
(1907) 01 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1920 of 1904

Trilokya Mohini Dasi

APPELLANT

Vs

Kali Prosanna Ghose and Others

RESPONDENT

Date of Decision : 16-01-1907

Acts Referred:

Citation : (1907) 01 CAL CK 0003

Judgement

1. The suit in respect of which this appeal has been preferred was brought by the present Plaintiff, Appellant, under the provisions of sec. 149, cl. 3 of the Bengal Tenancy Act. In Mouzah Mallabati, Taraf Serampore, Pergana Alanipore, there are two tenures, the one called Ganti Ribi Saheb and the other Ganti Madia. The former is the property of the Plaintiff, the latter is the property of Defendant No. 1, Kali Prosonno Ghose. Both of these were created many years ago by the predecessor-in-title of Babu Kali Prosonno Ghose in favour of the Bengal Indigo Co., which was then the lessee of Mallabati. They were after wards sold to Sonai Sardar. After his death by different sales in execution of decrees Ganti Bibi Saheb came into the possession of Nishita Pal Chowdry and Ganti Madia into the possession of Kali Prosonno Ghose. Nishita Pal Chowdry having become insolvent the Official Assignee conveyed his interests in Ganti Bibi Saheb by a deed of sale to the present Plaintiff. In 1897 the Defendant No. 1 sued Defendants Nos. 2, 3, 4 and 5 for rent of the lands held by them on the allegation that they were included in his estate. The Defendants admitted that a portion of the rents claimed were due from them but alleged that they were payable to the Plaintiff as their landlord and not to the Defendant No. 1. They therefore deposited the amounts in Court under the provisions of sec. 149 of the Bengal Tenancy Act. Notices were then served on the Plaintiff and the present suit was instituted on the 21st September 1898.

2. The suit was first heard and decreed in favour of the Plaintiff on the 10th October 1898 by Babu Polin. Behari Bose, Munsif of Bongaon. On appeal, however, his judgment and decree were set aside on the 28th November 1899 by Babu Jadunath Ghose, Subordinate Judge of Jessore, and the suit was remanded

for rehearing apparently under the provisions of sec. 562, C. P. C.

3. The suit was heard for a second time by Babu Hari Prosanna Mukherjee, Munsif of Bongaon, and again decreed in favour of the Plaintiff. On appeal the judgment and decree of the Munsif was set aside by Babu Lal Behary Dey, Subordinate Judge of Jessore, on the 4th May 1904. The Plaintiff appealed to this Court and the appeal has come on for hearing nearly seven years after the date of the institution of the suit.

4. In a suit of this description in which the main point for determination is whether or not the Plaintiff is entitled to the rents deposited the delay is lamentable. It is due to the fact that throughout the suit has been argued as a title suit though the institution fee has been paid only on the amount of rent deposited. The question was raised in the Munsif's Court whether the institution fee was sufficient but it was held to be so on the authority of the decision of this Court in the case of Jagadamba Devi v. Protap Ghose I. L. R. 14 Cal, 537 (1887). It was held in the later case, Rabiunnia v. Guljan I. L. R. 17 Cal 829 (1890), that the Plaintiff in such a suit was entitled to have the question of title tried, though the question of what institution fee should be paid was not then determined. It could, however, hardly have been the intention of the legislature that a simple suit such as sec. 149, cl. 3 of the Bengal Tenancy Act appears to contemplate should develop into a suit involving intricate questions of title.

5. The important issue which has been tried in all the Courts has, however, been "whether the lands for which rent has been deposited appertain to Ganti Bibi Saheb." This question and the question of res judicata are two points which have been argued before us in this appeal.

6. The case for the Plaintiff is that rent for the lands which has been deposited under sec. 119 of the Bengal Tenancy Act is due to her as proprietor of Ganti Bibi Saheb, and she bases her title on the following facts.

7. After the death of Sonai Sardar the whole Ganti was sold by some of his heirs to Bangshi Sarkar, but the female heirs of Sonai brought a suit against Bangshi Sarkar and obtained a decree for a 7 annas odd gundas share. The remaining 8 annas odd gundas share was attached by Ram Lal Agarwalla in execution of a decree obtained against Bangshi Sarkar. Kali Prosonno Ghose, Defendant No. 1, in the present suit, who had meanwhile purchased Ganti Madia put in a claim in those execution proceedings alleging that the lands attached belonged to his tenure. His claim was, however, dismissed.

