APPELLATE CIVIL.

Before Mukerji and Mallik JJ.

BARKAT ALI HAJI

v.

PRASANNAKUMAR TALUKDAR.*

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Mar. 5

Estoppel—Active representation—Omission - Deceased plaintiff—Heirs—Substitution—Rent suit—Appeal—Decree—Nullity—Permitted Intentionally—"Thing", meaning of—Evidence Act (I of 1872), s. 115.

Where, in addition to the *active representation* (that the plaintiffs were the sole legal representatives of Raja Mia, the deceased co-sharer landlord) contained in the plaint of the collateral rent suit of 1925, there was the *omission* on the part of the present appellants in the High Court (the very self-same co-sharer landlords) to allege before the lower appellate court that the heirs of Raja Mia had not been substituted, and where the tenant respondents, being confirmed in their belief as to the truth of the statement contained in the plaint of 1925, did not take any steps to make an application for getting an order for substitution in the lower appellate court,

held that the appellants in the High Court (the co-sharer landlords) were doubly estopped by reason of the provisions of section 115 of the Evidence Act.

Held, further, that the question as to whether the persons left out and not substituted were the heirs of Raja Mia was not a question of law, but was a "thing" within the meaning of that section.

The phrase "permitted another person to believe a thing" is thus explained:—Not only may there be active inducement on the part of a declarant of a belief in the mind of another person, but it is enough if the declaration is such by which the declarant in the ordinary course permits somebody else to believe in the truth of the declaration and to act on that belief.

The word "intentionally" explained.

Sarat Chander Dey v. *Gopal Chander Laha* (1) relied on.

SECOND APPEAL by Barkat Ali Haji and others, plaintiffs.

In a suit for rent, the surviving plaintiffs claimed to be the heirs of a deceased co-plaintiff—one Raja Mia—and accordingly no substitution of the deceased's heirs were made in the lower appellate court,

*Appeal from Appellate Decree, No. 1627 of 1926, against the decision of Hem Chandra Das Gupta, Subordinate Judge of Chittagong, dated Mar. 8, 1926, reversing the decision of Naresh Chandra Chakravarti, Munsif of Patya, dated Nov. 13, 1924.

(1) (1892) I. L. R. 20 Calc. 296; L. R. 19 I. A. 203.

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which reversing the decision of the trial court, decreed this rent suit. In a collateral rent suit brought in 1925 these very same co-sharer landlords had made the same allegation about Raja Mia's heirs. In Second Appeal to the High Court in the previous rent suit these co-sharer landlords (appellants) urged that the first appeal not being properly constituted, decree therein was a nullity, no substitution having been made of the other heirs of the deceased co-plaintiff. The respondents urged that, by their conduct, the appellants were estopped from raising this contention.

Mr. Panchanan Ghosh, for the appellants.

Mr. Chandrashekhar Sen, for the respondents.

Mr. Birajmohan Majumdar, for the Deputy Registrar on behalf of the minor respondents.

MUKERJI J. This appeal has arisen out of a suit for rent. The suit was decreed by the trial court. The defendants then preferred an appeal, during the pendency of which one of the plaintiffs respondents, named Raja Mia, died. The death of this person took place admittedly some time in the year 1925. The fact of his death, however, was not brought to the notice of the lower appellate court by any of the parties. On the 8th March, 1926, the lower appellate court allowed the appeal and, reversing the decree of the trial court, dismissed the suit. The remaining plaintiffs then preferred this present appeal.

The contention that is sought to be urged on behalf of the said appellants is that the decree of the lower appellate court in so far as it was a decree passed in an appeal, which was not properly constituted, the suit out of which the said appeal has arisen being one for rent and the decree, from which that appeal was taken, being a joint decree for rent in favour of all the plaintiffs, was a nullity, inasmuch as one of the plaintiffs had died and his heirs had not been substituted in his place. The answer which the respondents give to this contention is that they were misled by the fact that the present appellants had instituted other suits for rent against them, alleging that the

interest of Raja Mia in the properties had vested in themselves only.

