a bond fide document, we must hold that the question of the bond fides of the kobala was directly and substantially in issue in the former suit. The decision of the Privy Council in the case of Soorjomonee Dayee v. Suddanand Mohapatter 12 B.L.R. 304 : 20 W.R. 377 fully supports this view.

6. The result then is, that this second appeal must be dismissed, and the decree appealed against affirmed with costs.