
(1918) 01 PAT CK 0016
In the Patna High Court

Sheo Charan Dhobi and Others

APPELLANT

Vs

Bansi Singh and Another

RESPONDENT

Date of Decision : 17-01-1918

Acts Referred:

Bengal Tenancy Act, 1885 — Section 60
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 3

Citation : AIR 1918 Patna 377(2) : 44 Ind. Cas. 129

Hon'ble Judges : Ali Imam, J

Bench : Single Bench

Judgement

Ali Imam, J.—In this case the plaintiff Bansi Singh sued Mohan Mahton and others for the recovery of rent for the years 1319, 1320, and 1321 basing his claim as usufructuary mortgage of a share in Mouza Barwa Khurd. He made Acchutanand, a malik in the mouza, as one of the defendants, alleging him to be his mortgagor. The case went to trial and the evidence on behalf of the plaintiff was recorded and finished, when Acchutanand put in an application praying to be entered as a plaintiff in the case and by an order passed on the 26th April 1916, the learned Munsif directed Acchutanand's name to be entered as such. The case before the "Munsif turned on the consideration as to whether the doctrine of ree judicata applied to the present suit.

2. It appears that there was an earlier suit instituted by Bansi Singh as against the tenant-defendants in this case for rent of 1319 and 1320 on the very same ground of his having been a usufructuary mortgage of a share of Acchutanand. In that suit, it appears from Exhibit 8, the judgment in that case, the claim was resisted by the defendants principally on two grounds, firstly, they challenged the right of Bansi Singh to recover rent on the. ground that if he was a mortgage he could not successfully sue for rent unless his claim was registered under the Land Registration Act. In the alternative they also pleaded payment.

3. The introductory part of the judgment, Exhibit, 8, would go to show that in the pleadings of that case the question of the title of Bansi Singh as mortgage of

Acchutanand was not raised. The issues framed in that case show that one of them was in these words:

is the plaintiff entitled to receive rent from the defendants?" It is evident that the language in which this issue was framed was wide enough to cover not only the locus standi of the plaintiff with reference to the registration of his name, but also his title as mortgage of Acchutanand.

4. It has been urged before me on behalf of the respondents that the language of this issue, though framed in general terms, could not have been intended to cover the issue affecting the title of the plaintiff as the mortgagee of Acchutanand. On the face of the pleadings as set out in the introductory part of the judgment one would be disposed to take that view, but a glance at that part of the judgment which deals with this issue shows that the Court did not confine itself to the consideration of only that part of the plaintiffs' right to realize rent which referred to the matter of the registration of his name, on the contrary it appears from his judgment that the learned Munsif who tried that case went exhaustively into an examination of the title of the plaintiff resting on the allegation that- he was .a mortgage of Acchutanand. After considering the various points relating to this matter of the alleged title of the plaintiff, the learned Munsif in that case concluded his observations on this particular issue in these words: "The thicca, therefore, confers no right on the plaintiff (defendant No. 2 in this case) and he cannot in any capacity realize rent from the tenants."

5. On a proper appreciation of this part of the judgment of the learned Munsif it is obvious that he did go into the question of the title of the plaintiff as mortgage to sue the defendants and that he gave his decision on that point adverse to the plaintiff. I am, however, invited to consider this part of the judgment of the learned Munsif as a decision on a point which was not before him, as the question of the title of the plaintiff as mortgage was never raised in the pleadings. In other words, I am invited to hold that unless and until in the pleadings the issue is raised any decision given must be regarded as a decision that did not arise in the case. There would seem to be some force in this argument were it not that Order XIV, Rule 3, of the CPC clearly lays down that the Court may frame the issues from allegations made on oath by the parties or by any persons on their behalf or made by the Pleaders of such parties. I have endeavored to find in this case whether the issue regarding the title of the plaintiff as mortgage of Acchntanand was before the Court and whether the plaintiff had an opportunity to contest the defendants' denial of his title, as it appears it was denied in the judgment of the learned Munsif. With a view to this it was necessary to find from the judgment of the learned Munsif as to whether the consideration of this question of title was sprung upon the plaintiff, when the judgment was given. I find that this was not so, inasmuch as it is clearly laid down in the judgment of the learned Munsif that in the argument before him the plaintiff had full notice of the contention and that he had resisted the contention of the defendants on this point to the best of his ability. I have not the pleadings

of that case before me, but taking the introductory part of the judgment to represent what the pleadings were it would appear that this part of the issue was framed, if not on the pleadings, at any rate on allegations of the two parties, namely, the plaintiff and the tenant-defendants in the case. In the circumstances I must hold that the issue on this point framed by the Munsif was an issue which covered the consideration of the question of the title of the plaintiff as mortgagee of Acchutanand. I also hold that the plaintiff was fully cognisant of the meaning of that issue. I also hold that in the argument on his behalf before the learned Munsif the point was gone into and that he contested the point to the best of his ability, and I also hold that after this contest the learned Munsif came to a clear decision adverse to the plaintiff.