8. The attached properties, with others subsequently attached, were in the end sold and purchased by Nishita Pal Chowdry, who also afterwards purchased the remaining 7 annas odd gundas share at a sale in execution of a decree.

9. Kali Prosonno Ghose having failed in his claim case instituted a regular suit, No. 41 of 1886, to recover from Nishita Pal Chowdry all the lands which had been the subject of his unsuccessful claim case as well as others, alleging that they

were included in his purchased tenure Ganti Madia. His claim was dismissed by the Subordinate Judge of Jessore on the 31st July 1888. He then appealed to the High Court, but was allowed, on the 14th August 1890, to withdraw his suit with liberty to bring a fresh suit on payment of all the Defendant's costs in the suit and appeal.

10. No such suit was, however, brought but in 1888 a suit was instituted by Kali Prosonno Ghose against Thakamoni the widow of Bangshi Sarkar for rent of the Ganti Bibi Saheb, though all her interest had been sold to Nishita Pal Chowdry. The suit was heard *ex parte* and a decree obtained and on the 17th July 1888, the Ganti Bibi Saheb was put up for sale and was purchased by Mohendra Nath Chakravarti the brother of Prosonno Kumar Chakravarti the head Dewan of Kali Prosonno Ghose.

11. Thereafter Nishita Pal Chowdry having failed to get the sale set aside brought a regular suit, No. 24 of 1889, to have the sale set aside as fraudulent and to recover possession with *wasilat*. The suit was brought against Kali Prosonno Ghose and Mohendra Nath Chakravarti as the chief Defendants, the widow of Bangshi Sarkar and the heirs of Sonai Sardar being added as *pro forma* Defendants. The suit was contested by Kali Prosonno Ghose and Mohendra Nath Chakravarti.

12. During the progress of the suit Nishita Pal Chowdry was adjudged a bankrupt and his properties were vested in the Official Assignee. In the end the Plaintiff, Nishita Pal, as represented by the Official Assignee, obtained a decree against Mohendra Nath Chakravarti, the Defendant No. 2, directing him to reconvey the property the subject of the suit, and to pay all the Plaintiff's costs. There was a further direction that Defendant No. 1, Kali Prosonno Ghose, should pay his own costs. The remarkable finding was arrived at that though the suit had been instituted on his behalf against the widow of Bangshi Sarkar by his chief Dewan, Prosonno Kumar Chakravarti, and the sale had been held in execute of the decree obtained in that suit the Plaintiff was absolved from responsibility for the fraud on the ground apparently that the Ganti had been purchased by the brother of his chief Dewan and that the chief Dewan had perpetrated the fraud for his brother's and not for his master's benefit. In the suit it was alleged that the brother Mohendra Nath Chakravarti was merely the *benamdar* of the Defendant No. 1, Kali Prosonno Ghose. This fact Kali Prosonno Ghose denied in evidence and after giving his deposition he dismissed his Dewan, Prosonno Kumar Chakravarti. This dismissal was accepted by the Sub-Judge as a sufficient indication that Kali Prosonno Ghose was not a party to the fraud. It is, however, to be observed that suit No. 41 of 1886 was then pending in appeal.

13. To the plaint of the suit No. 24 of 1889 a schedule was attached setting out all the lands in the Ganti Bibi Saheb recovery of which was claimed by Nishita Pal Chowdry together with *mesne profits*; and after the decree has been granted in favour of the Plaintiffs as represented by the Official Assignee a proper deed of sale was under order of the Court executed by the Court in favour of the Official

Assignee on the 11th August 1894, Mohendra Nath Chakravarti having in the meantime died, in which all the lands as set out in the schedule to the plaint were included.

14. On the 16th August 1896, a deed of sale of the same lands was executed by the Official Assignee in favour of the Plaintiff in the present suit.

15. The Plaintiff claims title to the lands in respect of which the rents were deposited on the basis of her purchase from the Official Assignee.

16. It was further alleged that the kabuliyats under which Defendant No. 1 claims to be entitled to the rents were taken from the tenants in 1297 and 1298, that they were obtained by unfair inducement and pressure from ignorant villagers, at rentals far below those previously paid, and that they were taken with the intention of dispossessing the Plaintiff's predecessor in-title at the time when the Defendant No. 1 had failed in his suit No. 41 of 1886. They therefore gave him no title.

