

**(1928) 02 CAL CK 0042**  
**In the Calcutta High Court**

Kanta Mohan Mullik and Others

APPELLANT

Vs

Gopi Nath Santra and Others

RESPONDENT

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**Date of Decision :** 15-02-1928

**Acts Referred:**

**Citation :** AIR 1928 Cal 355

**Hon'ble Judges :** Mullick, J

**Bench :** Division Bench

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### **Judgement**

Mullick, J.—This suit out of which this appeal arises was one for recovery of arrears of rent. The plaintiffs claimed rent on the allegation that the annual jama of the holding was Rs. 45-13-6`. The defence inter alia was that the rental of the holding was not Rs. 45-13-6 as alleged by the plaintiffs, but Rs. 34-13-9 only. The trial Judge gave effect to this defence and decreed the plaintiffs' suit in part on the basis of the rate admitted by the defendants. The matter was then taken to the lower appellate Court by the plaintiffs but with no better success there, The plaintiffs have come up to this Court in second appeal.

2. To establish their case that the rental was Rs. 45 odd the plaintiffs filed an ex-parte decree obtained by another cosharer landlord who had claimed rent on the allegation that the rental of the holding was Rs. 45-13-6. The learned Subordinate Judge held that this decree obtained by a cosharer landlord was not admissible in evidence, and, finding also that even if this decree would be taken as admissible there was a contested judgment in a subsequent case to show that the previous decree was no longer of any value, the learned Judge came to the conclusion that the plaintiffs were not entitled to any rent beyond what was admitted by the defendants. Both the learned vakils appearing for the appellants as well as the respondents, and myself have searched in vain for the contested judgment referred to by the learned Subordinate Judge in his judgment. There is no such document to be found anywhere in the record of the case. The second ground on which the learned Judge relied, namely, that there was a contested judgment going against the previous rent decree must, therefore go.

3. The whole controversy before me centred round the question whether the *exparte* decree obtained by a cosharer landlord was admissible in evidence or not. The learned Subordinate Judge has held, as I have said-before, that it was inadmissible, and for this he relied on the Full Bench case of *Surendra Nath Pal v. Brojo Nath Pal* [1886] 13 Cal. 352 which had, followed the Full Bench decision in *Gujja Lal v. Fattch Lal* [1881] 6 Cal. 171. But in another Full Bench case in *Tepu Khan v. Bajani Mohan Das* [1898] 25 Cal. 522 their Lordships observed that the dictum in the cases in *Gujju Lal v. Fatteh Lal* [1881] 6 Cal. 171 and *Surendra Nath v. Brojo Nath* [1886] 13 Cal. 352 (referred to above) had been materially qualified by the observations of their Lordships of the Judicial Committee in *Ram Ranjan Chakravarty v. Ram Narain Singh* [1895] 22 Cal. 533. In the 1925 Cal. case it was held that a previous decree obtained by a cosharer landlord would be admissible in evidence in a subsequent litigation if the subject-matters of the two suits would be identical; otherwise not. The learned vakil for the respondents contended that the Subject-matter in the suit from which this appeal arises was not identical with, but different from that in the previous suit in which the *exparte* decree had been obtained by a cosharer landlord, and in support of this contention he cited the case of *Abdul Ali v. Raj Chandra Das* [1906] 10 C.W.N. 1084. The facts of the case in *Abdul Ali v. Raj Chandra Das* [1906] 10 C.W.N. 1084 were very much similar to the facts in the present case. But their Lordships when they held that the previous decree obtained by a cosharer landlord was not admissible in evidence as to the rate of rent in a suit brought by another cosharer landlord on the ground that the subject-matters of the two suits were (different gave no reasons why they considered that the subject-matters in the two suits were not identical. It is difficult to understand) how it can be said that the subject-matters in the two suits were different. The amounts claimed were no doubt different and the claimants also were not the same. But the real dispute in the two suits was as to what the amount of the rental was. Their Lordships of the Judicial Committee in *Ram Ranjan. Chakravarty v. Ram Narain Singh* [1895] 22 Cal. 533 held that the judgment in a previous suit would be evidence for the purpose of showing what the amount of the rent was. It is to be observed also that in a case that was decided in this Court subsequent to the decision in *Abdul Ali v. Raj Chandra Das* [1906] 10 C.W.N. 1084 namely, in the case of *Byom Kesh Chakravarty v. Jagadiswar Rai* [1917] 22 C.W.N. 304 it was held that a decree obtained by a cosharer landlord is admissible in evidence as to the rate of rent in a subsequent suit for rent brought by another cosharer landlord. On a consideration, therefore, of the authorities on the point and specially of the observations of their Lordships, of the Judicial Committee in *Ram Ranjan Chakravarty v. Ram Narain Singh* [1895] 22 Cal. 522. I am of opinion that the learned Subordinate Judge was wrong in law when he held that the decree in the previous suit was inadmissible in evidence. In my opinion the decree was admissible, and that being so, the case must go back to the lower appellate Court to have the appeal reheard.

4. The result is that the judgment and the decree of the lower appellate Court

are set aside and the case is remitted to that Court for its determination according to law after admitting in evidence the ex-parte decree which had been obtained by another cosharer landlord. Costs will abide the result.