
(1917) 05 PAT CK 0025
In the Patna High Court

Palki Pandey and Others

APPELLANT

Vs

Dwarka Pandey and Others

RESPONDENT

Date of Decision : 10-05-1917

Acts Referred:

Citation : AIR 1917 Patna 471(1) : 40 Ind. Cas. 530

Hon'ble Judges : Edward Chamier, C.J; Mullick, J

Bench : Division Bench

Judgement

Edward Chamier, C.J.—This is an appeal against the judgment of a learned Judge of this Court setting aside an order of the District Judge of Darbhanga, whereby the suit was remanded to the Court of first instance for trial on the merits. The Munsif had decided that the suit was barred by the rule of res judicata. On appeal the District Judge held that the suit was not so barred. On appeal to this Court the learned Judge held that the suit was barred by res judicata. It appears to me that the decision of the Court of first appeal was correct and should not have been disturbed. The plaintiff in the present case claims to be the tenant of whole proprietary body in a village. There was a previous litigation in which one of the defendants, Dwarka Prasad sued the present plaintiff as his tenant. Dwarka Prasad succeeded in establishing his case and obtained a decree for rent against the present plaintiff. The question raised as between the plaintiff and the defendants other than Dwarka Prasad in the present suit are not res judicata under the decision in the previous suit. It appears to me that the learned District Judge was right in saying that the decision in the rent suit is res judicata as far as the question of settlement between the plaintiff and Dwarka Prasad is concerned but not with regard to the question of the plaintiff's title. I would allow this appeal, set aside the judgment of the learned Judge of this Court, restore the order of the Court of first Appeal and direct that the costs of both hearings in this Court should be costs in the cause and should abide the result.

Mullick, J.

2. I agree.