

(1913) 07 CAL CK 0029
In the Calcutta High Court

Moni Lal Kar Chowdhry

APPELLANT

Vs

Uma Charan Chakravarty

RESPONDENT

Date of Decision : 07-07-1913

Acts Referred:

Citation : AIR 1914 Cal 260 : 25 Ind. Cas. 571

Hon'ble Judges : Lawrence Jenkins, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal under Clause 15 of the Letters Patent against a judgment of Mr. Justice Coxe by which he has confirmed a judgment of Mr. Roe who had reversed the decision of the Court of first instance.
2. The plaintiff sued to recover possession of land from the defendant. The Court of first instance found in favour of the defendant and dismissed the suit. Upon appeal the District Judge has reversed that decision and decreed the suit.
3. On behalf of the defendant the judgment of the District Judge was assailed before Mr. Justice Coxe on the ground that it was based on evidence not on the record. Attention was drawn particularly to two statements in the judgment. The District Judge states in one place that a previous suit between the parties was compromised. The statement is admittedly "erroneous. The suit to which reference is made, was not compromised, but what is stated to have been compromised was another suit, but the parties to that suit are not before the Court. Mr. Justice Coxe, however, stated that this error was immaterial because the learned Judge in the latter portion of his judgment states that the "compromise decree is not evidence one way or another," though in an earlier portion he sets out the terms of the supposed compromise.
4. The second statement in the judgment to which exception was taken by the defendant, was that the defendant-respondent had in his own previous statement in the earlier suit admitted that the land in controversy belonged to the plaintiff. It is pointed out that the defendant did not make any such

statement. It transpires, however, that the Pleader for the defendant made some statement before the Commissioner appointed in that suit. But on an examination of the present record, it is plain that that statement is not put in evidence. In fact, the previous suit related to a different property, and the allegation of the plaintiff is that before the Commissioner who made the local inquiry in that suit the Pleader for the defendant stated in regard to the land in dispute that it did not belong to his client. This statement has not been proved. But even if it was proved, the question would arise as to the weight to be attached to it, because it has been argued on behalf of the appellant that the Pleader had no authority, to make an admission relating to a property not the subject-matter of that suit, and with reference to which he presumably had no instructions. It is plain, therefore, that the judgment of Mr. Roe is based upon evidence which is not on the record. If that evidence is excepted, whether the remainder of the evidence is sufficient to support his judgment it is impossible for us to say in second appeal.

5. The result, therefore, is that this appeal must be allowed and the judgment of Mr. Justice Coxe as also that of Mr. Roe which was confirmed thereby set aside. The case will be remanded to the lower Appellate Court in order that it may be re-tried with some approach to regularity. If the plaintiff relies upon any statement by the defendant or his Pleader made in the previous litigation between the parties, that statement must be regularly proved. The District Judge will be at liberty to give such directions as he may think necessary for the reception of additional evidence. If such additional evidence be given on one side, it will be obviously open to the other side to give rebutting evidence.

6. Costs will abide the result.