

(1879) 03 CAL CK 0014
In the Calcutta High Court

Okhoy Coomar Chuttopadhya and Others	APPELLANT
Vs	
Mahtap Chunder Bahadoor	RESPONDENT

Date of Decision : 25-03-1879

Acts Referred:

Citation : (1880) ILR (Cal) 24

Hon'ble Judges : Mitter, J; Birch, J

Bench : Division Bench

Judgement

Birch, J.—This suit was brought to obtain a refund of the amount paid by the plaintiffs in excess of the rent due to the defendant for three years and a half, from the 1st Kartick 1277 to the end of 1280.

2. The Subordinate Judge gave the plaintiffs a decree, holding that it was proved that the plaintiffs had paid the whole of the patni rent to the defendant, and that they had done so to save their patni, which otherwise would have been placed in jeopardy by the proceedings taken under the Patni Regulation by the defendant. The Subordinate Judge proceeds to say, that "the land was taken by Government before the plaintiffs" purchase, and there was no dispute as to the quantity of land taken. the plaintiffs from the time when the lands were taken were entitled to a deduction of rent for the 147 bigas of land so taken, and if, not with standing this, the Maharaja's agents continued to realize the rent of the land which had been taken, he can be justly called upon to repay what he received in excess of the sum to which he was fairly entitled."

3. The judgment of the District Judge in appeal is very short. The conclusion at which the Judge has arrived is, that as regards the excess payments made prior to 1st Falgoon 1280, the present suit would not lie, in as much as the plaintiffs ought to have included the claim for the refund of all excess payments made prior to the institution of the suit which they brought for abatement of rent in that suit, and that by not having done so they must be held to have relinquished their claim to a refund of the excess, rent paid up to the 1st Falgoon 1280, the date of the former suit. The Judge, therefore, modifies the decree of the

Subordinate Judge, and gives a decree for the refund of the excess rent paid subsequent to the date of the institution of that suit.

4. It seems to me that the Judge is wrong in this holding, that the plaintiffs, cannot recover the whole of the sum claimed in the present suit. Their former suit was for a determination of the sum that they were to pay as rent in future after obtaining abatement on account of the land taken by Government, and although they might in that suit have included the refund which is the subject of the present claim, the fact of their not having so included it does not prevent their bringing the present suit.

5. The result will be that the decision of the District Judge must be reversed, and the judgment of the Subordinate Judge must be restored, the appeal being decreed with costs.

Mitter, J.

6. I am also of the same opinion. I desire to add that the District Judge is in error in supposing that the present claim arises out of the same cause of action which was the foundation of the suit for abatement of rent. In the suit for abatement of rent the plaintiff's cause of action was, that Government had taken 147 bigas of land for public purposes. In the present case their cause of action is that the defendant wrongfully received the whole of the patni rent notwithstanding that a portion of the patni had been taken by Government for public purposes. Although by Section 8 of Act VIII of 1859 two claims upon two distinct causes of action, if between the same parties, may be joined together, yet it is quite clear that Section 7 of that Act cannot be pleaded as a bar to the maintenance of this suit because the two claims were not so combined.

7. Then as regards the contention of the learned pleader for the respondent, that the plaintiffs might have resisted the zamindar's demand in the proceedings which were taken under Reg. VIII of 1819, I do not think that there is any force in that. The Collector under the provisions of that Regulation could not entertain any claim for abatement of rent.

8. For these reasons, I am also of opinion that the decree of the first Court must be restored with costs.