
(1897) 03 CAL CK 0009

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 759 of 1895

Rai Churn Ghose and others

APPELLANT

Vs

Kumud Mohon Dutta Chaudhuri and others

RESPONDENT

Date of Decision : 26-03-1897

Acts Referred:

Citation : (1897) 03 CAL CK 0009

Final Decision : Allowed

Judgement

Banerjee, J.—In this appeal, which arises out of a suit for arrears of rent, the only point raised on behalf of the Defendants-Appellants is that the lower Appellate Court is wrong in law in holding that the question whether the rent is payable annually or quarterly by four equal instalments was not res judicata, whereas it ought to have held that the question was concluded by the decision in a previous suit, and that the claim for rent for the first six months of B. S. 1300 which was all that the first Court had decreed, should be dismissed as premature. The decision in the former suit, which is relied upon in support of the plea of res judicata, is that of the Subordinate Judge on appeal. It runs thus :---" This was a suit for recovery of arrears of rent with the allegation that the rent was payable by instalments. Defendants stated that he was not liable to pay by instalments, inasmuch as there was a judgment in a previous suit between him and the Plaintiff, which operated as res judicata. The Munsif decreed the suit holding that the Tenancy Act nullified the effect of the decree. Defendant appeals."

2. And then after setting out the questions for determination, the judgment proceeds in these words :--

The next question to be considered is whether the Tenancy Act created in Plaintiff such a right as to enable him to recover rents by instalments in spite of the decree. Sec. 53 of the Act provides that subject to agreement or established usage a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year. If the law had

enjoined that the rent should in all cases be paid in four instalments, the previous decree would have been of no avail, because it would not affect a right created by a statute passed subsequently. But the law does not so direct, and it saves agreement and custom from its operation. The Court cannot go behind the decree, and the obligation created by it is similar to that created by agreements or established usage, the decree presupposes the existence of such agreement or usage. " With the above remarks I hold that the previous decree has not been nullified by any provision of the Tenancy Act, and that it is still conclusive between the parties. The appeal is decreed, and the decree of the lower Court modified.

3. It is clear, therefore, that the issue now raised, namely, whether the rent of the Defendants' tenure or holding is under sec. 53 of the Bengal Tenancy Act, payable quarterly by four equal instalments as alleged by the Plaintiff, or whether it is payable in one sum annually as stated by the Defendants, was directly and substantially in issue in the former suit, and was decided in favour of the Defendants. But the lower Appellate Court has held that the question being one of law, and the decision upon it in the former suit being wrong, that decision cannot operate as a bar to the trial of the question in the present suit; and in support of this view the learned Subordinate Judge has relied upon the cases of Partha Saradi v. Chinna Krishna ILR 5 Mad. 304 and Hera Lal Dass v. Mathura Mohan Roy Chaudhuri ILR 15 Cal. 714. The second case has no bearing upon the question of res judicata. The first case, no doubt, lays down broadly that an erroneous determination of an issue of law is not binding between the parties. But I am unable to accept this broad proposition as correct. It is opposed to the decision of this Court in Gouri Koer v. Audh Koer ILR 10 Cal. 1087, the correctness of which I see no reason to doubt. It is Opposed also to Phundu v. Jangi Nath ILR 15 All. 327.

4. I may, however, observe that anomalous results might arise "if an erroneous decision upon a pure question of law in a previous suit is held to operate as ns judicata in a subsequent suit relating to a different subject-matter. Thus, if in a suit brought by A against B on a registered bond, the Court erroneously holds that the period of limitation is three years and not six, and if this decision be held to operate as res-judicata in subsequent suits brought by A against B upon other registered bonds, the result would be, that one erroneous decision in a suit between A and B would have the effect of altering the law of limitation applicable to suits on registered bonds as between those two parties. Though the language of sec. 13 may perhaps make it apply to such a case, it is very doubtful whether it was intended to have such application. But it is not necessary to consider this point any further, as the question upon which the former decision was arrived at, and which arises for determination now, is not a pure question of law, but is a mixed one of law and fact, the question being whether the rent of the Defendants' tenure or holding is payable quarterly by four equal instalments or whether it is by contract or established usage, payable in one sum annually. The learned vakil for the Respondents did not insist very strongly upon supporting

the decision of the lower Appellate Court upon the ground on which the learned Subordinate Judge has based it. He argued that the decision of the lower Appellate Court, that the judgment in the "former" suit could not operate as res judicata, might be supported on the ground that as no second appeal could lie to this Court against that judgment by reason of the value of the former suit; whereas a second appeal is allowed in the present suit, the Court in the former suit cannot be said to have been competent to try the subsequent suit with the same conclusive effect, and in support of this argument he relied upon *Bholabai v. Adesang* ILR 9 Bom. 75 and *Govind v. Dondharav* (8) I.L.R. 15 Bom. 104. But granting that the proposition of law upon which the argument is based was correct, it can have no application to this case, because, as was very properly pointed out by the learned vakil for the Respondent himself, a second appeal was not barred in the former case by sec. 153 of the Bengal Tenancy Act, notwithstanding that the value of the suit was below Rs. 100, as a question relating to the amount of rent was determined by the judgment of the Appellate Court. That being so, the former judgment must operate as res judicata, and the rent of the Defendants tenure or holding must be held to be payable in one sum annually, and the present suit for the rent of a portion of the year 1300. must be dismissed as premature. The result then is that this appeal must be allowed, the decree of the lower Appellate Court reversed and that of the first Court, dismissing the Plaintiffs' suit, restored with costs.

Macleay, C.J.

5. I have had the advantage of reading Mr. Justice Banerjee's judgment, and I concur in the conclusion at which he has arrived. In my opinion the present point in dispute was directly and substantially in issue in the former suit, and heard and decided between the same parties, and that being so, the matter is res judicata. The appeal must be allowed with costs and the decree of the Munsif restored. I understand that appeal No. 759 of 1895 abides the result of this appeal, and consequently in that case also the appeal must be allowed with costs.