
(1920) 08 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1168 of 1919

Nagendra Nath Ghosh and Another

APPELLANT

Vs

Lawrence Jute Co., Ltd. and Others

RESPONDENT

Date of Decision : 27-08-1920

Acts Referred:

Citation : (1920) 08 CAL CK 0008

Final Decision : Allowed

Judgement

1. This is an appeal against a judgment and decree of the Additional District Judge of Hooghly, dated the 4th March 1919, reversing the judgment and decree of the Subordinate Judge of Howrah, dated the 22nd February 1917, in a suit for declaration of the Plaintiffs' title to an one-fifth share in a putni mehal known as Mouza Chak Kasi and for a declaration that their right, title and interest in the said share had not in any way been affected by an execution sale held at the instance of the Defendant Company. The Subordinate Judge was of opinion that the Plaintiffs ought to succeed in the suit but, as pointed out above, the lower Appellate Court was of a contrary opinion. On appeal before us, it has been contended on behalf of the Plaintiffs-Appellants that the lower Appellate Court was in error in admitting in evidence, as against the Plaintiffs, the deposition of the Defendant No. 6 in a previous suit being Suit No. 127 of 1911 and that in the circumstances the appeal ought to be remitted to the lower Appellate Court for a rehearing. In order to appreciate the force of this contention, it is necessary to state the following facts. It appears that by two leases, dated the 20th December 1905 and 7th June 1906, one Upendra Nath Ghose, the Plaintiffs' eldest brother and one Jogendra Nath Pal (Defendant No. 7) who were putnidars in respect of certain lands held under the Andul Raj, granted permanent leases of 150 bighas and 49 bighas respectively in Mouzah Chak Kasi in favour of Messrs. Bird & Co. On the 25th August 1906, Messrs. Bird & Co. transferred the property covered by the leases referred to above to the Defendant Company. On the 3rd July 1908 the said Upendra Nath Ghose and Jogendra Nath Pal granted a third permanent lease to the Defendant Company in respect of another lot of 100 bighas 5 cottas

in the said Mouza. The lessors having failed to put the Defendant Company in possession of all the lands covered by the third lease and having thereby broken one of the covenants therein the latter brought a suit at Hooghly, being Suit No. 127 of 1911, for compensation, etc., against Jogendra Nath Pal (the present Defendant No. 7) and the representatives of Upendra Nath Ghose who had died in 1909. In this suit, which was decreed on the 13th May 1913, the present Defendant No. 6, Khagendra Nath Ghose, was examined as a witness by the representatives of Upendra Nath Ghose (see the pedigree set out on page 22 of the paper-book). The Defendant Company thereafter proceeded to execute the decree and they caused the putni taluk to be attached. On the 23rd March 1911 the present Plaintiffs preferred a claim in respect of the attached property which, after several adjournments, was finally dismissed on the 14th August 1914. The claim of the Plaintiffs, it may be noted, was based on an allegation, previously made, that the lands in question had been acquired by Upendra in his name with the aid of joint family funds. On the 10th September 1914 the putni taluk was sold in execution of the said decree and purchased by the Defendant Company. The plaint in the present suit was thereafter filed on the 16th August 1915, in which it was again alleged that so far as the share of Upendra Nath Ghose in the said putni taluk was concerned, that share stood in the name of Upendra for himself and for his brothers. At the trial before the learned Subordinate Judge the deposition of the present Defendant No. 6 in the previous suit (Ex. Q) was sought to be used by the Defendant Company for the purpose of proving that the Defendant No. 6 had no share in the said putni taluk and also that the Plaintiffs and Defendant No. 5 had no share therein. The learned Subordinate Judge held that the admission of Defendant No. 6 was not admissible as against the Plaintiffs though it might operate as estoppel against the person making it, namely, Defendant No. 6. The lower Appellate Court held, however, on a consideration of the cases of Kousulliah Sundari Dasi v. Mukta Sundari Dasi ILR 11 Cal. 586 (1885), Chalho Singh v. Jharo Singh ILR 80 Cal. 995 (1911), Bibi Gyannessa v. Mussamat Mobarakunnesa 2 C.W.N. 91 (1897) and Ambar Ali v. Lutf Ali ILR 45 Cal. 159 (1917) that the deposition of Defendant No. 6 was admissible in evidence as against the Plaintiffs. In this deposition, the Defendant No. 6 stated that the said Upendra Nath Ghose lived separately after the death of his father and that he (Defendant No. 6) had no interest in the said Mouza. It is conceded that this statement, if true, goes very greatly against the Plaintiffs' case that the family was joint at the time when the putni patta was obtained in respect of the said Mouza from the Andul Raj. It has been argued before us on behalf of the Plaintiffs that the deposition, Ex. Q, is admissible in evidence only, if Defendant No. 6 was a joint owner of the said Mouza and that as it is the Defendant Company's case that the Defendant No. 6 was not interested in the property, it is not open to them to use the said deposition in evidence in the present suit, while on behalf of the Defendant Company reliance has been placed upon the cases referred to above and attention has been drawn to the fact that according to the Plaintiffs, the Defendant No. 6 had an interest jointly with them in Mouza Chak Kasi at the time when the deposition was given. Briefly stated the

position is this. The Plaintiffs asserted that at the time when the patta in respect of the putni taluk was obtained they and their brothers including Defendant No. 6 constituted a joint family and that a certain property was joint family property. The Defendant No. 6 in the course of his deposition as a witness on behalf of the representatives of Upendra Nath Ghose in Suit No. 127 of 1911 stated that on the death of the Plaintiffs' father, Upendra separated from his brother and that there was no joint family (see p. 26 of the paper-book). The Defendant No. 6 therefore was not claiming any interest in the property in question and in the "admission" made by him in the previous suit he did not fulfil the character of a declarant jointly interested with the party, in respect of the property concerned, against whom the admissions are sought to be used. Furthermore, it is to be noticed that the Defendant Company do not themselves say that at the time when the admissions referred to above were made by Defendant No. 6 there was any community of interest between Defendant No. 6 and his brothers. The admission of one party may be given in evidence against another, when the party against whom the admission is sought to be used has a joint interest with the party making the admission in the subject-matter or the thing to which the admission relates. This rule depends upon the legal principle that persons seized jointly are seized of the whole; each being seized of the whole, the admission of either is the admission of the other and may be produced in evidence against that other. See this principle discussed at length in *Ambar Ali v. Lutfi Ali* ILR 45 Cal. 159 (1917). Applying this principle to the facts of the present case, the conclusion, In our opinion, is irresistible that the deposition of Defendant No. 6 in the previous suit is not admissible as admission against the present Plaintiffs and that the case must be remitted to the lower Appellate Court for reconsideration after exclusion of the deposition, Ex. Q, in the case. The appeal is accordingly allowed and the case remanded to the lower Appellate Court to be disposed of in the light of the above observations. Costs of this appeal to abide the result of the decision by the lower Appellate Court.