

(1918) 06 CAL CK 0053
In the Calcutta High Court

Nandan Das Mahapatra

APPELLANT

Vs

Gajendra Narain Das Mahapatra and Others

RESPONDENT

Date of Decision : 18-06-1918

Acts Referred:

Citation : 47 Ind. Cas. 650

Hon'ble Judges : Panton, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the defendant No. 3 against the decision of the learned Additional District Judge of Midnapore, dated the 7th June 1916, affirming the decision " of the Officiating Subordinate Judge of the same place. The suit was brought for possession of a portion of a Khal on declaration of title. Three points have been raised in this appeal against the judgment of the learned Additional District Judge. The first point raised is as regards limitation. It is said that the learned Judge for the finding he arrived at on the question of limitation relied on evidence which was inadmissible under the terms of the Indian Evidence Act. There are two answers to that. The first answer is that the learned Judge was invited by the parties to give his decision on the evidence on the record and, in the grounds of appeal, no question was raised with reference to the two documents objected to. The learned Judge might not unreasonably suppose that no grounds of appeal having been taken against the admissibility of those two documents he was entitled to refer to them. The second answer is this: certainly, the first document, namely, the judgment in the criminal case, was admissible and the second document, namely, the plaint, was not used by the learned Judge for the purpose of acting" on the so-called admission contained therein but was used for the purpose of the learned Judge discovering what the suit dismissed was about. In those circumstances, the learned Judge was obviously entitled to satisfy himself as to what the suit the judgment in which was given in evidence was about, for, the suit having been dismissed for default, the learned Judge, unless he read the pleadings, was absolutely in the dark as to what the case was about.

2. The next point is that the learned Judge refused to permit a case of res judicata to be gone into. The grounds on which he refused that are these. This case was on appeal before the learned District Judge on a former occasion. The present appellant obtained from the District Judge a remand and that remand was granted on the grounds stated in the learned District Judge's judgment. And, amongst those grounds, the learned Judge held that the decision in the former boundary suit was not to be treated as res iudicata between the parties. If the present apellant was not satisfied with that order, he could have appealed against that. He having taken the remand on the conditions mentioned by the learned Judge in his judgment, must be taken to have accepted the condition lad down by the learned Judge that the decision in the former boundary suit was not to be treated as res judicata between the parties.

3. The third point is one that has no substance in it. It is said that there ought to be a fresh local enquiry, the learned Judge having refused to accept the report of the Commissioner. That was a matter clearly within the discretion of the learned Judge and it is not shown that he wrongly exercised that discretion. Then the appellant states that he wished to examine the Commissioner but he was not allowed to do so. In a matter like this, the Court is bound to see that there is some real ground for examining the gentleman who had undertaken the duty of the Commissioner and that it is not for the purpose of annoying him or for some frivolous purpose. The learned Judge obviously has a discretion in a matter of this nature as to whether he should permit or refuse a party to examine the Commissioner, It has not been shown to us that the learned Judge improperly exercised he discretion that the law vested in him in declining to allow the appellant at the stage he applied to examine the Commissioner.

4. The present appeal fails and must be dismissed with costs.

Panton, J.

5. I agree.