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**(1960) 02 CAL CK 0006**  
**In the Calcutta High Court**  
**Case No : A.F.O.D. No. 221 of 1953**

National Investment Co. Ltd.

APPELLANT

Vs

Mohendra Nath Kundu and Others

RESPONDENT

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**Date of Decision :** 12-02-1960

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 26F  
Civil Procedure Code, 1908 (CPC) — Section 11  
Evidence Act, 1872 — Section 32, 33, 35, 44, 56

**Citation :** AIR 1960 Cal 724 : (1961) 1 ILR (Cal) 295

**Hon'ble Judges :** U.C. Law, J; P.N. Mookerjee, J

**Bench :** Division Bench

**Advocate :** A.C. Gupta and Bijan Behari Das Gupta, for the Appellant; P.N. Mitter and Syamadas Bhattacharya, (Sr.) Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

P.N. Mookerjee, J.—The appellant before us was the plaintiff in a suit for declaration of title and recovery of possession of the suit properties, comprising C.S. Dags Nos. 243 and 244 of mouza Dum Dum, having a total area of 5.818 acres. The suit has been dismissed by the trial Court and hence this appeal by the plaintiff.

2. The disputed Dags, which, admittedly, belonged in right of ownership to the Kundu defendants and/or their predecessors, were settled in leasehold right under a Kabuliyat (Ext. 2), dated 2nd Chaitra, 1323 B. S., corresponding to March 15, 1917, in the name of one Jadunandan Ghosh. Under the said Kabuliyat (Ext. 2), the stipulated rental was Rs. 50/- per annum.

3. According to the plaintiff, Jadunandan, the executant of the Kabuliyat aforesaid, was the sole lessee thereunder and, after his death in 1926, the above lease-hold property devolved on Jadunandan's only son and heir Bishan Dayal, who, on March 25, 1939, sold the same to one Makhan Lal Chakravarty for Rs. 2704/- by the Kobala (Ext. A), and, from the latter, the plaintiff Company

acquired the disputed property, by purchase, under a Kobala (Ext. A(1)), dated 5-4-1939, for Rs. 9375/-.

4. The defence was that the lease under the Kabuliyat aforesaid was taken, not by Jadunandan alone, but by him, representing himself and his brother Haripada, who was living jointly with him, at the time, at Dum Dum, where the disputed Dags were situate, although the Kabuliyat was given by Jadunandan alone and that, accordingly, each of the said two brothers, Jadunandan and Haripada, had a moiety share in the same under the aforesaid lease and, on the death of Jadunandan in 1926, his moiety share devolved on his only son and heir Bishan and, upon Haripada's death in 1930, the remaining moiety share of the suit property, belonging to him, as aforesaid, devolved on his two surviving brothers, Lachhman and Haru, equally, and, upon Lachhman's death, thereafter, his said inherited four annas share in the above disputed property devolved on his two sons Shewmangal and Shew Pujan.

5. Thus, according to the defendants, the suit property ultimately devolved on Bishan in 8 annas and on Haru in 4 annas and on Shew Mangal and Shew Pujan in 2 annas each. In 1938, one Bholanath Shaha purchased, by two separate Kobalas (Exts. A(2) and A(3), dated respectively April 28, and June 18, 1938) from Haru and from Shew Mangal and Shew Pujan the above 8 annas share of Haripada. which had devolved upon his said vendors as aforesaid. These two purchases, however, were pre-empted by the Kundu defendants, who were the admitted landlords under the aforesaid lease, under the law, then in force, namely, Section 26F of the Bengal Tenancy Act, as it stood before the amendment of 1938. The said pre-emption application (Misc. Case No. 437 of 1938) appears to have been filed shortly after the above two purchases and it was allowed on 17-9-1938, and, in execution of the said pre-emption order, the Kundu defendants, as pre-emptees as aforesaid, took delivery of possession through Court, on 1-11-1938.

6. When, thereafter, Bishan sold his interest to Makhanlal Chakravarty on March 25, 1939, and the latter's sale to the present plaintiff followed quickly on April 5, 1939, the Kundu defendants claiming to be "co-sharer tenants" or, "co-sharers in the tenancy", -- we are using both the phrases in view of *Goas Ali Bhuiya and Others Vs. Lal Mia and Others*, -- under and by virtue of their aforesaid preemption, applied for pre-emption of the same, on August 18 of the same year, under the amended Section 26(F) of the Bengal Tenancy Act, giving rise to Misc. Case No. 45 of 1939 and the said Misc. case was, eventually, allowed by the trial Court on 9-10-1947, and the present plaintiff failed to get the said order of pre-emption set aside in appeal and, also, in further revision to this Court.

