

Abdul Samad and anr. Vs. Gunendra Krishna Roy and anr.

Abdul Samad and anr. Vs. Gunendra Krishna Roy and anr.

SooperKanoon Citation : sooperkanoon.com/876932

Court : Kolkata

Decided On : Mar-25-1924

Reported in : AIR1925Cal452,82Ind.Cas.974

Judge : Mukerji, J.

Appellant : Abdul Samad and anr.

Respondent : Gunendra Krishna Roy and anr.

Judgement :

Mukerji, J.

1. Conscious as I am of the restricted powers that we exercise in second appeals I hesitated a good deal before deciding whether I should interfere with the finding of the lower Appellate Court in these cases to the effect that the presumption arising from the entries made in the finally published Record-of-Rights has not been rebutted. Having regard, however, to the peculiar facts and circumstances of the cases I think I should interfere. If a Court of second appeal can interfere with a finding of fact when that finding is based on no evidence, if it can interfere with a finding of fact when the finding is arrived at without reference to the evidence on the record, if an inference as to facts can be interfered with when it is not warranted by the facts found, I do not see why a Court of second appeal should not interfere with a supposed finding of fact when that finding is arrived at upon an erroneous supposition as to matters which are not to be found on the record.

2. What has happened in the present case is this: The plaintiffs instituted the suits out of which these two appeals have arisen for recovery of rent for the years 1323 to 1326 B.S. on the basis of the rents mentioned in the finally published Record - of-Rights. The defendants produced certain dakhilas in order to show that the rents which they had been paying were actually less than those which were mentioned in the finally published Record-of-Rights. The plaintiffs did not produce the collection papers. Whether they did that intentionally or otherwise is a matter which I shall deal with presently. The Court of first instance held that the presumption arising from the entries in the finally published Record-of-Rights had been rebutted and that the rates of rent which the defendants said were the rates at which they had been paying had been proved and, in that view, that Court gave the plaintiffs decree, in the two suits on the basis of those rates. On appeals being preferred by the plaintiffs, the learned Subordinate Judge has reversed the decision of the Munsif and decreed the two suits on the basis of the rents mentioned in the finally published Record-of-Rights. His decision is substantially upon these grounds. The first is that no blame attached to the plaintiffs for the non-production of the collection papers. With regard to the collection papers, the learned Judge observed in his judgment as follows: 'The learned lower Court has found fault with the plaintiffs for non-production of plaintiffs' collection papers. The papers were, in fact, produced though at a very late stage; but the learned lower Court refused to accept them. The onus of rebutting the Record-of-Rights is upon the defendants. The defendants should have rather asked the Court to take in these papers instead of objecting to their reception in evidence.' From these observations it would seem as if the plaintiffs had produced the collection papers though at a late stage of the case and that the defendants objected to their reception on the ground that they had not been put in proper time and that, therefore, it was the defendants who were to blame for the collection papers not being on the record. The facts, however, are otherwise. It appears from the statements made by the learned Vakils appearing on behalf of the parties before me as also upon an examination of the Records that some of these collection papers were produced by the plaintiffs on the 29th September, 1920, and another batch of collection papers was produced by them on the 17th November, 1920. Later on, the exact date does not appear, these papers were taken back by the

plaintiffs and the plaintiffs' witness No. 1 in his evidence before the Court stated that the collection papers could not be produced inasmuch as there was some litigations pending between the plaintiffs and their co-sharers. This being the state of facts, it is curious that the learned Subordinate Judge should assume that it was the defendants who were responsible for the collection papers not being put in evidence. So much for the collection papers.

3. The second ground on which the learned Subordinate Judge's judgment is based is that, in his opinion the dakhilas which the defendants had produced had not been to use the words of the learned Judge himself) 'satisfactorily proved.' What he means by this expression, it is difficult to understand for it appears that these dakhilas were produced in the Trial Court by the defendants, that they were spoken to by the witnesses examined on behalf of the defendants and that they were marked as Exhibits in the cases without any objection on the side of the plaintiffs. If the learned Subordinate Judge meant that the dakhilas were not genuine, there is no reason why he should not have said so expressly in his judgment. If, however, he referred to the fact that the dakhilas had not been properly proved, that is to say, proved in accordance with law, in my opinion, he was not right in taking that view. In the first place, the persons who produced these dakhilas stated in Court that there were the dakhilas which had been received either by them or by others, from whom they had received them, on payment of rent to the plaintiffs and it is well-known that this is one of the ways in which dakhilas can be proved in a suit. Reference may, in this connection, be made to the case of Surja Kanta Acharjee v. Banerwar Shaha (1897) 24 Cal. 251 wherein, relying-upon the cases of Raj Mahomed v. Banoo Rasmah (1869) 12 W.R. 34 and Madhub Chunder Chowdhry v. Promotho Nath Roy (1873) 20 W.R. 264, this Court held that where the genuineness of a rent receipt is sworn to by the tenant by whom the rent has been paid, that is legally sufficient to prove the receipt notwithstanding that the persons whose signature it bears has not been examined. To add to this there is the fact which cannot be lost sight of, namely, that no objection was taken on behalf of the plaintiffs to the reception of these dakhilas in evidence and to their being marked as exhibits in the cases. As observed in the case of Rajeswari Dasi v. Pulin Behary Mittra A.I.R 1921 Cal. 71 were rent receipts were admitted in evidence without objection in the Court of first instance,

no objection could be taken in the appellate Court that they were not properly proved. In fact, this proposition rests upon a well-known principle with regard to the rule of evidence and that is this. Where an objection has got to be taken as to the mode of proof of a particular document, such objection must be taken at the time when the document is tendered for admission, for any lacunae in the mode of proof may then be at once supplied by the party who produces the document and wants to have it proved.

4. The third ground upon which the learned Subordinate Judge has proceeded is that 'the dakhilas are of much prior dates.' 'It seems to me' says learned Judge, 'that they, that is the defendants, have withheld some dakhilas.' In making this observation, it seems that the learned Subordinate Judge has wholly misconceived the situation. It appears from an examination of the dakhilas themselves that some of them ran quite up to the year 1322 B.S. and showed payment of rent for that year, that year being the one immediately preceding the period 1323 to 1326 B.S. for which rents have been claimed in these suits. The learned Subordinate Judge, therefore, proceeded entirely upon a misconception with regard to all these matters and the finding arrived at by him based on such misconception. The finding to the effect that the presumption arising from the Record-of-Rights finally published has not been rebutted on account of these facts cannot be touched as a finding of fact in second appeal. I would, therefore, set aside the decrees passed by the learned Subordinate Judge and remit the two appeals to his Court to be dealt with afresh in the light of the observations that have been made above. Costs will abide the result.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com