

Mane Muhammad Nasya and anr. Vs. Dhani Muhammad and ors.

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Court : Kolkata

Decided On : Jul-30-1912

Reported in : 16Ind.Cas.22

Judge : Sharfuddin and; Coxe, JJ.

Appellant : Mane Muhammad Nasya and anr.

Respondent : Dhani Muhammad and ors.

Judgement :

1. The plaintiffs brought the present suit for the establishment of their title to six plots of land mentioned in Schedule (ka) of the plaint and also for khas-possession of those plots. There was also a prayer in the alternative to recover rent for those plots.

2. The plaintiffs' case is that the defendants were holding six plots arid one Subratu was holding another six plots of land under them. It is alleged that this Subratu abandoned his holding and went away to Bhutan Duars and that since then, the defendants have held all the twelve plots under a consolidated jama of Rs. 30 a year. They further say that they instituted Suit No. 461 of 1905 for rent against the present defendants, in which the defendants denied holding Subratu's jama and contended that their jama was only Rs. 16 per year and that that suit was decreed at the admitted rate. On the above facts, the plaintiffs brought the present suit.

3. The defendant's main contention in the present suit is that the question of the amount of rent payable, having been finally decided in the rent suit of 1905, and the six plots of land included in this suit being included in the eight plots of the previous rent suit, this suit is barred by the rule of res judicata.

4. The first Court dismissed the suit on the ground that the findings of the previous, rent suit operated as res judicata in. the present suit.

5. The plaintiffs thereupon appealed to, the. Subordinate Judge and the main question involved in that appeal was the question of res judicata. The Subordinate Judge, relying on the cases of Sahaded Dhali v. Ram Rudru Haldar 10 C.W.N. 820 and Rajendra Nath Ghose v. Tarangini Dassi 1 C.L.J. 248 held that the suit was not barred by the rule of res judicata.

6. The defendants have appealed to, this Court and the only point urged on their behalf is that the present suit was rightly dismissed by the first Court and that the, second Court was wrong in holding that to finding in the previous rent suit did not bar the present suit.

7. The question involved in the present appeal is one of constant recurrence and, the decision must depend on the circumstances, of each case. In all such suits, what is necessary to see is this, namely, whether the decision in the former rent suit was given on an incidental point or on a question that went to the very root of the case.

8. In Suit No. 461 of 1905 one of the issues was: What is the jama payable by the defendants for the lands in arrears and for the period of action?' In that suit, the plaintiffs attempted to show that the defendants were in occupation, in addition to their own jama, of the lands of one Subratu. The decree in that suit with regard to the rate of rent was in the following terms: 'That the rent in respect of the land claimed by the defendants be fixed at Rs. 16 per annum.'

9. From the above, it is clear that the question whether the defendants were or were not also holding the jama of Subratu was not an incidental question.

10. The plaintiffs and defendants of the rent suit are respectively plaintiffs and defendants in the present suit and the land for which rent was claimed in the rent suit includes the land in the present suit.

11. The issue in the rent, suit as quoted above, involved three questions (1) what was the jama payable by the defendants for the land in arrears; which, therefore, included; (2) what was the land in arrears; and (3) what was the jama for the period in question. All these points, therefore, were directly and substantially in issue between the parties in the previous suit.

12. On behalf of the parties, reference has been made to various authorities of this Court. The first is the case of *Bakshi v. Nizam-ud-di* 20 C. 505. It was held in that case that where in a rent suit, a Judge tries the question 'What is the yearly rent?' and gives judgment upon it, that decision is *res judicata* between the parties. The second is the case of *Hurry Behari Bhagat v. Pargun Ahir* 19 C. 656. In this case, it was held that the question as to the rent payable for the period covered by the first suit was *res judicata* but that it did not follow that the decree in that suit operated as *res judicata* and conclusively determined the rate of the rent payable for the year in respect of which the subsequent suit was brought, as that depended on whether the previous decision was that the plaintiff should recover from the defendant the sum admitted by him to be due, or that the sum so admitted to be due was the proper amount payable for the holding. The third is the case of *Upendra Kumar Chakravarti v. Sham Lal Mondol* 11 C.W.N. 1100 : 6 C.L.J. 715 : 34 C. 1020. In that case, it was held that when the defence of a tenant that the landlord was entitled to rent for a lesser area of land than was stated in his claim, was rejected on the merits in previous suit, he was precluded from raising the same defence in a subsequent rent suit by the rule of *res judicata*. The fourth is the case of *Rajendra Nath Ghose v. Tarangini Dassi* 1 C.L.J. 248. In this case, it was held that if the rent is claimed at a certain annual rate, on the simple ground of rent having been paid at that rate in the preceding year, it cannot be said that an issue as to the annual rate of rent generally is a direct issue in such a suit; on the other hand, if the rent is claimed at an annual rate alleged to have been settled by a binding contract between the parties, either written or verbal, and the Court proceeds to try the question, what is the yearly rent payable according to the

contract set Up, that question must be taken to be directly in issue in the case. The fifth is the case of 'Dwarka Nath Roy v Ram Chand Aich 26 C. 428 : C.W.N. 266. The question referred to the Full Bench was: 'whether a decision in a suit for rent brought by a plaintiff against a person who is alleged to have been his tenant in respect of certain land, operates as res judicata in a subsequent suit brought by the same plaintiff for establishment of his title to the land?' The answer given by the Full Bench was in the negative. In the subsequent case, the parties were not identical as the rival proprietor was added as a party. The sixth case is the case of Nil Madhub Sarkar v. Brojo Nath Singha 21 C. 236. In that case, it was held that the rejection of the defence that a portion of the holding was in possession of the plaintiff himself was not res judicata in a subsequent suit between the same parties for rent for later periods and the lower Court was directed to determine the question as to the amount of rent for the subsequent period on the evidence produced. The facts of that case are quite distinguishable from the facts of the present case. In that case, the question in the previous suit was what was due as rent from the defendant who had alleged that he held a lesser area than that for which rent was claimed. The onus was on the defendants who failed to discharge it, and the decree was passed for the full amount claimed. In the subsequent suit, the defendant set up the same plea and it was held that the decision in the previous suit was not res judicata as a mere failure of the defendant to prove what he tried to prove in the previous suit would not prevent him from proving it in a subsequent suit, for rent of the same holding for subsequent years, because in the previous suit the Court did not definitely determine the area of the land in defendant's possession and the question decided in that suit was not one of area but only one of the amount of money which the plaintiff was to recover for the years then in question.

13. From a review of the authorities mentioned above, it is manifest that a decision on a matter in a previous rent suit operates as res judicata in a subsequent suit if the matter in question is directly and substantially in issue in both the suits. As already observed, the question involved in both the suits now under consideration was whether Subratu's holding came into the possession of the present defendants, whether they were liable to pay rent for that holding, and what was the rent of the holding. It was held in the previous suit that the defendants were liable

to pay rent at the rate of Rs. 16 per annum for a holding which included the land now in suit. In the - subsequent suit, the plaintiffs' case was not that there was any alteration effected with regard to the annual rental fixed by the decree in the previous suit. It is clear that in the former suit, the question whether the defendants held Subratu's six bighas as part of the holding in suit, though it may not have been stated in the pleading, was the sole question that was in controversy between the parties at the hearing and was the point on which the whole decision turned. It went to the very root of the case and the decision of it must, therefore be regarded as conclusive between the parties. We must hold, therefore, that the suit is barred by the rule of res judicata.

14. Accordingly, the appeal is decreed and the suit dismissed with costs of all Courts.

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