

(1922) 03 PAT CK 0013
In the Patna High Court

Mannoo Lal Choudhury and Others

APPELLANT

Vs

Lalji Chaube and Others

RESPONDENT

Date of Decision : 22-03-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 51

Citation : AIR 1922 Patna 213 : 77 Ind. Cas. 334

Hon'ble Judges : Ross, J

Bench : Single Bench

Judgement

Ross, J.—The plaintiff is the tenant of 2 bighas 11 kathas 18 dhurs of land which, he alleges he held at an annual Hunda rental of 15 maunds of grain. In the recent Revisional Survey his rent was recorded as 30 maunds, and he has brought this suit for a declaration that his rent is 15 maunds a yea The defence was that the rate of rent was 30 maunds, that in the Cadastral Survey it had been recorded erroneously as 15 maunds and that subsequently, the plaintiff agreed to pay at the higher rate. It was further pleaded that in Suit No-2483 of 1918, rent was decreed for the years 1332 to 1325, at the rate of 30 maunds per annum. The Munsif decreed the plaintiff's suit and the learned Subordinate Judge dismissed the appeal.

2. The main question raised in second appeal is whether the rate of rent is not res judicata by reason of the decision in the suit of 1918. It is further argued that even if the matter is not res judicata, the decision in that suit raises a presumption as to the rate of rent and it would be for the plaintiff to show a subsequent agreement reducing the rent. In *Kishun Dayal Rai v. Kulpati Kuer* 45Ind. Cas. 316 : 3 PLJ 372 : (1918) Pat 238 Mr. Justice Atkinson laid down that a judgment in a rent-suit did not in point of law amount to an estoppel and did not accord with the principles of res judicata unless the rent was payable at a rate stipulated by contract Mr. Justice Mullick observed. "The question whether a decision as to the rate of rent operates as res judicata depends on the frame of the issue." In *Hurry Behari Bhagat v. Pargun Ahir* 19 C. 656 : 9 Ind. Dec. 880 it

was held that the question depended upon whether the previous decision was that the plaintiff should recover from the defendant the sum admitted by him to be due, or that the sum so admitted to be due was the proper amount of rent payable for the period in question. In *Hara Chandra Bairagi v. Bepin Behary Das* 6Ind. Cas. 860 : 13 CLJ 38 the rule was thus stated by Mr. Justice Mukherji: "Whether the decision in the previous suit operates as *res judicata*, must be determined with reference to the question, whether the issue in the previous suit related to the amount of rent payable for a particular period or to the rent payable for the full term of the lease. In the former contingency, the decision is not *res judicata*, in the latter event it is."

3. In the present case the pleadings in the previous suit have not been produced, and from the judgment there is nothing to show that it was not simply a suit for rent for the years 1322 to 1325. The issue was: "What is the Hunda payable by the defendant to the plaintiffs for the rent claimed land." This issue is equivocal and may be either general or particular. It is true that the judgment is not based on any special considerations, particularly relating to the years then in suit; but on the other hand, there is nothing to show that the Munsif was deciding anything more than the claim to the rent for the years for which rent was claimed. This judgment does not satisfy any of the tests laid down in the decisions cited above. The true rule applicable in this case is that stated in *Maharani Beni Pershad Koeri v. Raj Kumar Chowbey* 6 CWN 589: "We think that, so far as the rents of the years, which were in contest in that suit were concerned, the decision no doubt is an absolute bar under the doctrine of *res judicata* to any suit for the rents of those years. But so far as the rents or rates of rent of subsequent years are concerned, we do not think that the judgment can be held to be an absolute bar, so as to prevent the parties from raising the question in a subsequent suit. In our opinion, the prior decision may be taken to determine the rent claimed in that suit, and to give rise u/s 51 of the Bengal Tenancy Act to the presumption that the rents for subsequent years remained the same." All that this judgment does is to raise a presumption as to the rate of rent for the following years and that in the absence of evidence of a subsequent agreement it remained the same. The effect to be given to this presumption depends on the, whole evidence. The defendants' case was that there had been a panchayat at which the plaintiffs agreed to pay 30 maunds. It has been found that this was not proved. It has further been found to be proved that the plaintiff had paid 15 maunds previously and also that the defendants failed to prove payment at 30 mannds subsequently. The case is, therefore, concluded by the findings of fact.

4. The appeal must be dismissed with costs.