

(1938) 04 PAT CK 0006

In the Patna High Court

Case No : Appeals Nos. 814 and 815 of 1935

Hira Lal Singh and others

APPELLANT

Vs

Matukdhari Singh and others

RESPONDENT

Date of Decision : 21-04-1938

Acts Referred:

Citation : (1938) 04 PAT CK 0006

Final Decision : Dismissed

Judgement

Dhavle, J.—These are two appeals by the landlords and arise out of two suits. One was a rent suit for the years 1336 to 1339 Fasli brought by the landlords in respect of 15 bighas of land lying in eight plots of which it is only necessary to specify one very small plot, namely No. 361 with an area of 16 kathas 12 dhurs. The other was a suit brought by the tenants for confirmation of possession of a holding of about 15 bighas under these very land-lords, consisting of four plots including plot No. 361 alone out of the eight plots mentioned by the landlords in their rent suit. In 1928 the landlords had brought a similar rent Suit No. 1072 which ended in a decision of the Munsif in September 1929, that there was no relationship of landlord and tenant between the parties in respect of any of the eight plots mentioned by the landlords (except plot No. 361 regarding which there was no dispute) and that therefore the landlords were not entitled to recover anything. In 1930, the landlords made an application under S. 158, Ben. Ten. Act, in respect of the same eight plots and succeeded both in the trial Court and also in appeal. The tenants' case in their suit, Title Suit No. 112 of 1932, which is under appeal was that the order in the proceeding under S. 158 was without jurisdiction and null and void, while the landlords contended that the order in those proceedings operated as res judicata. The trial Court held that the question of the actual holding of the tenants was determined once for all in the rent suit of 1928 and that the order under S. 158 did not bar the tenants by way of res judicata. The learned Munsif also found on the facts that the tenants were in possession of the four plots claimed by them and not of the eight plots mentioned by the landlords. The result was that the tenants' title suit was

decreed and the landlords" rent suit dismissed. The landlords appealed in both the suits and the appeals were heard by a Subordinate Judge who held that the order under S. 158 would have operated as *res judicata* but for the decision in the rent suit of 1958. On the question of possession he agreed with the trial Court. In the result he dismissed both the appeals.

2. It has been contended on behalf of the landlords appellants that the order under S. 158 operates as *res judicata*, and being the last decision between the parties should govern their relations rather than the earlier decision in the rent suit of 1928. Now it may be conceded that when there are two conflicting decrees *inter partes*, the later must be taken to prevail: see 48 C L J 577. *Rajani Kumar Mitra and Others Vs. Ajmaddin Bhuiya*, But can it be properly said that the order under S. 158 is a decree so as to operate in the manner contended for on behalf of the appellants? Cl. 3 of the section does provide that the order "shall have the effect of and be subject to the like appeal as a decree". It was nevertheless held in 20 Cal 249 *Peari Mohun Mukerji v. Ali Sheikh*, (1893) 20 Cal 249 that a decision under the section does not operate as *res judicata* between the parties in a subsequent regular suit, and a landlord who was suing in ejectment contrary to an order under S. 158 was permitted to proceed with his suit. The reasons for this view given by Pigot and Rampini JJ., were followed by a Special Bench of the Calcutta High Court in 30 Cal 339, *Dharani Kanta Lahiri Vs. Gaber Ali Khan* in dealing with the similar provision in S. 107, Ben. Ten. Act (as it then stood) that certain decisions "shall have the force of a decree", and the reasoning in this Pull Bench decision has been accepted in this Court in more than one reported decision : see for example 3 Pat L J 379. *Mahendra Narayan v. Gitish Chandra Kar*, A I R (1918) Pat 660 : 46 I C 125 : 3 Pat L J 379

3. The learned Subordinate Judge referred to the decision in *Peari Mohun Mukerji's* case, *Peari Mohun Mukerji v. Ali Sheikh*, (1893) 20 Cal 249 and it is difficult to appreciate the grounds on which he declined to follow that ruling. The learned advocate for the appellants has drawn attention to 97 I C 604 *Kailash Chandra Gantail Vs. Meheruddi Sheikh and Another*, and the decision of Mullick J. in 61 Cal 72, *Dwarkanath Das Sarkar Vs. Prasannakumar De*, which deal with *Peari Mohun Mukerji's* case (1893) 20 Cal 249 but which do not in my opinion shake the authority of that decision as regards the operation of an order under S. 158, Ben. Ten. Act. *Res judicata* may not as pointed out in 18 C W N 466, *Barbamdat Missir v. Krishna Sahay*, A I R (1914) Cal 29 : 20 I C 910:8 C W N 466 be the correct term, strictly speaking, to apply in such cases, but it is well known how the view of the Courts (see also the Privy Council decision in 29 Cal 707 *Gokul Mandar and Another vs. Pudmanund Singh and Others*), as regards the jurisdiction given by the Bengal Tenancy Act in these matters was accepted by the Legislature and the jurisdiction of the Civil Courts barred in some cases (e. g. S, 107) by providing in addition that the order shall be final (subject to such appeals as may be allowed by the Act). It is contended on behalf of the appellants that the Courts which passed and in appeal upheld the order under S. 158 did consider the decision in the rent suit of 1928, that it was within their

