

(1925) 01 CAL CK 0035
In the Calcutta High Court

Official Trustee of Bengal

APPELLANT

Vs

Sagar Paik and Others

RESPONDENT

Date of Decision : 07-01-1925

Acts Referred:

Citation : AIR 1925 Cal 1011

Hon'ble Judges : Suhrawardy, J;Cuming, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This is a suit for recovery of arrears of rent in respect of 4-annas share of the plaintiff in the holding. The rent is claimed at Rs. 54-11-7 for the 16-annas share; but the Record-of-Rights shows the jama at Rs. 36-6-7. Both the Courts below have agreed in dismissing the plaintiff's suit on the finding that the plaintiff had failed to prove the jama as alleged by him. The plaintiff produced neither the collection papers nor any other evidence in proof of realisation of rent at the rate claimed by him; but he has simply relied upon a certain decree passed in 1895, in a rent-suit against the present respondent on confession. A copy of the decree in that suit has been filed in this case which shows that the amount claimed was decreed on confession by the defendant. The terms of the compromise have not been put in. The decree itself does not prove as to what the defendant admitted. As it stands the admission is only in respect of the amount claimed in that suit. It cannot, therefore, operate as res judicata in the present suit with regard to the rate of rent, on the principle laid down in the Full Bench case of Madhusudan Shaha Mundul v. Brae [1889] 16 Cal. 300 (F.B.). Mr. Sen for the appellant has further argued that if the decree in the previous suit may not operate as res judicata, it is a strong piece of evidence against the defendant. Admitting that to be so, the Courts below have, on a consideration of this and other evidence, come to the conclusion that the plaintiff has failed to rebut the presumption arising from the Record-of-Rights, and it is a decision on facts. This appeal is accordingly dismissed with costs.

Cuming, J.

2. I agree.