

(1908) 11 CAL CK 0017
In the Calcutta High Court

Kali Pada Sadhu

APPELLANT

Vs

Mati Lal Fouzdar and Others

RESPONDENT

Date of Decision : 24-11-1908

Acts Referred:

Citation : 4 Ind. Cas. 166

Hon'ble Judges : Doss, J;Caspersz, J

Bench : Division Bench

Judgement

1. The facts out of which this second appeal arises may be shortly stated as follows:

2. Two brothers, Sat Couri Sen and Rai Charan Sen, owned a certain property. Sat Couri died, leaving, him surviving, a widow and three daughters; Rai Charan, also, died leaving behind him a son Taran. One Sridhar, who, the plaintiff says, was his benamadar, purchased a half share of the property from the three daughters; and the defendants Nos. 1 to 3 purchased the entire property from the son. In suit No. 1047 of 1902, by Sridhar against the defendants Nos. 1 to 3, a compromise was effected and Sridhar gave up the half share for a consideration of Rs. 230. The plaintiff then brought his action against the defendants and Sridhar who, subsequently, died leaving a widow.

3. The Court of first instance dismissed the suit against all the defendants, except Sridhar, and gave the plaintiff an ex parte decree against Sridhar's widow for the recovery of Rs. 230. The finding of the first Court was that Sridhar was the benamdar of the plaintiff.

4. On appeal by the plaintiff, the lower appellate Court arrived at a different conclusion. The Subordinate Judge held that the plaintiff was not the beneficial owner but that he had been set up by another person Norendra Nath Roy.

5. The question then arose whether, in terms of Section 544, Civil Procedure Code, the Subordinate Judge, on appeal by the plaintiff against the defendants Nos. 1 to 3 but not against Sridhar's widow, could give the benefit of his finding

to Sridhar's widow and dismiss the suit entirely against all the defendants. Relying upon the case of Abdul Ghani v. Muhammad Fasih 28 A. 95 and upon principles of justice, equity and good conscience, the Subordinate Judge adopted the view that Section 544, Civil Procedure Code, could be applied in favour of Sridhar's widow. The Subordinate Judge said: "It having been found on the objection of defendant No. 3 that the plaintiff is not the owner, the whole suit fails, and I do not see how the decree against the defendant No. 4 can be maintained."

6. On behalf of the plaintiff, it has been urged before us that the judgment of the lower appellate Court proceeded on a misinterpretation of Section 544, Civil Procedure Code, inasmuch as the Court of first instance did not pass a decree on any ground common to all the defendants, and, in support of this position, we are referred to the decision of this Court in Protab Chunder Dutt v. Koorbanissa Bibee 14 W.R. 130.

7. This case was considered by the Allahabad High Court in Puran Mal v. Krant Singh 20 A. 8 where it is explained that when the Court below, that is to say, the first Court, has made a decree against several defendants upon a finding which applies equally to all of them, then u/s 544, any one of the defendants may appeal against the whole decree, and the appellate Court may reverse or modify that decree in favour of all the defendants. We accept this view as a sound exposition of the true meaning of Section 544.

8. A Full Bench of the Madras High Court, in Dhuttaloor Subbayya v. Paidigantam Subbayya 30 M. 470; 2 M.L.T. 140; 17 M.L.J. 119 (F.B)) similarly points out that all that is necessary u/s 544, Civil Procedure Code, is that the decision appealed against should proceed on any ground common to all.

9. It is obvious that the Munsif's finding recognized the plaintiff to be the real owner. That was a finding as against all the defendants, and, though the result of that finding was different in the case of the defendants Nos. 1 to 3 and the defendant No. 4, Sridhar's widow, nevertheless, the finding itself was one which would entitle all the defendants to take the benefit of it in case the relief granted to the plaintiff was varied in appeal. The word "decree" in Section 544 has reference to the appeal which is lodged against the decision of the first Court. It is not the decision or judgment which is appealed against, but the decree which is appealed against; and, in interpreting the section, we are entitled to consider the ground or finding upon which the decision or judgment is based and not merely the operative decree which grants, or withholds, relief, as the case may be.

10. On the merits of this appeal, therefore, the plaintiff's contentions cannot prevail. But there is another fatal objection to his success; and that is, that the widow of Sridhar is not a party respondent before us. The plaintiff cannot obtain relief at this stage when she is not impleaded in this appeal. On this point, no less than the merits, we hold adversely to the plaintiff-appellant and dismiss the

appeal with costs.