

(1899) 12 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 193 of 1898

Mohunt Das

APPELLANT

Vs

Nil Komul, Dewan and another

RESPONDENT

Date of Decision : 13-12-1899

Acts Referred:

Citation : (1899) 12 CAL CK 0005

Judgement

1. This appeal arises out of a suit brought by the Plaintiffs-Respondents, to recover arrears of rent in respect of a howla tenure, on the allegation that the howla originally stood in the name of one Jagannath Das at a rent of Rs. 45 odd; that subsequently by a decree made by the Settlement Officer the rent was raised to Rs. 84 odd; and that on the death of Purnamashi Dasi, the holder of the said howla, her son, the Defendant, Mohunt Howladar, became entitled to it and is liable to pay the increased rent decreed by the Settlement Officer. The defence, so far as it is necessary to be considered for the purposes of this appeal, was that the enhancement decree made by the Settlement Officer could not be binding upon the Defendant, as the decree was made against his mother Purnamashi who had neither right to nor possession of the howla, the Defendant and not his mother having been the person rightfully entitled to the same.

2. The First Court held that the decree of the Settlement Officer was binding on the Defendant, firstly, because the suit or rather the proceeding in which the decree was passed had been properly instituted against Purnamashi Dasi as she was the recorded tenant and the party in possession of the tenure; and, secondly, because even if the proceeding had been wrongly instituted against Purnamashi Dasi, the Defendant was estopped from denying the binding character of the decree, as he had conducted the defence on behalf of his mother Purnamashi and had caused her name to be recorded in the Record of Rights.

3. On appeal by the Defendant, the lower Appellate Court disagreed with the Munsif upon the question whether Purnamashi was the recorded tenant, and came to the conclusion that the proceeding in which the enhancement decree

was made had been wrongly instituted against Purnamashi, but the Subordinate Judge came to no finding on the question whether Purnamashi was or was not the party in possession of the tenure at the time. He, however, held that though proceeding had been wrongly instituted against Purnamashi, the Defendant was estopped from denying the validity of the decree, as he had conducted the defence on behalf of his mother and had caused her name to be recorded in the Record of Rights; and he accordingly affirmed the decree of the First Court.

4. In second appeal it is contended on behalf of the Defendant that the lower Appellate Court is wrong in holding that the Defendant was estopped from questioning the validity of the decree when it does not find that the Defendant had by his representation or conduct led the Plaintiff to think that Purnamashi was the right person to be sued before the Plaintiff instituted the proceeding against her.

5. Now, the rule of law applicable to judgments and decrees inter partes is that they bind only parties and privies. The only extension, given to this rule by our Courts, is that a decree against a benamdar binds also the beneficial owner. See *Gopinath Chobay v. Bhagwat Pershad* ILR 10 Cal. 697 (1884) and *Shangara v. Krishnan* ILR 15 Mad. 267 (1891) There is also an extended definition of the term "party" in the following passage in *Bigelow on Estoppel*, 5th Edition, p. 114 : - "Parties," says Greenleaf, "in the larger legal sense, are all persons having a right to control the proceedings, to make defence, to adduce and cross-examine witnesses, and to appeal from the decision, if an appeal lies; and it may be added, those who assume such a right." "But the rule which makes a decree against a benamdar binding on the beneficial owner is based upon the ground that the benamdar acts in concert with the beneficial owner, or rather that the beneficial owner acts through the benamdar, and on the further ground that it is by the act and conduct of the beneficial owner that the benamdar is held out to the world as the rightful owner; so that the beneficial owner cannot fully complain if a decree made in a suit which the Plaintiff was led to institute against the benamdar by reason of the acts and representations of the beneficial owner is sought to be used as binding against him. But can the same thing be said of a person in the position of the Defendant in this suit, who had conducted the defence in the previous suit or proceeding upon being authorized to do so by the person who was wrongly sued by the Plaintiff ? We think not, So far as the findings of fact arrived at by the lower Appellate Court go, there is nothing to show that it was by reason of any representation or conduct of the Defendant that the Plaintiff was led to think that Purnamashi was the right person to be sued before the proceedings that resulted in the enhancement decree were instituted; and what the Defendant did subsequently could not in any way have influenced the conduct of the Plaintiff in instituting the proceeding before the Settlement Officer. Perhaps it was not morally right for the Defendant to have kept the Plaintiff in the dark and to have made him persevere in his mistake; but it is difficult to say that there was any legal obligation on the Defendant to apprise the Plaintiff of his mistake, a mistake into which he had fallen not

through any act or representation of the Defendant. Nor can we say that the Defendant comes within the description of a person who assumed the right to conduct the defence. He did not come in as an intervenor, nor did he conduct the defence in his own name. He conducted the defence, and looked after the case, only as the authorized agent of his mother Purnamashi. It is quite true that Purnamashi had the benefit of the Defendant's advice and direction, and that the Defendant had some hand in the conduct of the case; but we do not think that that could be a sufficient reason for holding that the Defendant is bound by the decree made in that case. The rule of law about estoppel which was enunciated by Lord Denman in *Pickard v. Sears and Barrett* 6 Adolphus & Ellis, p. 469 (1837) and which is embodied in sec. 115 of the Evidence Act, requires that a declaration, act or omission which is to operate by way of estoppel, has led another person to believe a thing to be true and act upon such belief. But the Plaintiff in this case was not led to institute the enhancement proceeding against Purnamashi by reason of any declaration, act or omission on the part of the Defendant.

6. That being so, the ground upon which the judgment of the lower Appellate Court is based is, in our opinion, not sound and that judgment, therefore, cannot stand. And, as the learned Subordinate Judge in the Court of Appeal below has omitted to come to any finding upon the question whether Purnamashi was or was not the party in possession at the date the proceeding for settlement of rent was instituted, and as moreover he has not come to any finding upon another question, namely, whether the Defendant caused the name of his mother to be recorded in the Record of Rights before or after the institution of the proceeding for settlement of rent, the case must go back to the lower Appellate Court in order that it may come to a finding upon those two points and then dispose of the appeal. If it be found that Purnamashi was in possession of the tenure at the time the proceeding for settlement of rent was instituted, or if it be found that the Defendant caused the name of his mother to be recorded in the Record of Rights before that proceeding was instituted, then, in either case, the decree will be binding upon the Defendant, in the former case, because the proceeding must be held to have been rightly instituted, and in the latter case, because the Defendant would be estopped from denying the validity of the decree obtained in a proceeding which the Plaintiff might well have been led to institute against Purnamashi by reason of the act of the Defendant in having her name recorded as owner of the tenure. We may add that upon the question of Purnamashi's possession the written statement filed in the settlement of rent proceeding on behalf of Purnamashi, which was verified by the Defendant, and which contains an averment that Purnamashi was in possession of the tenure on payment of rent at the old rate, would be an important piece of evidence which the lower Appellate Court should take into consideration.

7. The costs of this appeal will abide the result. As to the cross-appeal on behalf of the Plaintiffs-Respondents, as the decree of the lower Appellate Court is reversed and the case sent back, it will be open to the Plaintiff's to raise the

points involved in their cross-appeal before the lower Appellate Court when the case comes on again for hearing before that Court.