17. An Amin was employed during the course of the first trial to prepare a map of the lands in suit in order to ascertain whether they fell within Ganti Bibi Saheb and from the judgment of the Munsif before whom the case was first tried it appears that the report of the Amin was to the effect that the lands in suit were all covered by the deed of sale of the 11th August 1894 which was executed by order of the Court in favour of the Official Assignee and also that they corresponded with a chitta of 1277 prepared during the tenure of Bangshi Sarkar and on which the Plaintiff relied in support of her case. It further appears from the judgment of the same Munsif that the pleader of Defendant No. 1 admitted that the lands in suit were identical with those covered by the deed of the sale of 11th August 1894. It also appears that Defendant's witness No. 2, Nazaruddin, proved that the lands in suit were identical with the lands which were the subject of suit No. 41 of 1866 instituted by Defendant No. 1.

18. The Munsif after a careful review of all the evidence decided the main issue in favour of the Plaintiff and held that she was entitled to the rents which had been deposited as it was in respect of lands covered by Ganti Bibi Saheb.

19. On appeal the Subordinate Judge held that the Amin's inquiry was incomplete as he had failed to ascertain whether the lands in suit corresponded with a chitta of 1275-1276 prepared while the two Gantis were in the possession of the Bengal Indigo Co. He accordingly remanded the suit in order that a fresh local investigation might be made to ascertain whether the lands in suit were covered by the dags of the chitta of 1275-1276 and whether any of the disputed plots were included in suit 22 of 1882, which was the suit instituted by the female heirs of Sonai Sarder against Bangshi Sarkar.

20. An objection was raised in that appeal on behalf of the Plaintiff that the Defendant No. 1 was bound by the decision in suit No. 24 of 1889 and therefore that the question whether the lands in suit were covered by Ganti Bibi Saheb was

res judicata as against him and in favour of the Plaintiff. The Subordinate Judge, however, disallowed that objection.

21. On rehearing, the question of res judicata was raised, and the Munsif being of opinion that the remand re-opened the whole case, entered into it and held that the Defendant, Kali Prosonno Ghose, was bound by the decision in the suit No. 24 of 1889, and that the question whether the lands in respect of which the rents had been deposited were included in Ganti Bibi Saheb was res judicata against him.

22. He further held on the merits that the Plaintiff had proved that those lands were included in that Ganti. He therefore decreed the suit in favour of the Plaintiff.

23. In disposing of the appeal against that decision the Subordinate Judge has held that the Munsif was bound by the decision of the previous Subordinate Judge before remand, and that the question was not res judicata against Kali Prosanna Ghose.

24. He also set aside the finding of the Munsif on the merits. He held that the onus lay on the Plaintiff to prove that the lands in respect of which rents were deposited appertained to Ganti Bibi Saheb: He held that the Munsif was wrong in relying on the plaints and decrees in the claim case brought by Kali Prosanna Ghose and on the regular suit No. 41 of 1886 instituted by the same persons as there was nothing to show that the lands in respect of which the rents had been deposited formed the subject-matter of those cases and therefore they had no important bearing on the present suit. He also considered that the Munsif had given much importance to the chittas of 1277 on which the Plaintiff relied. He then proceeded to lay down on the authority of the cases of Rabiunnissa v. Guljan I. L. R. 17 Cal. 829 (1890) and Jadublaul Roy v. Khemankari Debya 8 C. W. N. 248 (1903), that the only legitimate issue in a suit under sec. 149, cl. 3 of the Bengal Tenancy Act was whether the Plaintiff was in possession of the property and was in the habit of receiving rent from the tenant Defendants in preceding years, and found that the Plaintiff had failed to prove that she had ever realised rent from the tenant Defendants. He held that the Defendant had been in the habit of realising rent for the disputed lands from the tenant Defendants and then, with strange inconsistency, came to the conclusion that the disputed lands do not appertain to Ganti Bibi Saheb, thereby deciding the question of title which he seems to have held was not open for decision.

