

(1925) 12 CAL CK 0038
In the Calcutta High Court

Gnanada Gobindo Choudhuri and Others	APPELLANT
Vs	
Nalini Bala Debi and Others	RESPONDENT

Date of Decision : 04-12-1925

Acts Referred:

Citation : AIR 1926 Cal 650 : 94 Ind. Cas. 837

Hon'ble Judges : Suhrawardy, J; Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—This appeal arises out of a suit for rent in respect of a patni tenure for the years 1324 to 1327 B.S. The defendants may be classified into two groups, the defendants Nos. 1 to 5, 8 and 9 being the holders of an 8-annas interest, while the other 8-annas which was formerly held by the defendant No. 6 Jamini Kumar Pakrashi is now alleged to be held by the defendant No. 7 Nalini Bala Debi. The plaintiffs' case is that this 8-annas share was purchased by the estate of one Bidhumukhi Debi which now belongs to Nalini Bala Debi. Bidhumukhi is dead, and so is her adopted son Birendra, whose widow is Nalini Bala.

2. The Subordinate Judge decreed the plaintiffs' suit against the defendants Nos. 1 to 5 and 7 to 9. On appeal preferred by the defendant No. 7 Nalini Bala the learned District Judge absolved her from liability for payment and set aside the decree in so far as it was against her. The plaintiffs have appealed.

3. On the merits the learned District, Judge was of opinion that the 8-annas share of Jamini was purchased for the estate of Bidhumukhi and with her money and, therefore, the estate was liable for the rent. He, however, held that a previous decision stood as a bar in the plaintiffs' way and operated as res judicata.

4. The facts relating to the previous litigation are these: That suit was instituted for rent of the patni for the years 1320 to 1323 B.S. The holders of an 8-annas share of the patni were the defendants Nos. 1 to 7 therein. Jamini Kumar

Pakrashi was the defendant No. 8. The defendant No. 9 was one Soshi Bhushan Chatterji (or Bhattacharjya) executor to the estate of Brojendra Mohan Roy, husband of Bidhumukhi, No. 9 (ka) was Birendra Mohan Roy son of Brojendra Mohan Roy, and No. 10 was the said Soshi Bhushan Chatterji, (or Bhattacharjya) executor to the estate of Bidhumukhi. It is not very clear when exactly the said defendant No. 10 was impleaded in the suit, but in any event, he was added after the issues in the suit had been framed. There was a debt due to Bidhumukhi by Jamini on note of hand, on which a decree was obtained and in execution of that decree Jamini's 8-annas share in the patni was purchased. In that suit question arose as to whether the plaintiffs were entitled to recover the rents from Soshi Bhusan as executor to the estate of Brojendra or from Birendra or from Soshi Bhusan as executor to the estate of Bidhumukhi. The Subordinate Judge in a long, hesitating and rambling judgment discussed the facts and eventually arrived at certain conclusions which may be gleaned from his judgment and which may be summarised as follows: The property was an acquisition to the estate of Bidhumukhi. It was not purchased by Soshi Bhusan as executor to the estate of Brojo Mohan and so Soshi Bhusan as such executor was not liable; nor was Birendra liable; presumably as Bidhumukhi's estate was then unadministered and Soshi Bhusan as executor to that estate was in seizin thereof. In the judgment recorded by him on the 30th April 1918 the learned Subordinate Judge expressed an opinion that the purchase was made by Soshi Bhusan but not as executor to the estate of Bidhumukhi, and not with due regard "to the interest of Birendra, who was a minor and out of fraudulent and selfish motives and ultimately held--"but as the decree was in a suit on a note of hand by Jamini in favour of Bidhumukhi and the sale was in execution of the decree on a note of hand by Jamini in favour of Bidhumukhi and Soshi is the executor to her estate, and as Soshi as such executor has not put in any objection to the claim against him as such executor, the suit is decreed ex parte against him". On the 1st May 1918 an application was made on behalf of Birendra for amendment of the judgment, and upon that the learned Subordinate Judge amended his judgment in this way: Instead of the decree being that the suit is decreed ex parte against Soshi as such executor, meaning executor to Bidhumukhi's estate, it would run thus--"The suit is decreed ex parte against Soshi, sued as executor to the estate of Bidhumukhi, but he is to be personally liable and not the estate for the rent claimed". It would seem that by this amendment the learned Subordinate Judge wanted to absolve the estate of Bidhumukhi from liability but then he proceeded to conclude his order with these observations: "I ought to notice here that I have forgotten to notice and decide a point raised in the defence of defendant Birendra and argued by the Pleaders of the parties : it was to the effect that Soshi even if he purchased the patni as executor to the estate of Bidhumukhi could not by the purchase render the estate liable for rent for the patni and the estate could not be liable for rent for the period claimed. I regret that this matter escaped me when writing judgment, but I am not competent to decide it now". I confess I am unable to understand what the learned Subordinate Judge meant by these observations if in point of fact, he amended