7. The defendants claimed that, in the circumstances, detailed as aforesaid, they had acquired full title to the disputed properties and that title was unimpeachable and indefeasible and not open to challenge by the plaintiff either in law or in fact and they, while claiming title on merits, as aforesaid, also raised inter alia, the plea of *res judicata* or of principles, analogous thereto, as a bar to the plaintiffs

suit.

8. With regard to the settlement record (Vide Ext. G), recording both Bishan and Haripada as owners of the disputed lease-hold interest in equal shares, that is, in 8 annas share each, the plaintiff's case is that it is erroneous and fraudulent and is the result of collusion between Haripada and the landlords officer and that, in truth, in respect of the said tenancy or demised land, Bishan was the sole owner. The plaintiff further contended that, even if the two brothers Jadunandan and Haripada were lessees under the Kabuliyat of 1323 B. S. the resultant position would be then same, as Haru and Lachhman and, also, Shew Mangal and Shew Pujan were fictitious persons, -- at any rate, they were not brothers Of brother's sons of Jadunandan and Haripada, as claimed by the defendants, so that, on Haripada's death, his alleged 8 annas share also devolved on Bishan and, accordingly, the latter became the 16 annas holder of the disputed property and that 16 annas passed, by the two Kobalas (Exts. A and A(1)) of 1939, to the plaintiffs vendor Makhan Lal Chakravarty and then to the plaintiff by and under its purchase from Makhan Lal on 5-4-1939. In the circumstances, the plaintiff further contended that the defendants were never "co-sharer tenants" or "co-sharers in the tenancy" and, accordingly, the pre-emption order in respect of Bishan's sale in Misc. Case No, 45 of 1939 was without jurisdiction and of no legal effect and no question of res judicata would also arise, as the pre-emption proceedings were of a summary nature or, at least, were expressly dealt with summarily by the learned Subordinate Judge.

9. In the aforesaid context, the points that arise for decision are:

(1) Whether Jadunandan alone or he, along with his brother Haripada, were lessees under the Kabuliyat of 1323 B. S, and whether the record of rights was incorrect.

(2) Whether Lachhman and Haru were brothers of the aforesaid two persons and whether Shew Mangal and Shew Pujan were Lachhman's sons, as alleged by the defendants, and

(3) Whether the question of title was barred by res judicata or principles, analogous thereto, by reason of the pre-emption order in Misc. Case No. 45 of 1939 and whether any of the material questions is this suit was concluded against the plaintiff by reason of the said order or decision.

10. All the above points were decided against the plaintiff by the learned Subordinate Judge, who, accordingly, dismissed the plaintiff's suit, and, in this appeal, we are called upon to determine how, in the facts of the present case, the above points are to be decided in terms of law.

11. On the question of title on the merits, tire position appears to be clear, even on the plaintiffs own documents of title, namely, Exhibits A and A(1), that the lease (Kabuliyat Ext. 2) of 1323 B. S. was taken by Jadunandan for himself and his brother Haripada and that both of them were the lessees under the said