25. Against that decision the Plaintiff has appealed. In support of the appeal, two main points have been argued, (1) that the question whether the lands belong to Ganti Bibi Saheb is by reason of the decision in suit No. 24 of 1889 res judicata in favour of the Plaintiff and against Kali Prosanna Ghose and (2) that the Subordinate Judge has erred in law in rejecting and misconstruing the documentary evidence adduced in favour of the Plaintiff: that he has wrongly thrown the onus on the Plaintiff to prove his title after she had proved that the

lands in dispute were covered by the conveyance executed in favour of her predecessor-in-title by the Court in accordance with the decree passed in suit No. 24 of 1889, and that he has misunderstood the findings of the first Court and the grounds on which they are based. He has in consequence misapplied his mind to the facts and to the evidence and has arrived at conclusions which are mere personal opinions and are contrary to the evidence and are not based on it.

26. It has further been contended that the order of remand passed by the Subordinate Judge after the first trial under sec. 562, C. P. C., was illegal and that all the subsequent proceedings are in consequence void and should be set aside.

27. In support of the decision of lower Appellate Court it has been argued that the findings of the Subordinate Judge are findings of fact and that the present appeal is concluded by them.

28. We agree with the learned Counsel for the Appellants to this extent that the remand order was not strictly in accordance with the provisions of sec. 562, C. P. C., but we see no reason to differ from the decision of this Court in the case of *Mohesh Chunder Das v. Jahiruddi Mollah* 5 C. W. N. 509: s. c. I. L. R. 28 Cal 324 (1901), and hold that this amounted to an irregularity and was covered by the provisions of sec. 578, C. P. C.

29. The question of *res judicata* which has been raised is, under the special circumstances of this case, not free from difficulty. We are unable to agree with the Subordinate Judge that after the whole case had been remanded under sec. 562, C. P. Code, the Munsif was at the second trial precluded from re-opening it. The point had not been raised or tried by the Court of first instance and had only been raised in the Appellate Court and disposed of incidentally for the purposes of the remand only. After the case had been remanded however the whole case was re-opened and in our opinion the Munsif at the second trial had jurisdiction to re-open it and to come to a finding with regard to it on the evidence.

30. The difficulty in deciding the question arises in our opinion from the extraordinary conclusion at which the Subordinate Judge arrived in disposing of the suit No. 24 of 1889. He held to be fraudulent all the proceedings on the rent suit brought in the name of Kali Prosanna Ghose against the widow of Bangshi Sarkar which ended in the sale of Ganti Bibi Saheb, and the purchase of the same in the name of Mohendra Nath Chakravarti, the brother of the Chief Dewan of Kali Prosanna Ghose. Yet because Kali Prosanna Ghose did not personally direct the institution of the suit he held that he was not responsible for the fraud committed in his name by his agent. The suit could, however, only have been brought by the chief Dewan in the name of Kali Prosanna Ghose under authority vested in him by Kali Prosanna whose agent he was, and if the agent was guilty of fraud in the course of his business as such on behalf of his principal, it is difficult to understand how under the law the principal could avoid liability for the act of his agent. The learned Counsel for the Appellant contends that the dismissal of the Dewan by Kali Prosanna Ghose after Kali Prosanna had been

examined as a witness, on which fact the Subordinate Judge seems to have placed so much reliance as proof of Kali Prosanna's honesty, was merely a colourable transactions and a blind to conceal his own misconduct. Without going quite BO far, we are of opinion that the dismissal in itself ought not to have been accepted as raising any presumption in favour of Kali Prosanna sufficient to relieve him from responsibility for the act of his agent. However in that suit the Subordinate Judge granted relief against Mohendra Nath Chakravarti alone and directed him to pay all the costs of the Plaintiff. At the same time the Subordinate Judge held that although the Defendant No. 1 (i.e., Kali Prosanna Ghose) was not himself guilty of fraud, the conduct of his mofussil servants disentitled him to recover any costs from the Plaintiff. The question then arises whether under such circumstances the matters decided in that suit can be held to be res judicata against Kali Prosanna Ghose. He was a party to the suit and contested it, and though he was not cast in the costs of the Plaintiff it can hardly be said that he succeeded in the suit.

