

Laxmipathaya Vs. Ramachendra

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Court : Chennai

Decided On : Apr-18-1916

Reported in : 35Ind.Cas.421; (1916)31MLJ311

Appellant : Laxmipathaya

Respondent : Ramachendra

Judgement :

1. The plaintiff as Moktesor of a temple sues to eject the 1st defendant. Among other pleas the defendant contended that he is a mulgeni tenant and is not liable to be ejected. He also denied that his defence was not barred by res judicata. To understand this last contention, it is necessary to state that the present plaintiff sued the present 1st defendant and others on a previous occasion to recover possession: The District Munsif and the District Judge held that the 1st defendant was only a chalgeni tenant and must surrender possession (O.S. No. 77 of 1903 and A.S. No. 274 of 1905). In Second Appeal (S.A. No. 155 of 1906), the High Court held that the notice determining the tenancy was insufficient and refused to decree possession. Hence the plea of res judicata.

2. The District Munsif in the present case has come to the conclusion that the 1st defendant was only a chalgeni tenant and gave a decree to the plaintiff. On appeal both on the merits and on the plea of res judicata, the District Judge has disagreed with the Court of First Instance.

3. In Second Appeal Mr. M.O. Parthasarathy Aiyangar contends that the decision in S.A. No. 155 of 1906 is res judicata against the 1st defendant, as the decision as to the sufficiency of the notice necessarily involves the finding that the tenant had no occupancy right and relies on Bayyan Naidu v. Suryanarayana I.L.R. (1912) Mad. 70 : 23 M.L.J. 548 and Muthammal v. Secretary of State for India : AIR1915 Mad106 . After careful consideration, we are unable to agree with learned Counsel on this point. The plea of res judicata being one in restraint of the right of a litigant to have his case fully tried and' determined, the judgment which is pleaded in bar of this right must be strictly construed. The judgment of the learned Judges of this Court in Second Appeal lends itself to two possible constructions:

(a) that they accepted the finding that the defendant was holding only as a chalgeni tenant, but held that the notice to quit was insufficient or

(b) that they assumed without deciding that the defendant had only the chalgeni tenure, but held that even on that assumption he was not liable to be evicted as there was no proper notice.

3. We think that the defendants are entitled to claim the latter alternative. This view is in accordance with the decision of the Calcutta High Court in Nundo Lall Bhattacharjee v. Bidhoo Mookhy Debee I.L.R. (1887) Cal. p. 17 and Thakur Magundes v. Thakur Mahadeo Singh I.L.R. (1891) Cal. p. 647. We therefore hold that the defendants are not barred by res judicata.

4. On the merits, we are unable to uphold the judgment of the District Judge. The major portion of it is devoted to canvassing the reasons given by two of the District Munsifs who heard the case (the first at the original trial and the second after remand). A large number of documents have been filed and there is a considerable body of oral evidence. Especially when the appellate Court reverses a finding of fact, it ought to apply its mind to the consideration of the whole of the evidence in the case. Moreover, it is doubtful whether the District Judge is right in holding that the burden was on the plaintiff to show that the direction of the Collector in Exhibit CCC was actually communicated to the ancestor of the defendants. The presumption is that official acts have been performed in the usual course ; and when we find that the Collector directed his immediate Subordinate in

specific terms that he should communicate to the applicants that he is not granting them a mulgeni lease, the presumption is that the direction was carried out. The Judgment of the District Judge is vitiated by this initial conclusion regarding the origin of the possession.

5. For all these reasons, we must reverse his finding on the merits and direct him to record a revised finding on Issues II, IV and V.

6. The finding should be submitted within two months from this date and seven days will be allowed for filing objections.

In compliance with the order contained in the above Judgment, the District Judge of South Canara submitted the following

4. My finding on issues II and IV are accordingly:

On Issue II:--The defendant's predecessor acquired no more than a chalgeni interest in the suit property.

On Issue IV:--The plaintiff's claim is not barred by adverse possession on the part of the defendant.

5. As to Issue V:--The parties agree that the improvements may be valued at Rs. 207-8-0, as found by the lower Court.

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