6. These being the facts the question that arises now for consideration is as to whether the judgment in the present case given by the learned Subordinate Judge reversing the order of the Munsif of Anrangabad can be sustained.

7. The Munsif in this case held, that the judgment in the previous case was res judicator and barred the claim set up by the plaintiff, Banshi Singh. In doing so I notice that the Munsif did not overlook the fact that the principal ground on which the former suit was resisted was the ground of no registration of Banshi Singh's name. Having that point before his eyes the learned Munsif has carefully examined the question as to how far the decision of this particular issue in the former case would be a bar. In this connection it is also noticeable that the judgment given by the Munsif in the previous case was accepted by Banshi Singh sub silentio. If he realized after the judgment was given that the Munsif had in that case gone out of the scope of the case and delivered a judgment on a point which did not arise, it is expected, that Banshi Singh should have taken some steps to remove such disability as might have been placed upon him by that judgment. Banshi Singh did not do so.

8. The question then is whether with reference to Banshi Singh and the tenant-defendants the doctrine of res judicata must be held to apply to this case. The learned Subordinate Judge in his judgment reversing the judgment of the Munsif in the present case says:

Now the law is that a finding can operate as res judicata only if it was "directly and substantially in issue", was alleged by one party, and denied by another" and was raised and decided." "Now the question of validity or invalidity of the thika lease was never alleged or denied by any party in the previous suit it was never directly or even indirectly, or substantially in issue and it was raised by none, and the plaintiff had no opportunity of adducing evidence on the point or of meeting it.

9. For the reasons given above I am, unable to agree with the view taken by the learned Subordinate Judge. As I have said, before this issue was raised or else it could not have been a contested one as is apparent from the judgment of the learned Munsif, and I am unable to agree with the learned Subordinate Judge in

regarding the decision of the Munsif in the previous case on the question of title as mortgage as a mere obiter dictum. I, therefore, hold that on this point Hansi Singh's case is concluded by the doctrine of res judicator.

10. The learned Yakils appearing on behalf of Banshi Singh and Acchutanand have pressed before me the consideration that should it be held that the question of Banshi Singh's title is concluded by res indicate, then I should in that case hold in favor of plaintiff No. 2 Acchntanand. He admittedly was no party to the first suit. I am unable to accept this suggestion, for I look upon Acchutanand in this case as a person who does not appear to have been a bona fide plaintiff in the suit. It was not, as I have said before, till after Banshi Singh's case had closed and Acchntanand occupied the position of a defendant ,that he applied to be made a plaintiff in the case. It seems to me that the contest really has been between Banshi Singh on the one side and the tenant-defendants on the other. I am, therefore, unable to accept this suggestion.

11. I have also been asked to consider the question of the rent of 1321. It is urged that if the previous judgment is a bar by the doctrine of res judicata to the relief claimed by Banshi Singh then that should be limited to the rent of 1319 to 1320 only and that I should allow Banshi Singh relief in respect of the rent of 1321. I do not agree with this view for the reason that the question of res judicata, as I have said before, is not limited to the consideration of Banshi Singh's title to receive rent for 1319 and 1320, rather it goes to the very root of his claim in as much as his title as mortgage of Aochutanand has been rejected by the Munsif in the previous case.

12. The next point that has been placed before me on behalf of Banshi Singh is that it is not open to the tenant-defendants in this case to plead in defence to the claim set up by Banshi Singh that not he but somebody else is entitled to receive rent. This is advanced on the ground that Banshi Singh has been registered under the Land Registration Act of 1876 and I am asked to hold that Section 60 of the Bengal Tenancy Act is " an absolute bar to any plea set up by the tenant defendants denying the right of Banshi Singh to realize rent because of the plea that rent is due to a third person. I do not sympathies with this suggestion, in as much as I am unable to think that Section 60 of the Bengal Tenancy Act was intended to be of the effect which the learned Vakil on behalf of Banshi Singh invites me to give to it. A reading of that section clearly points out to me that it relates to cases of those who are proprietors, managers or mortgages of an estate. In the present case the defendants deny the position of Banshi Singh as a mortgage. Admittedly he is not a manager or a proprietor; if his position as a mortgage had been admitted I could understand the application of Section 60 of the Bengal Tenancy Act, but that has been denied and that very title in the previous case has been held to be not in Binsi Singh. In the circumstances Section 60 of the Bengal Tenancy Act has no application to the present case. The decree given in this case by the learned Subordinate Judge must, therefore, be vacated and the order passed by the Munsif dismissing the suit be confirmed.

The appeals are allowed with costs.