31. In that suit the reliefs claimed were to recover possession of the Ganti Bibi Saheb by setting aside the fraudulent decree and further to recover wasilat from the Defendants Kali Prosanna Ghose and Mohendra Nath Chakravarti. To the plaint in that suit a schedule setting out all the lands which it was alleged were included in the Ganti was attached, and it is difficult to understand how wasilat could have been decreed or ascertained" if there had been no such description and how the determination of the lands included in the Ganti could have been left, for disposal in the execution proceedings. The lower Appellate Court has held that the description of the lands constituting the tenure was " foreign to the purpose of the suit and therefore a mere superfluity," whether that was the case or not was a question which should have been determined not merely on the plant itself but with due regard to the facts and circumstances leading up to the institution of the suit and which rendered it necessary for the Plaintiff in that case, Nishital Pal Chowdry, to institute it. The Munsif in his judgment goes carefully into these facts. The Subordinate Judge simply ignores them. They are (1) that when Ram Lal Agarwalla attached and brought to sale certain lands as included in the 8 annas 17i gundas share of Ganti Bibi Saheb in the suit which he had brought against Bangshi Sarkar, Kali Prosanna Ghose put in a claim to the lands alleging they were included in Ganti Madia which he had purchased. His claim was disallowed. He then instituted suit No. 41 of 1886 to recover those lands alleging that they formed part of Ganti Madia and that he had been dispossessed of them by Nishita Nath Pal Chowdry, the purchaser under the decree of Ram Lal Agarwalla. He failed in that suit and then in appeal applied for permission to withdraw it with leave to bring a fresh suit. Meanwhile the suit against the widow of Bangshi Sarkar for the rent of Ganti Bibi Saheb had been instituted which resulted in the fraudulent ex parte decree.

32. Now the Munsif found that the lands claimed in the claim case and in suit No. 41 of 1886 were the same and the result of the finding in those two cases was to support the view that they formed part of Ganti Bibi Saheb. The same lands

naturally would have been covered by the fraudulent sale in execution of the fraudulent rent decree. The object of the Plaintiff in suit No. 24 of 1889 was to recover all the lands covered by the Ganti, and at the same time to recover mesne profits for those lands. That being the case the Munsif was in our opinion right in the view which he took that the description of the lands claimed in suit No. 24 was a material and substantive portion of the plaint, and we cannot agree with the view taken by the Subordinate Judge that it was a mere superfluity. We think then that under the provisions of sec. 13, cls. 1 and 2, the decision of the question what lands" were comprised in the Ganti Bibi Saheb was substantially in issue and that as the description was not contested by the Defendants it must be held to have been impliedly admitted. So far then as Mohendra Nath Chakravarti was concerned we hold that the question was res judicata: and so far as Kali Prosanna Ghose is concerned we think that it certainly would have been res judicata had not the Subordinate Judge arrived at the remarkable conclusion that he was not responsible for the fraudulent act of his agent. Under the circumstances, however, it would not perhaps be safe to go so far as to hold that the matter is res judicata against him. But if the question was not res judicata still the matter having been in issue in a suit in which he was a party and that suit having been decided in favour of the Plaintiff; and in accordance with the decree passed in that suit a conveyance having been executed in favour of the Plaintiff's predecessor-in-title including all the lands as described in the plaint we hold that this constitutes a strong case in favour of the Plaintiff's title and possession which it lay heavily on the Defendant to displace.

33. This, however, brings as to the main issue, i.e., whether the lands in dispute are included in Ganti Bibi Saheb and are covered by the conveyance executed by the Court in favour of Plaintiff's predecessor-in-title in suit No. 24 of 1889.

34. In dealing with this question the Subordinate Judge appears to have overlooked the grounds on which the remand was made by his predecessor.

35. They were that a local investigation should be made to ascertain whether the lands in suit were covered by the dabs in the chitta of 1275-76, i.e., the chitta prepared in the time of the Bengal Indigo Company and whether any of them are included in the suit No. 22 of 1882, that is to say, the suit brought by the female heirs of Sonai Sardar against Bangshi Sarkar. Apparently the investigation of the first amin was not questioned so far as he had reported that the lands, in respect of which the rents were deposited, were included in the deed of sale of the 11th August 1894 executed by order of the Court, and in the chitta of 1277, and therefore that they formed part of Ganti Bibi Saheb.

36. The Subordinate Judge also has overlooked the admission made in the course of the first trial by the pleader for the Defendant Kali Prosanna Ghose that the disputed lands were covered by the deed of sale of the 11th August 1894.

37. The report of the amin, Hrambo Nath Bosu, made after the remand is not easy to understand and it certainly goes beyond the two points to clear up which,

the remand was ordered. The Munsif in his judgment states: " That the lands comprised in the kobala, dated 4th Sraban 1203, the plaint and decree in suit No. 24 and the Plaintiff's kobala from the Official Assignee include the disputed lands has been found by the amin and also has been admitted by the Defendants pleader," and further on he says "any way the amin has found as a fact that the lands in dispute are included in the said documents." The Subordinate Judge remarks that the Munsif has paid no attention to the findings in the report of last amin, who he says, it is clear, had arrived at the finding that the lands in dispute did not appertain to the Ganti Bibi Saheb.

