

(1900) 07 CAL CK 0005
In the Calcutta High Court

Prasanna Kumari Chowdhurani and Others

APPELLANT

Vs

Hridoy Krishna Das and Others

RESPONDENT

Date of Decision : 03-07-1900

Acts Referred:

Citation : (1901) ILR (Cal) 142

Hon'ble Judges : Francis W. Maclean, J; Banerjee, J

Bench : Division Bench

Judgement

Maclean, C.J.—A variety of objections have been taken on this appeal, but most of them have been disposed of in the course of the argument. I allude to the points, that the present appellants took their lease under an authority conferred by the plaintiff's mother-in-law, a point not taken in any of the Courts below; that the appellant's possession as raiyats gave them a good title although they obtained that possession through the pro forma defendants who were themselves mere trespassers; and that the present case falls within the principle of *Watson and Co. v. Ramchund Dutt* I.L.R (1890) . 18 Cal. 10: L.R.

2. These points have been disposed of during the course of the argument, and it is sufficient to say that I do not think there is anything in any of them.

3. The only other point is as to the admissibility of the decree in the previous suit, No. 1 of 1890, thought it has been suggested that if the Court decided against the present appellants they were entitled to some compensation. I do not understand the principle upon which they can be entitled to compensation or as against whom, and no authority has been referred to in support of that contention. They were trespassers upon another man's land; they knew they were trespassers, and, if foolishly they improved, as they say, the property, they cannot charge the plaintiff with the cost of these improvements.

4. I now come to the question of the admissibility of the decree in the previous suit. Speaking for myself, I am not satisfied as to its inadmissibility, but, any way, I think that it is too late for the appellants to raise the question. The decree

in question was admitted in evidence in the lower Appellate Court, and in the first Court without objection, by the present, appellants, and not only that, but as appears from paragraphs 6 and 7 of their written statement, they themselves relied upon it as part of their defence to the present suit. In the case of *Girindra Chandra v. Rajendra Nath* 1. C.W.N. 530 we have pointed out the injustice of allowing objections, such as the present, being taken at such a late stage of the proceedings. If the appellants here had in the first Court objected to the admission of this decree as evidence against them, it would have been open to the plaintiffs to have proved their title in another and very simple way. They could have put in the Will and asked the Court to construe it, and the Court would, in all probability, have accepted the construction put upon it in the previous suit, No, 1 of 1890, in which the decree I have mentioned was made. That would have obviated any difficulty as to the admissibility of the decree and have been equally effective for the plaintiff's purpose. This course was not adopted because the decree was admitted without objection.

5. It is urged that, assuming this decree was not evidence against the appellants, no admission on their part could make it evidence. It is a clear evidence against the pro forma defendants under whom the appellants claimed, and the document being evidence, at any rate, as against them, I am not satisfied that the observations of the Privy Council in the case of *Miller v. Matho Das* I.L.R (1896) . 19 All. 76: L.R. 23 IndAp 106 would properly apply under the special circumstances of this case.

6. I think, therefore, that we should not be justified at this late stage in remanding the case, and allowing it to be reopened upon this point; especially as what was proved by the decree can obviously be proved in the way I have indicated. On these grounds, the appeal fails and must be dismissed with costs.

Banerjee, J.

7. I agree with the learned Chief Justice in thinking that this appeal should be dismissed with costs. Upon the question of the propriety of the lower Appellate Court having used as evidence the judgment and decree in the previous suit, I think it enough to say that the appellants are precluded by the course they have adopted in this litigation from raising the objection now. For not only did they not object to the judgment and decree being admitted in evidence before the first Court, but in paragraphs 6 and 7 of their written statement they sought to make use of the decree in question as the basis of two of their objections to the present suit; and having done that, they could not be heard to say that the Court of first instance was wrong in using the judgment and decree as evidence against them. This case is clearly distinguishable from the case of *Miller v. Madho Das* I.L.R (1896) . 19 All. 76: L.R. 23 IndAp 106 upon which reliance was placed by the learned Vakil for the appellant, because all that happened in that case was, that there was an erroneous omission to object before the Courts below to the admission of evidence that was not relevant, and their Lordships of the Privy Council-held that that was not enough to make irrelevant evidence relevant.

Here, as I have stated above, there was not merely an omission to object to the documents to which exception is now taken, but there was a reference to those very documents as affording a basis for two of the objections raised by the defendants appellants to the present suit. That being so, it must be held that they are precluded from raising the objection now.