the judgment in the way that he did. On the basis of the judgment a decree was prepared and in that it was declared that "the estate of Bidhumukhi would not be liable for this decree." From this decree two appeals were preferred, one by Jamini with which we are not concerned now, and the other on behalf of Soshi as executor to the estate of Bidhumukhi. The latter challenged in the appeal the part of the decree making him personally liable and absolving Bidhumukhi's estate from liability. The learned District Judge held that a decree against Soshi as executor was quite right and the subsequent addition in the judgment "but he is to be personally liable and not the estate for the rents claimed" was wholly unwarranted. He, therefore, set aside the decree in so far as it purported to make Soshi personally liable and as regards the liability of the estate for the rent claimed he declined to interfere with the decree in that respect as the estate was not represented before him, Soshi Bhusan having ceased to be executor while the appeal was pending, and having thereafter died and Birendra also having died and Nalini Bala as his widow having been substituted as his heir in his place, but nothing appearing as to where the estate lay at the time. In accordance with this judgment, a decree was drawn up in which it was declared that "Soshi Bhusan is exonerated from the personal decree".

5. The learned District Judge has held that the decision of the Subordinate Judge absolving Bidhumukhi's estate from liability operates as *res judicata* and there can be no decree against Nalini Bala who now holds that estate. He seems to have been of opinion that the question as to whether the estate was liable or not was specifically raised and decided in that case, that the previous suit was dismissed as against the estate of Bidhumukhi and that the decree of the Trial Court exonerating Bidhumukhi's estate became final.

6. The essence of the doctrine of *res judicata* is that where a material issue has been tried and determined between the same parties in a proper suit and in a proper Court as to the status of one of them in relation to the other or as to the right or title claimed by one of them against the other, the same question cannot be agitated by them again in another suit : *Krishna Belari Roy v. Bunwari Lall Roy* 2 I.A. 283 : 1 C. 144 : 25 W.R. 1 : 3 Sar. P.C.J. 559 : 3 Suth P.C.J. 213 : 1 Ind. Dec. 93 (P.C.). In the case of suits for rent or other recurring liability, the causes of action for suits for successive periods are different. In the case of such suits, for the doctrine to apply, it will have to be shown that the question of right or liability not merely for the period in the previous suit but that for all times or once for all was directly and substantially in issue and was tried and determined. If a direct issue on the point was raised and decided the decision would be *res judicata* in respect of any suit for a subsequent period : *Nobo Doorga Dossee v. Foyzbux Chowdhury* 1 C. 202 : 24 W.R. 403 : 1 Ind. Dec. 129 *Vishnu v. Ramling* 26 B. 25 : 3 Bom.L.R. 450 *Natesa Gramani v. Venkatarama Reddi* 30 M. 510 : 17 M.L.J. 518 : 2 M.L.T. 455 and *Dwarka Das v. Akhay Singh* 30 M. 470 : 5 A.L.J. 407 : A.W.N. (1908) 192. If the decision falls short of that requisite and if the general question was gone into and decided merely for the purpose of deciding the right or liability for the period involved in the suit, then the issue was raised

not directly and substantially but collaterally or incidentally. In a suit for rent, no issues need be framed, but where issues are framed, the non-existence of a direct issue of this character has to be seriously taken " into account in determining whether the question of right or liability for all times was really directly and substantially in issue. In the present case in previous suit the ordering portion of the judgment of the Trial Court distinctly stated "that Soshi as executor was to be liable and not the estate for the rent claimed", the decree framed in accordance with the judgment expressly absolved the estate from liability in respect of the particular decree, and the concluding paragraph of the judgment which I have already quoted above left the question of the liability of the estate for all times as undertermined.

