

(1942) 03 CAL CK 0010

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 632 of 1939

Ganga Prasanna Mukhopadhaya and Others

APPELLANT

Vs

Kumar Brahma Nirnanjan Chakravarty and Another

RESPONDENT

Date of Decision : 26-03-1942

Acts Referred:

Citation : (1942) 03 CAL CK 0010

Final Decision : Dismissed

Judgement

Edgley, J.—Defendant No. 37 is the Appellant in this case and in the suit out of which this appeal arises, the Plaintiffs sought to recover patni rent for the years 1339 to 1342 B. S. The Defendants put forward various defences in the trial Court, but the main defence on which they relied seems to have been that the Plaintiffs had not obtained registration of their names under the provisions of the Bengal Land Registration Act (Act VII of 1876). The first Court dismissed the Plaintiffs' suit on the ground that no rent was payable. The Plaintiffs appealed against this decision and while the matter was pending before the lower Appellate Court, they produced a certificate under the provisions of the Bengal Land Registration Act and obtained a decree for the rent which they alleged was due to them. Defendant No. 37 has now appealed against this decree. The learned Advocate for the Respondents contends that the whole matter is concluded by the principle of res judicata having regard to the fact that in a subsequent decision, dated the 25th of March, 1941, it has been held that the Defendants including Defendant No. 37 were liable to pay rent to the Plaintiffs in respect of this particular patni. In support of this contention the learned Advocate relies on a decision of this Court in the case of Isup Ali v. Gour Chandra. Deb 37 C. L. J. 184 (1922). in which it was pointed out that

if the same question is in controversy between the same parties in two distinct litigations, one after the other, but simultaneously pending, the final decision in the later suit, if given earlier, operates as res judicata in the earlier suit whose final stage is reached later.

2. In our opinion, there can be no doubt that, with regard to the question as to the liability of the Appellant to pay rent to the Plaintiffs, the matter, is concluded by the above-mentioned decision in Rent Suit No. 7 of 1940 against which no appeal was filed.

3. Although the question of the Plaintiffs' general right to realise rent from the Appellant can no longer be disputed, the learned Advocate for the Appellant contends that, in so far as this right relates to the years 1339 to 1342, the Plaintiffs' right cannot be exercised having regard to the fact that they only obtained registration under the provisions of the Bengal Land Registration Act after the decision of the trial Court. The decision of the learned Subordinate Judge is dated the 2nd of October, 1937, whereas the registration certificate is dated the 19th of November, 1937, With regard to this point we consider that the lower Appellate Court has rightly applied the law as laid down in a Full Bench decision of this Court in the case of Alimuddin Khan v. Hira Loll Sen ILR 23 Cal. 87 (1895). and a further decision of the Patna High Court in the case of Umeshwardhari Singh v. Neman Singh I. L. R. 7 Pat. 690 (1928). In the former case, it was held that, under the provisions of the Land Registration Act, the right to the rent of an estate is vested in the true proprietor even though he may be unregistered and that his right to sue for rent is not taken away by anything in the Act which does not affect his cause of action. As pointed out by Mr. Justice Prinsep

An the right of an unregistered landlord is in no way questioned by the Act, bat is rather recognized by sec. 81, it seems to me that the object of the Legislature in enacting sec. 78 was to place an impediment in the way of realisation by such a person of rents due to him by depriving him of the right to a decree until he shall have fully complied with the law.

4. There is nothing in the afore-mentioned Full Bench decision or in the provisions of the Act to suggest that the impediment imposed by the provisions of the Land Registration Act cannot be removed at any time while the question of the right to receive rent is being agitated either in the Court of first instance or in the Appellate Court. In fact the Patna High Court held in Umeshwardhari Singh's case I. L. R. 7 Pat. 090 (1928). cited above that the requisite registration may even be effected while a second appeal relating to the landlord's right is pending before the High Court.

5. Having regard to the above-mentioned considerations the judgment of the lower Appellate Court is affirmed and this appeal is dismissed.

6. We think, however, that the parties should bear their own costs throughout.

Akram, J.

I agree.