competence to pronounce upon its effect, and that the lower Appellate Court on the present occasion is in error in holding that the Courts which tried the case under S. 158 were precluded by the finding in the rent suit from taking cognizance of the averment of the tenants in that proceeding regarding the lands which constituted their holding. In this view the learned Subordinate Judge actually holds that the order under S. 158 was without jurisdiction and must be treated as a nullity. In my opinion, here again he is wrong. The order under S. 158 was not without jurisdiction even though it was based on an erroneous view as regards the effect of the decision in the rent suit. But that order, though not null and void, does not operate, for the reason I have already indicated, to preclude the tenants from urging that their holding consists not of the plots then alleged by the landlords and accepted by the Courts, but of the plot alleged by the tenants and accepted by the Courts [negative the landlords' claim that the holding consisted of some other plots (besides plot No. 361)] in the rent suit of 1928. That the decision in the rent suit operates as *res judicata* is perfectly clear, for, the constitution of the holding was expressly put in question and pronounced upon on that occasion. What seems to have happened is this: In 1914 the landlords gave a lease of 34 bighas 1 katha and 15 dhurs to these tenants and others. The lease came to an end in 1329 F. The landlords then brought a suit (Title Suit 493 of 1922) for the ejectment of the tenants. The suit was dismissed by the Subordinate Judge, and the landlords appealed to the District Judge.

4. On this appeal the co-tenants of our tenants gave up 19 bighas 1 katha and 15 dhurs, with the result that the District Judge gave the landlords a decree for "khas possession of the land remaining after the lands of the contesting defendants have been excluded". What these "lands of the contesting defendants" were is not to be gathered either from the District Judge's judgment, Ex. 10, or from his decree, Ex. 3. The petition of the co-tenants (Ex. A) does mention certain plots as those that they were giving up, but our tenants were no parties to this petition. In the rent suit of 1928 the landlords failed to establish that the holding consisted of the eight plots alleged by them, and they did not in support of their claim produce the petition filed by the co-tenants before the District Judge or the District Judge's decision. During the pendency of the rent suit of 1928 there was a proceeding under S. 107, Criminal P. C. (Ex. 6=Ex. F). The Sub-divisional Magistrate made a local enquiry and received an application (Ex. 1) signed by matukdhari, the principal tenant, and also by a man Tarini, apparently acting on behalf of the other party, stating what Matuk's plots were (namely, the four plots with an area of 14 bighas 19 kathas 2 dhurs that are even now claimed by the tenants to constitute their holding) and adding that he made no claim to the balance of 19 bighas surrendered by the co-tenants in the Court of the District Judge.

5. Shortly after this, a petition (Ex. B) seems to have been filed before the Sub-divisional Magistrate stating on behalf of Matuk that he laid no claim to the plots mentioned in the petition of surrender before the District Judge. It was after this that the rent suit of 1928 was decided, and as I have already said, the petition of

surrender by the co-tenants or the decision of the District Judge was not produced by the landlords in this suit, nor the petition of compromise before the Subdivisional Magistrate, The learned Munsif infers that the mention of plots in the petition of surrender was a surreptitious interpolation, and it seems to me that that inference alone will explain the failure of the landlords to produce the petition of surrender in the rent suit, or to explain away the application signed not by Matuk only but also by Tarini. The Munsif also refers to the possession of the tenants found by the commissioner, and further accepts the oral evidence of the tenants' possession in preference to the oral evidence adduced on behalf of the landlord. These findings of fact have been endorsed by the learned Subordinate Judge. The appeals are thus really concluded on the finding of fact, and though the appellants have been able to point out errors made by the lower Appellate Court as regards S. 158, the correct view of the matter, as I have already shown, is that the order under that section is no bar to the tenants establishing their case as they have done. That the tenants attacked the order under S. 158 as without jurisdiction is immaterial. The essence of the tenants' suit was confirmation of their possession, and this relief has been rightly given to them by the lower Courts notwithstanding the mistake of the lower Appellate Court in its reasoning about S. 158.

6. The learned advocate for the appellants has also urged that there has been no dispute between the parties regarding the rent of the tenants' holding. But, the appellants did not ask the lower Court for a money decree, leaving the question of the constitution of the holding open, nor can I think that where the landlords sue for the rent of about 15 bighas, most of which is found not to be in the possession of the tenants, the Courts were bound, of their own accord, to give the landlords a money decree. The grounds of appeal to this Court do not by any means clearly ask for such a decree, and I am not prepared to hold that the conduct of the appellants has been such as to entitle them to any indulgence at this stage. The result is that both these appeals fail and must be dismissed with costs.