Kabuliyat (Ext. 2) in respect of the present suit property. This position is admitted by Bishan, from or through whom the plaintiff claims or traces its title. The admission is contained in the aforesaid two Kobalas (Exts. A and A(1)) and all attempts of the plaintiff to establish the contrary have proved futile in the face of the said two documents. It is also important to note, in this connection, that Bishan has not been examined by either party in this suit. It is, of course, hardly to be expected that the defendants, who are not claiming to have had any transaction with Bishan and who are, rather, claiming adversely to him (Bishan), would examine him as their witness, but, so far as the plaintiff Company is concerned, it stands in an entirely different position. The plaintiff, in this case, admittedly, claims title under or through Bishan and it has produced a Dakhila of the year 1317 B. S., which saw the light of day only in this suit and was never produced before any of the authorities, before whom previous proceedings in respect of the disputed property had taken place. In these circumstances, it is reasonable to hold, as held by the learned Subordinate Judge, that Bishan was siding with the plaintiff, so far as the present suit was concerned, and, in the context, his non-examination must, necessarily, lead to an adverse inference against the plaintiff. It cannot be denied that Bishan would have been a very competent witness, who could have thrown considerable light on the point of the original acquisition of title to the disputed property by the Kabuliyat (Ext. 2) of 1323 B. S., or as to the real title to the same, and, at least, and, in any event, with regard to the entry in the settlement record (Ext. G), recording him and Haripada as joint holders (lessees) in respect of the same. It is to be remembered further that, on the side of the defendants, two other very important documents have been produced, namely, a judgment (Ext. I(4)) and a decree (Ext. J(1)) of a rent suit, brought by the landlords in respect of this very tenancy, shortly after Jadunandan's death, wherein, both Bishan and Haripada were impleaded as defendants as the tenants of the said tenancy. The suit was decreed against both the said defendants and no objection appears to have been taken therein that Haripada had no interest in and was not a tenant with Bishan in respect of the disputed property and, accordingly, should not have been impleaded therein as a tenant or co-tenant with hurt. In the face of the documents and circumstances, mentioned above, it is idle to contend that the original acquisition of the disputed property or properties by the Kabuliyat (Ext. 2) of 1323 B.S. was by Jadunandan alone and was not for the benefit of himself and his brother Haripada or that the entry in the settlement Record (Ext. G.) recording Bishan and Haripada as joint owners or joint lessees (tenants) of the disputed property or properties is incorrect. The position, thus, is clearly established that the suit property originally belonged under the Kabuliyat (Ext. 2) to both the brothers, Jadunandan and Haripada, and each of them had an 8 annas share therein. There can be no question, also that Jadunandan's 8 annas devolved on his only son and heir Bishan. As regards Haripada's 8 annas share, the plaintiff's case is that it, too, devolved upon Bishan, who was the sole surviving nephew of Haripada and was his sole heir in the circumstances, pleaded by the plaintiff. On this part of the case, the defence contention is that

Jadunandan and. Haripada were two of five brothers Raghu Nandan, Jadunandan, Haripada, Lachhman and Haru, all sons of Bandhu Goala, and that Raghunandan was separate from his said brothers at all material times so that, upon Haripada's death, his 8 annas interest in the suit property devolved upon his two surviving brothers, Lachhman and Haru, in equal shares, namely, to the extent of 4 annas each, and, upon Lachhman's death thereafter, his 4 annas share, inherited as aforesaid, devolved upon his (Lachhman's) two sons, Shew Mangal and Shew Pujan. There is, of course, no dispute that, so far as Haru, Shew Mangal and Shew Pujan are concerned, their interest, if any, in the suit property passed by the two Kobalas (Exts. A(2) and A(3)) of 1938 to Bholanath Saha. This, indeed, is clearly established by the said two Kobalas and it is also an admitted fact of the case, that these two Kobalas (Exts. A(2) and A(3)) were pre-empted by the defendants in the aforesaid pre-emption case of 1938, namely, Misc. case No. 437 of 1938. If, therefore, Haru, Shew Mangal and Shew Pujan, had interest in the suit property, as aforesaid, which, on the strength of the above two Kobalas (Exts. A(2) and A(3)), passed to Bholanath, there can be no question that that interest, by reason of the above pre-emption order, vested in the defendants. The plaintiff, accordingly, sought to make out a case that the defence story that Lachhman and Haru were brothers of Haripada and that Lachhman died, leaving two sons, Shew Mangal and Shew Pujan, was not true. On this dispute, the parties have adduced oral evidence and the learned Subordinate Judge has preferred to accept the said evidence, as adduced by the defendants. The defence witnesses on the point, are D. W. 2 and D. W. 3, who have been believed by the learned Subordinate Judge. Of the above two witnesses, D. W. 2, Joy Narayan Pandey, was the Patwari, who used to make, under the law & in pursuance of the terms of his appointment, returns in respect of the properties of, amongst others, the family of Bandhu Goala, in its native place. These returns (Khatauni papers), or, rather, the English translations thereof, have been marked as Exhibits N and N(2) and, from them, it clearly appears that Lachhman and Haru were sons of Bandhu Goala. There is, also, no evidence that, in this particular village, there was any other person of the name of Bandhu Goala. In the circumstances, it has been reasonably contended on behalf of the defendants that Lachhman and Haru were brothers of Haripada and Jadunandan, who were, admittedly, sons of Bandhu Goala. The oral evidence referred to above, on the defence side, and, here, we may add that D.W. 3. who is, plainly respectable, and also D.W. 2, the Patwari, are both reliable witnesses, is clear on the point that Bandhu had 5 sons, as named by the defendants. An objection has been taken to the admissibility of the above two returns (Khatauni papers), Exhibits N and N(2). But, in our opinion, that objection has little substance and, in any event, it would not be quite a strong one. Returns were made or purported to have been made under a statute, namely, the Land Revenue Act, U. P. (U. P. Act No. III of 1901), and, both u/s 35 of the Indian Evidence Act and also u/s 44 or 57 as the case may be, of the said U. P. Act itself, read in the light of Sections 32, 33 and 56 thereof and the relevant rules, prescribing the particular form, those returns would be admissible evidence.