7. The respondents contend that the decision of a question in an earlier suit which was not raised in the issues but which it was necessary to decide therein operates as *res judicata* in respect of the same question when it is raised in a subsequent suit. They urge on the authority of the decision of the Privy Council in *Soorjomonee Dayee v. Suddanund Mohapatter* 12 B.L.R. 304 : 20 W.R. 377 : I.A. Sup. 212 (P.C.) that it is not necessary to constitute a matter directly and substantially in issue that a distinct issue should have been raised upon it and that it is sufficient if the matter was decided in substance. In that case the Privy Council followed a decision of Lord Hardwicke in *Gregory v. Molesworth* (1747) 3 Atk. 626 : 23 E.R. 1160 that "where a question was necessarily decided in effect, though not in express terms, between parties to the suit, they could not raise the same question as between themselves, in any other suit in any other form". Their Lordships were of opinion, that the expression "cause of action" should be construed with reference rather to the substance than to the form of action; the question which had been decided in the earlier suit in that case was necessary to be decided in the earlier case and it was a question on which the plaintiff had sought for the decision of the Court. Several other decisions are also relied on behalf of the respondents to which it is now necessary to refer: *Lilabati Misrain v. Bishun Chobey* 6 C.L.J. 621 in which it was laid down that a decision may operate as *res judicata* although no issue had been expressly raised and that the test to be applied was whether it plainly appears that the question so raised by the parties in their pleadings was actually submitted by them to the Court and judgment given on it: *Aghore Nath Mukerjee v. Kamini Debi* 6 Ind. Cas. 554 : 11 C.L.J. 461 in which it was observed that where the dispute relates to matters which had already been in controversy and formed the subsidiary consideration in the previous suit, although the cause of action in the two suits are distinct the estoppel is to be limited to matters distinctly put in issue and determined in the prior action the case of *Midnapur Zamindary Co. v. Naresh Narayan Roy* 63 Ind. Cas. 161 : 33 C.L.J. 317 in which it was laid down that if in a previous suit a Court having a question before its mind and specially brought to its notice as a thing of importance decided that the issue did arise and was a necessary one, the decision on that issue will be *res judicata* in a subsequent suit though the issue might not be a necessary or proper one to be tried; a decision that was

affirmed by the Judicial Committee in the case of Midnapur Zamindary Co. v. Naresh Narayan Roy 80 Ind. Cas. 827 : 51 I.A. 293 : AIR 1924 P.C. 141 : 26 Bom.L.R. 651 : 47 M.L.J. 23 : 51 C. 631 : 35 M.L.T. 169 : (1924) M.W.N. 723 : 29 C.W.N. 34 : 20 L.W. 770 : L.R. 5 A. (P.C.) 137 : 23 A.L.J. 76 : 3 Pat.L.R. 193 : 6 P.L.T. 750 (P.C.) and several other cases in which similar proposition have been laid down. In the present case, however, there is hardly any room for the application of these principles, as it is not at all clear that the question of liability of the estate for the rent of the patni for all times was either raised or decided, Swhile on the other hand the matters which I have already referred to point to a contrary conclusion.

8. I am, therefore, of opinion that the decision of the learned District Judge on the question of res judicata cannot be supported and must be reversed.

9. The respondents have urged that if we consider the suit is not barred by res judicata we should remand the case to the lower Appellate Court in order to deal with the merits of the case. We readily assent to their prayer because the decision of that Court on the merits is far from satisfactory. No clear or definite findings have been arrived at on the questions of fact which arise in the case and the reasoning on which the finding as to liability of the estate is based does not commend itself to us.

10. We, therefore, set aside the decree of the learned District Judge and send the case back to his Court so that the appeal may now be re-heard and dealt with afresh on the merits. Costs of this appeal will abide the result.

Suhrawardy, J.

11. I agree.