

(1901) 07 CAL CK 0025

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 372 of 1899

Mohim Chandra Guha

APPELLANT

Vs

Annada Charan Dutt and Others

RESPONDENT

Date of Decision : 11-07-1901

Acts Referred:

Citation : (1901) 07 CAL CK 0025

Final Decision : Dismissed

Judgement

1. In the suit out of which this appeal arises, there are two sets of Defendants to whose defences it is necessary to refer. The suit as against one set of Defendants who have been referred to here as the Basacks was for the declaration of the Plaintiff's raiyati title and, as against the other Defendant, one Annada, for a declaration of his dur-raiyati title and possession. These two sets of Defendants set up separate and distinct defences.

2. The suit was heard ex parte by the Munsif in the first instance and, on the 20th July 1897, he made a decree declaratory of the Plaintiff's title both as a raiyat and as a dur-raiyat.

3. The Defendant, Annada, who alone contested the case in respect of the dur-raiyati interest of the Plaintiff afterwards applied for the restoration of the suit under sec. 108, Code of Civil Procedure, and the application was granted, it being recorded expressly by the Munsif that the suit was restored and would be re-heard only with reference to the case set up by the Defendant Annada. The other parties Defendant, the Basacks, appears to have subsequently applied for a review of the ex parte decree but this was refused and nothing more came of that application. Then, at the re-hearing as between the Plaintiff and Annada who, I ought to state, disputed not only the raiyati but also the dur-raiyati title of the Plaintiff, the Munsif, on the 25th February 1898, made a decree in favour of the Plaintiff declaratory of his title in both these respects. From this decree the Basack Defendants, as well as the Defendant Annada, appealed and the Subordinate Judge has dealt with their appeals and in the result, he has

dismissed the suit of the Plaintiff in toto.

4. It is contended here, firstly, that, so far as the Basack Defendants are concerned, the Subordinate Judge had no jurisdiction to entertain their appeal because there stood as against them the ex parte decree of the Munsif of the 20th July 1897, from which they had preferred no appeal and which they had not taken any legal measures to set aside. With regard to the dur-raiyati interest claimed by the Plaintiff against Annada, the Subordinate Judge has held that the Plaintiff has failed to make good his title as a dur-raiyat but it is contended here that that finding is incorrect and unsustainable because the Subordinate Judge has not given proper effect to a certain deed of relinquishment which the former dur-raiyat is said to have executed in favour of the Plaintiff. The first contention is, we think, well founded. The ex parte decree of the Munsif was divisible, as it affected the Basacks and the Defendant Annada and the claim of the Plaintiff against the two sets of Defendants, as well as the defences of the two sets of Defendants were distinct and the decree, though in form a single decree, was equivalent to two distinct decrees, one against the Basacks and the other against the Defendant Annada. The Basacks, as I have mentioned, never appealed against that portion of the decree which affected them and never availed themselves of the provisions of sec. 108, Code of Civil Procedure, to have it set aside and it remained, in our opinion, a good and binding decree as against them. They were no parties to the re-hearing nor do we think that the Munsif would have had jurisdiction under the circumstances to have retried the case as against them.

5. They were no parties to the subsequent decree which was passed on the retrial and that decree in no way affected their rights. It is against that decree that they preferred their appeal and we think that that appeal was incompetent. So far, therefore, as they are concerned, the decision and the decree of the lower Appellate Court must be reversed, and the original declaration in favour of the Plaintiff as to his raiyati holding as against them, as contained in the ex parte decree of the 20th July 1897, will hold good.

6. With respect to the other branch of the case, we think that we are concluded here by the finding of the learned Subordinate Judge that the Plaintiff failed to make good his title to the dur-raiyati interest. His title depends upon proof that the land in suit came to the widow of the former dur-raiyat by means of a partition. The Subordinate Judge has held that there is no proof of that partition and consequently no proof that the widow of the former dur-raiyat had any right to convey the property to the Plaintiff's vendor. His title, therefore, fails at the root and it is unnecessary to consider the effect of the subsequent transactions between the Plaintiff and the person who is stated to have relinquished his interest in his favour. As against the Basack Defendants the appeal will therefore be decreed with costs and, as against the Defendant Annada, it will be dismissed with costs.