Under, again, Section 57 or Section 44, the entries in the above returns would have a presumptive value and that presumption of correctness would prevail until rebutted. Clearly, also, there is no rebutting evidence in this case, which can be accepted as reliable or sufficient. Even, otherwise, namely, even if Section 57 or Section 44 do not apply, the returns or the statements, contained therein, would be admissible u/s 35 of the Indian Evidence Act, though the weight to be attached thereto, would, of course, depend upon the circumstances of the case. But, in view of the fact that there is ample corroborative oral evidence in support of the aforesaid relevant statements in the said returns and, in view, further, of the fact that there is no evidence, worth the name, contradicting the same, some weight is clearly to be attached to the said entries in the aforesaid returns, and besides even without and apart from the said returns, the above oral evidence on the defendant's side is, by itself, sufficient, in our opinion, to prove the defence case on the point. In the light, then, of the materials before us, we are bound to hold that Lachhman and Haru were brothers of Haripada. It is also clearly established, on the evidence before us, that Lachhman died, though some time after Haripada and not before him as wrongly -- and obviously, purposively -- stated in Haru's kobala (Ext. A(2)), leaving two sons Shew Mangal and Shew Pujan. The above is sufficient to establish the defence contention that, by his purchase from Ham and Shew Mangal and Shew Pujan, Bholanath acquired 8 annas interest in the suit property and that 8 annas share was preempted by the defendants in Misc. case No. 437 of 1938, that is, on September 17, 1938, when the said case was allowed. Clearly, then, the defendants, in the said year 1938, became "co-sharer tenants" or "co-sharers in the tenancy" by pre-emption, as aforesaid, and the status, thus acquired, entitled them to apply for pre-emption of the plaintiff's purchase in 1939 under the amended Section 26F of the Bengal Tenancy Act, The pre-emption order in the relative and relevant Misc. Case No. 45 of 1939, which followed, was affirmed up to this Court and, under the said order, therefore, the remaining interest also in the suit property was acquired by the defendants. The defendants, thus, have been able to establish a clear case on the merits as regards their title to 16 annas of the suit property and, accordingly, the plaintiff's present suit for declaration of title and recovery of possession must fail.

12. What we have said above is enough for the disposal of this appeal and for affirmance of the judgment of the learned Subordinate Judge, but there is another way of looking at the matter, which also leads to the same conclusion and which also has been elaborately discussed and placed before us. Assuming that the defence case as to tide is not true on the merits and that the plaintiffs contentions to the contrary, so far as tide on the merits is concerned, are well-founded, the position in law, clearly, is that these, contentions are barred by res judicata and concluded against the plaintiff, so far as the instant suit is concerned, by reason of the decision in the pre-emption case (Misc. Case No. 45 of 1939). The plaintiff and its vendor were both parties to the said Misc. Case and the said case was contested by the plaintiff up to this Court. There, also, the

present contentions of the plaintiff on the question of title were raised, and, although the learned Trial Court, on that occasion, -- notwithstanding full and abundant materials before it, -- dealt with the case rather summarily to hold ultimately in favour of the defendants, who were the applicants for pre-emption there, in appeal, the whole matter of title was fully argued, investigated and discussed, upon materials, which, practically, covered all that has been placed before us. The above appeal was at the instance of the present plaintiff and, after a thorough discussion of all the important materials, on which reliance has been placed by it in the present suit, the plaintiff's contentions were negatived by the learned District Judge. In revision to this Court, the above decision of the learned District Judge, which, of course, affirmed the decision of the learned Trial Judge, as aforesaid, could not be successfully challenged and the Rule obtained by the present plaintiff, as petitioner, was discharged.