38. The Subordinae Judge, however, pays no attention to what the Munsif has recorded, viz., that the amin's findings were directly to the contrary effect! apparently the Munsif relied on the findings of the amin in the report submitted at the first trial and these do not seem to have been objected to when the remand order was made.

39. It is certainly unsatisfactory to find that after the remand the reports of no less than 3 amins had to be disregarded, and the Munsif seems to have considered the report of the last amin as of no greater value. It is to be observed that in dealing with the question, whether the lands in suit were covered by suit No. 22 of 1882, the last amin depends on facts which the Munsif who first tried the case held afforded no sufficient basis for any conclusion and did not base his report on facts ascertained by means of the local enquiry. In this he usurped the functions of the Court, and his findings cannot be accepted.

40. It is not easy from the materials before us to understand the report submitted by the Civil Court amin and the Subordinate Judge does not show from his judgment that he went fully into it. In his judgment the Munsif has, however, shown plot by plot how the lands in suit are covered by the lands which formed the subject of suits No. 41 of 1886 and No. 24 of 1889. The Subordinate Judge has not dealt with this part of the judgment nor does he in any way displace the findings of the Munsif on these points. The circumstances connected with the previous litigation leave in our opinion no doubt that the lands in contest in all the suits were the same and we think that the conclusion of the Subordinate Judge is wrong that there is nothing to show that the lands in dispute in the present case formed the subject of dispute in the previous cases. His finding amounts merely to an expression of opinion, and cannot be accepted as a finding displacing the findings of Munsif on these points which have been based on substantial grounds. We hold therefore that the Subordinate Judge erred in law in disregarding this evidence without giving sufficient reasons for rejecting it.

41. We find therefore that there were in this case sufficient materials to support the finding of the Munsif that the lands in dispute in the present case were the same as those in dispute in the case No. 41 of 1886 and No. 24 of 1889, and as those which were included in the deed of sale of the 11th August 1894, and in the subsequent conveyance of the 26th August 1896. We hold that the findings of the Subordinate Judge arrived at after a rejection of the Plaintiff's evidence

without sufficient cause and purely on surmise cannot be supported in law.

42. The lands in suit being identical with the previous lands we further hold that the Plaintiff had made out a very strong case to support his title to the rents which have been deposited. The Subordinate Judge seems to have ignored the conveyance executed by the Court in suit No. 24 of 1889 and to have treated it as though it conferred no title in law on the Plaintiff. In this view also we hold that the Subordinate Judge erred in law and that the conveyance was in itself prima facie evidence of a good title in favour of the Plaintiff.

43. The onus was then certainly on the Defendant to displace the case set up by the Plaintiff. The Subordinate Judge has, however, held that the Plaintiff in this suit was not entitled to succeed as she had failed to prove that she had previously realised rent from the tenants. It is hard to see how the Plaintiff could possibly have proved this. Her case was that she had been dispossessed by the fraudulent rent decree and sale and the Subordinate Judge ignores the fact which the Munsif has noticed that during the pendency of that suit the Defendant No. 1 had been obtaining kabuliyats from the tenants by unfair pressure and inducements.

44. Clearly the Plaintiff" was not in a position to prove realization of rents from the tenants when her case was that the Defendant had been preventing her from realising them. At the same time the claim and the plaint in the suit previously brought by Defendant No. 1 against the predecessors-in-interest of the Plaintiff amount to admission on his part that previously the Plaintiff's predecessors-in-interest were in possession of the Ganti. The only real ground then on which the Subordinate Judge appears to have held that the Plaintiff was not entitled to succeed in the suit is in our opinion not good in law.

45. We hold therefore that the judgment of the Subordinate Judge and his decree are bad in law and cannot be supported, and we find that the errors which he has fallen into are errors not of fact merely but of law.

46. We therefore set aside the judgment and decree of the Subordinate Judge and holding that the Plaintiff has in this suit sufficiently substantiated her title to the rents in deposit we restore the decree of the Munsif ordering the payment of those sums in deposit to her. The Plaintiff will recover her costs in all the Courts from the Defendant No. 1.