

## APPELLATE CIVIL.

*Before Jenkins C., and N. R. Chatterjee J.*

1915

June 9

HIRANMOY KUMAR SAHA

v.

RAMJAN ALI DEWAN.\*

*Rent Decree—Evidence—Previous ex parte rent decree, admissibility of, as evidence of relationship between parties—Presumption of continuance thereof—Evidence Act (I of 1872), s. 114, illus. (d).*

A previous *ex parte* rent decree (between the same parties) is not merely an item of evidence, but is conclusive as to the relationship between the parties at that time. Its value becomes more apparent since the terms of s. 114, illus. (d) of the Evidence Act permit the Court to make a presumption as to the continuance of the state of things.

SECOND Appeal by Hiranmoy Kumar Saha, minor, by his mother and next friend, Urmila Sundari Dassi, the plaintiff.

This appeal arose out of a suit instituted by the plaintiff in the Court of the Munsif of Kalna for recovery of his share of a *jama* of Rs. 12-7-8g. with cess and damages being arrears for the years 1908 to 1911. Ramjan Ali Dewan, defendant No. 1, alone contested plaintiff's claim denying the relationship of landlord and tenant. The only evidence adduced by the plaintiff was an *ex parte* decree against defendant No. 1 in respect of the disputed *jama*. There was no evidence whether the decree was executed. On the 30th May 1912, the learned Munsif of Kalna decreed

\* Appeal from Appellate Decree, No. 1563 of 1913, against the decree of Debendra Bijoy Bose, Subordinate Judge of Burdwan, dated Feb. 21, 1913, affirming the decree of Benode Behari Mukerjee, Munsif of Kalna, dated May 30, 1912.

plaintiff's suit *ex parte* against defendants Nos. 2 and 3, but dismissed it on contest against defendant No. 1, holding that plaintiff had not been able to prove his case against him. On the 21st February 1913, the learned Subordinate Judge of Burdwan dismissed the appeal filed by the plaintiff holding that the *ex parte* decree was not *res judicata* and not admissible in evidence to prove relationship of landlord and tenant. Thereupon, the plaintiff preferred this second appeal to the High Court.

1915  
 HIRANMOY  
 KUMAR SAHA  
 v.  
 RAMJAN ALI  
 DEWAN.

*Babu Khirode Narain Bhuiya*, for the appellant. The previous *ex parte* rent decree operates as *res judicata* regarding the relationship of landlord and tenant between the parties; and the Courts below are wrong in holding otherwise and treating it as no evidence. I submit that it is admissible in evidence. See *Raj Kumar Roy v. Alimuddi* (1) in which it is further held that a presumption arises in a subsequent suit that the same relationship continued till the contrary was shown.

*Babu Debendra Nath Bagchi*, for the respondent. A claim for rent is a continuing or recurring cause of action, and even if an unexecuted *ex parte* decree operates as *res judicata* regarding the relationship of landlord and tenant between the parties at the time to which the previous suit referred, surely it is not so in a suit for rent for a subsequent period. The facts in *Raj Kumar's Case* (1) are distinguishable, as there the presumption as to the continuance of relationship as landlord and tenant was acted upon because the previous *ex parte* decree was based upon the consideration of a *kabuliyat* while there is none in the present case.

(1) (1912) 17 C. W. N. 627.

1915  
 HIRANMOY  
 KUMAR SAHA  
 v.  
 RAMJAN ALI  
 DEWAN.

JENKINS C.J., AND N. R. CHATTERJEA J. This is a suit for arrears of rent. It was necessary for the plaintiff to establish that he was the defendant's landlord. He proposed to do that by utilizing among other things a decree for rent which he had obtained in a prior suit against these defendants. The lower Appellate Court has rejected the decree as an item of evidence, apparently on the ground that it was *ex parte*. This is manifestly erroneous. The decree is not merely an item of evidence, but is conclusive as to the relationship between the parties at the time to which the previous suit referred. That does not mean that in the circumstances of this case it is conclusive as to the present relation between the parties. But it is good and valuable evidence in so far as it establishes the relationship at a time that has passed. Its value becomes more apparent when the terms of section 114 of the Evidence Act and illustration (d) are borne in mind which do not compel, but certainly permit, the Court to make a presumption as to the continuance of the state of things. The decree has been excluded from consideration by the lower Appellate Court in error.

We must, therefore, reverse the decree of the lower Appellate Court, and send back the case in order that it may be determined according to law. Costs hitherto incurred will abide the result.

G. S.

*Appeal allowed; case remanded.*