13. A point, however, has been raised before us that the decision in a pre-emption case u/s 26F of the Bengal Tenancy Act, even after its amendment in 1938, cannot be res judicata on, inter alia, the question of title and, in support of the same, reference has been made to the decisions of this Court in *Maha Luxmi Bank Ltd. v. Abdul Khaleque*, 43 Cal WN 1046, and *Prosanna Kumar Roy Choudhury Vs. Smt. Adya Sakti Dasi*, . On the other side, our attention has been drawn to three later decisions of this Court, reported in *Balai Chand Mondal Vs. Nibaran Chandra Dass and Others*, ; *Hossain Ali and Another Vs. Kala Chand Ghose and Others*, and *Aparnath Mukherjee Vs. Kanai Lal Chatterjee and Others*, . On behalf of the plaintiff appellant, reliance was also placed upon the well-known decision of the Judicial Committee in AIR 1940 7 (Privy Council) . It is not necessary to refer to any of the other decisions, which were cited before us, as the grounds, on which they are based, are all covered by the aforesaid decisions.

14. On a consideration Of the entire position, it seems to us that, in the present case, the defence plea of res judicata ought to prevail. We put it on the short ground that, otherwise, the very order of pre-emption which, at least, is final between the pre-emptors (Kundu defendants) and the pre-emptee (plaintiff company), may be set at naught or rendered infructuous, or to put it in the words of Vice-Chancellor Knight Bruce in *Bam v. Jackson*, (1842) 1 Y CCC 585, "the conclusiveness of a judicial decision- as to its immediate and direct object would be affected" and "the immediate subject of the decision would be withdrawn from its operation so as to defeat its direct object". This view, which we shall presently elaborate at some length, is not opposed to any of the above authorities but is expressly recognised and accepted in some of them, cited on either side (vide, i.e. 43 CWN 1046 and *Balai Chand Mondal Vs. Nibaran Chandra Dass and Others*, ). We would add also that the cases, cited on behalf of the appellant, are all distinguishable, -- and that distinction we shall duly point out in the course of this judgment, -- and, moreover, as at present advised, we are also inclined to think that the decisions, relied on by the respondents, are nearer to the present case and are, broadly speaking, correct on the point of scope of the

amended Section 26F of the Bengal Tenancy Act and the effect of a decision thereunder, to wit, res judicata as between the pre-emptor and the pre-emptee, or, as between the parties to the pre-emption proceeding, as discussed therein.

15. Turning to the promised elaboration first, we would put, the matter as follows:

Pre-emption is, the immediate and direct object of a proceeding u/s 26F of the Bengal Tenancy Act and the immediate subject of the decision therein. The order of pre-emption is made under Sub-section (5) of the section and, under the statute, that order is final, subject to the appeal provided in Sub-section (10). The effect of an order of pre-emption is stated in Sub-section (7) which provides, to put it broadly, that, "from the date of the making of the order of pre-emption, the right, title and interest in the portion or share of the holding, accruing to the transferee from the transfer shall", subject to certain exceptions, not material for our present purpose, "be deemed to have vested" in the pre-emptor. If, now, the pre-emptee, be allowed to question this title of the pre-emptor in another suit or proceeding, he would, in effect, be allowed to question the very order of pre-emption (which, on the terms of the above statute, vests that tide in the pre-emptor) collaterally and contrary to the said statute and to the finality, which it attaches to the said order. That would be nullifying the statute itself and neither principle nor authority would permit the same. This is enough to affirm the defence plea of res judicata in the present suit, whereby the pre-emptee plaintiff seeks to displace the pre-emptor-defendants' title under the pre-emption order in question. That order was not without jurisdiction on any conceivable ground and, certainly, not on the ground that the finding that the pre-emptors (present defendants) were co-sharer tenants, entitled to apply for pre-emption, was erroneous. The pre-emption court had, undeniably, jurisdiction to decide the question of the applicants' status for the purpose of adjudicating upon the maintainability of the preemption application and its decision thereon, however wrong or erroneous, cannot be held to be without jurisdiction, so as to make the pre-emption order one without jurisdiction and to rob it of its finality and binding effect as between the parties thereto.

16. The above view is, in no sense, opposed to the decision of the Judicial Committee in the case of AIR 1940 7 (Privy Council) , where, as pointed out by their Lordships of the Judicial Committee themselves, under the very scheme of the particular statute, the proceeding in question was clearly a summary one, the decision wherein on the question of the existence or non-existence of public trust was not intended to be final and conclusive as between the parties thereto, in any suit on the point. It is to be remembered also that the Judicial Committee, in the said case cited, was dealing with a special tribunal, whose very jurisdiction in the matter depended on the existence of a public trust and, accordingly, the District Judge, as the special tribunal, as aforesaid, could not clothe himself with that jurisdiction by an erroneous decision on the point. That would have been an illegal or erroneous assumption of jurisdiction and not a defect merely in the

exercise of jurisdiction and would have been fatal to the finality of the said decision and, moreover, as the Judicial Committee pointed out categorically and with particular emphasis, the District Judge had only to make a prima facie finding on the point to proceed further with the matter. The statute, therefore, did not contemplate a finding, in the said proceeding, as to the existence or otherwise of a public trust, which would be final and conclusive between the parties for all purposes. The decision and the observations of the Judicial Committee are to be read against the above background and it would hardly be proper to take any of the aforesaid observations of their Lordships out of or divorced from then said real context.

