

(1920) 07 CAL CK 0025
In the Calcutta High Court

Jaladhar Bhowmik and Others

APPELLANT

Vs

Birendra Nath Roy Chowdhury and Others

RESPONDENT

Date of Decision : 20-07-1920

Acts Referred:

Citation : AIR 1921 Cal 761(1) : 60 Ind. Cas. 389

Hon'ble Judges : Asutosh Mookerjee, Acting C.J.; Ernest Fletcher, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, Acting C.J.

1. This is an appeal by the defendants in a suit for arrears of rent. The plaintiffs are. putnidars and allege that they hold an 8-annaa odd share in the putni. On this basis they claim from the defendants Rs. 22-10-5 gandas as rent annually payable for the holding in their possession. The defendants contend that the share of the plaintiffs in the putni is not 8-annas odd, as alleged by them, but only 7. annas odd and that the rent payable by them to the plaintiffs in respect of this 7. annas odd share is Rs. 13-2-6 gandas. Two questions are thus in controversy between the parties, namely, first the extent of the share in the superior interest held by the plaintiffs, and, secondly, the amount of rent annually payable by the defendants to the plaintiffs. The Courts below have held that these questions are rei judicata by reason of the decision in a previous litigation between the parties.

2. It appears that in the previous suit for rent these very questions were raised, not in a limited form as touching the rights and liabilities of the parties during the particular years for which rent was then claimed, but in a general form as affecting the relationship between the parties as landlords and tenants. On the 25th February 1911 the Court of first in stance gave a decision thereon in favour of the defendants On appeal, that decision was reversed by the District Judge on the 13th September 1911 and a decree was made in favour of the plaintiffs. A second appeal was preferred to this Court with the result that the decision of the District Judge was confirmed on the 22nd July 1915. Prima facie the previous

decision operates as res judicata in the present suit which was instituted on the 20th April 1917.

3. The defendants contend, however, that as, on the 29th May 1914, that is, during the pendency of the second appeal in the previous litigation, a record of Rights was finally published containing entries which support their allegations, the decree of this Court is of no effect. The Courts below have overruled this contention and have held that the record of Rights cannot nullify the effect of the previous decision as res judicata. We are of opinion that the attention of the defendants is untenable. Our attention has not been drawn to any authority, nor has reference been made to any principle which lends support to the view that the effect of the publication of the record of Rights is to sweep away all previous decisions between the parties. Such a consequence would not have followed even if the entry in the Record of Rights had the effect of a decision in a spit between the parties *Balkishan v. Kishan Lal* 11 A. 148 : (1889) A.W.N. 42 : 18 Ind. Jur. 309 : 6 Ind. Dec. (N.S.) 528. We hold accordingly that the view taken by the Subordinate Judge is correct, that the decree must consequently be confirmed and this appeal dismissed.

4. It is conceded that this judgment will govern the other appeals which are accordingly dismissed.