

(1914) 04 PRI CK 0010

In the Privy Council

Nalini Kanta Lahiri and another

APPELLANT

Vs

Sarnamoyi Debya and others

RESPONDENT

Date of Decision : 23-04-1914

Acts Referred:

Citation : (1914) AIR(PC) 31

Hon'ble Judges : Ameer Ali, John Edge, Parker of Waddington, Lords Moulton, JJ.

Advocate : Neville, Rogers, Barrow, W.W. Box and Co., B. Dube, Ross, DeGruyther, for the Appearing Parties.

Judgement

Lord Moulton

In this case the original plaintiff (now represented by the appellants) was one of the co-sharers of a Patni talook. In past times, others of the co-sharers have been desirous to have their shares partitioned out to them, and have accordingly brought suits for that purpose. To every one of those numerous suits the appellant was a party, and the object of each of those suits was to have the share of the plaintiff in the suit partitioned out by metes and bounds. Those suits have gone on until every co-sharer other than the plaintiff has had his share thus partitioned out so that the plaintiff was left with the remainder as representing his share. In this suit he alleged that this remainder was insufficient to represent his share of the original Patni-talook. It is evident that on examination of the claims of previous plaintiffs, he had convinced himself, and so far as their Lordships know, convinced himself correctly, that in two cases the shares ascribed to other co-sharers were larger than those to which they were entitled, and that, accordingly, the partition gave them a larger share of the property than it ought to have done.

It is immaterial, in the opinion of their Lordships, whether this view which is put forward by the plaintiff in his plaint is correct or not, but their Lordships will assume for the purpose of this judgment, that it is correct. The object of the present suit is to correct the apportionment to those of the previous plaintiffs, or

co-sharers, who received more than their proper share so that the remainder will properly represent the plaintiffs share.

The Courts below have held that this suit cannot be sustained both on the ground of *res judicata* and on the ground of limitation. Their Lordships do not find it necessary to deal with the question of limitation, which was dealt with by both the Courts below, because they are of opinion that the plea of *res judicata* is a sufficient answer to the suit.

The case viewed from this point of view is an extremely simple one. If any co-sharer applies for a partition of a property he must make the other co-sharers defendants, because the partition which is made in his favour is a partition against his co-sharers. That which gives him a portion of the property takes away all right which they would otherwise have to that portion, and therefore it is a decree against them, and in favour of himself.

In the present case two groups of suits are referred to. The first comprises suits 25 of 1885, and 75 and 1885, and suit 5 of 1886. These suits were heard together and culminated in a decree which was a decree made in the three suits. It declared the shares of all those who in those suits sought partition. Commissioner was directed to go on the ground and to measure out the declared shares of those parties. That was done, and they were put into possession of these shares.

The decree was thus made in a partition suit in which the plaintiff was a defendant. It was therefore a decree against him in a suit to which he was a party. That being so their Lordships have no hesitation in saying that it became thereby *res judicata*, so far as he was concerned. Supposing any error was made in the partitioning out, his remedy lay in proceedings in that suit suitable to correct that error; and the Code of Civil Procedure provides adequate means for the correction of such error. But apart from such proceedings (none of which were taken by him) it is in their Lordships' opinion the clearest possible example of *res judicata*, a judicial decree made against a party in a suit in which he is defendant.

Mr. Ross has attempted to draw a distinction between the partitions under this group of suits and that in the other suit to which exception is taken by the plaintiff, viz., No. 231 of 1892. In that case a lady, who was not originally made a defendant, applied to be made a defendant, claiming that a certain portion of the share of her husband (who was a defendant to the action) was now possessed by her, and she was accordingly made a defendant. In such partition suits a defendant has a right to have his share also partitioned out, and she applied and her share was partitioned out. Mr. Ross has been unable to point out any irregularity in the procedure in that suit. He pointed out, with perfect justice, that in the plaint his client says that he was ignorant of her being made a party, and intimates that he was ignorant also of her having obtained a partition. But he admits that his client, must have known of the decree for partition, and certainly

he knew that he was interested in the partitioning actually being carried out in that suit. But it is not necessary to enter into these matters. It suffices for the present judgment to say that no irregularity of any kind has been pointed out by the counsel for the appellants in that suit, and the consequence is that there is nothing to distinguish it from the previous cases with which their Lordships have already dealt.

Their Lordships are therefore of opinion that the action of the plaintiff is barred by the plea of *res judicata*, and accordingly they humbly advise His Majesty that this appeal should be dismissed with costs.