17. The position before us is entirely different, as we are not dealing here with a special tribunal, nor even with a special jurisdiction, strictly speaking, but with the enforcement of a particular statutory right under a special procedure by the ordinary tribunal. The question of maintainability of the application, under these circumstances, does not involve any question of jurisdiction of the court and an error on that point would not make its final order one without jurisdiction. To complete the relevant context, we deem it necessary to state also at this stage that, in our opinion, the proceeding under the amended Section 26F of the Bengal Tenancy Act is not a summary proceeding in the sense, in which that term is usually understood, and there is nothing in this particular statute to compel the Court to confine itself only to prima facie findings on any of the questions, mentioned hereinbefore, and required to be decided for the passing of the final order under the section, which questions arise directly, -- and not incidentally, -- for decision in pre-emption proceedings under the above statutory provisions. The reasons for this view are to be found in *Balai Chand Mondal Vs. Nibaran Chandra Dass and Others*, and also in *Aparnath Mukherjee Vs. Kanai Lal Chatterjee and Others*, where the different aspects of the matter have been fully discussed. In the above circumstances, the significance of the provision for an appeal cannot be overlooked or overrated. This will be clear even from the decision of the Judicial Committee in AIR 1940 7 (Privy Council) , cited on behalf of the appellant itself.

18. In the above context the two other decisions cited by Mr. Gupta, namely *Prosanna Kumar Roy Choudhury Vs. Smt. Adya Sakti Dasi*, are also clearly distinguishable. Thus, so far as 43 CWN 1046 is concerned, it was a case u/s 26(J) of the Bengal Tenancy Act and one particularly distinctive feature of that case was, -- and that was expressly emphasised and relied on by the learned Judges, -- that the proceedings u/s 26(J) were, clearly, of a summary nature and there was no right of appeal from a decision therein. The other case, namely *Prosanna Kumar Roy Choudhury Vs. Smt. Adya Sakti Dasi*, was, no doubt, a case u/s 26(F) of the Bengal Tenancy Act, but that, again, was a case before the amendment of the said section in 1938, when, for the first time, a right of appeal was provided under Sub-section 10 of the said section. This case, too, is therefore, distinguishable on the above ground but, apart from that, we are inclined to hold, as pointed out by Chakravartti, J. as he then was, in *Balai Chand*

Mondal Vs. Nibaran Chandra Dass and Others, , that the reasons, given in the said decision Prosanna Kumar Roy Choudhury Vs. Smt. Adya Sakti Dasi, , could not be reconciled and would be self-contradictory unless the explanation thereof, as given in Sankaracharja Mullick Vs. Sk. Sademani and Others, be accepted, but which explanation would, immediately, resolve the apparent conflict between that decision and our view on the point of res judicata, as indicated hereinbefore.

19. The same contest would also support broadly the decisions in the three cases, reported in Balai Chand Mondal Vs. Nibaran Chandra Dass and Others, ; Aparnath Mukherjee Vs. Kanai Lal Chatterjee and Others, and Hossain Ali and Another Vs. Kala Chand Ghose and Others, , of which the last one, though not strictly on the point of res judicata, explains the true scope of a proceeding under the amended Section 26F, which helps understanding of the true effect of a decision therein.

20. It is clear, then, that the rule of res judicata, -- and the present case is one of actual res judicata, -- would apply to the instant suit and would debar the plaintiff from raising any claim of title or from challenging the defendants' title to the suit property, even assuming that the plaintiff's plea of title could have, otherwise, been supported or established, to wit, on the merits. In the light of the foregoing discussion, the plaintiff's present claim must be held to be barred by res judicata also and, accordingly, both on merits and otherwise too, the plaintiff's instant suit must fail.

21. The decision of the learned Subordinate Judge must, therefore, be held to have been perfectly correct, both in law and on facts, and it cannot be interfered with in this appeal.

22. In the result, this appeal fails and it is dismissed with costs.

Law, J.

23. I agree.