In order to understand the respective contentions of the parties, it is necessary to give a few dates and facts. On the 30th July, 1925, that is to say, when the appeal in the present case was pending before the the lower appellate court, the remaining plaintiffs, instituted another suit for rent against the respondents, in which they stated that Raja Mia having died his interest had vested in his uncles, plaintiffs Nos. 4, 5 and 6, Abdul Hakim, Amir Hamja and Badsha Mia. The plaint in this suit was verified by all the plaintiffs in the suit including the plaintiff No. 1, Barkat Ali Haji. This second appeal was filed in this Court on the 21st June, 1926, and the main ground of the appeal was the invalidity of the decree due to Raja Mia's death. On the 22nd May, 1926, the said Barkat Ali Haji swore to an affidavit, in which he stated that Raja Mia had died on the 8th August, 1925, but that no application for substitution of his heirs had been made in the lower appellate court and that court made a decree against all the plaintiffs including Raja Mia who was dead. It will appear, therefore, that the date of Raja Mia's death as given in the said affidavit could not be correct, because, though it was stated therein that Raja Mia had died on the 8th August, 1925 in the plaint to which I have already referred, which was filed on the 30th July, 1925, it was stated that Raja Mia had already died. After filing the appeal to this Court on the 21st June, 1926, accompanied with the aforesaid affidavit of Barkat Ali, the said remaining plaintiffs, including the said Barkat Ali Haji, instituted another suit for rent against the respondents on the 16th September, 1926, purporting to claim the entire rent and without making any mention of anybody else as the heir of the said Raja Mia.

The facts set out above speak for themselves. They show that while in one set of proceedings the appellants before this Court were instituting suits for rent and getting decrees therein on the footing of

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they themselves or at least some of them having acquired the interest of Raja Mia, in the appeal which they filed in this Court they have sought to make out that Raja Mia had left other persons, and on them Raja Mia's interest had devolved, as heirs. The respondents contend that, in view of the fact that representations were made by the appellants in the collateral proceedings, that is to say, in the two suits for rent, it should be held that the said appellants are estopped from raising, in the present appeal, the contention that they are not the only heirs of Raja Mia.

It seems to us that it would be whittling down the provisions of section 115 of the Evidence Act to allow the appellants to raise this contention. That section states :—" When one person has, by his declaration, " act or omission, intentionally caused or permitted " another person to believe a thing to be true and to " act upon such belief, neither he nor his representa- " tive shall be allowed, in any suit or proceeding " between himself and such person or his represent- " tative, to deny the truth of that thing."

What is said on behalf of the appellants is that the representations contained in the plaint of 1925 were not intended to be acted upon by the defendants and that, in point of fact, the defendants knew that there were other persons, who survived after the death of Raja Mia, and that, as defendants in the suit, they were bound not to take the statements in the plaint as correct, but to make further inquiries and ascertain whether the statements were correct or not. We may say at once that we entirely disagree with this contention. This contention overlooks the words " permitted another person to believe a thing, etc :" Not only may there be active inducement on the part of the declarant of a belief in the mind of another person, but it is enough if the declaration is such by which the declarant, in the ordinary course, permits somebody else to believe in the truth of the declaration and to act on that belief.

It is next said that there was no intention on the part of the remaining plaintiffs that the respondents would act on the representation and that the word "intentionally" which appears in the section has not been satisfied. The answer to that is to be found in the decision of the Judicial Committee in the case of *Sarat Chunder Dey* v. *Gopal Chunder Laha* (1). The word "intentionally" has been explained in that decision. In that decision, what their Lordships have said, is this:—"The law of this country gives "no countenance to the doctrine that in order to "create estoppel the person whose acts or declarations "induced another to act in a particular way must "have been under no mistake himself or must have "acted with an intention to mislead or deceive. "What the law and the Indian statute mainly regard "is the position of the person who was induced to "act; and the principle on which the law and the "statute rest is, that it would be most inequitable "and unjust to him that if another by a representa-"tion made, or by conduct amounting to a representa-"tion, has induced him to act as he would not other-"wise have done, the person who made the repre-"sentation should be allowed to deny or repudiate "the effect of his former statement, to the loss and "injury of the person who acted on it.

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"It may in the result be unfortunate for him, but it "would be unjust, even though he acted under error, "to throw the consequences on the person who believed "his statement and acted on it as it was intended he "should do."

We are of opinion that so long as it cannot be said that there was any duty cast upon the defendants not to rely upon the statement made in the plaint but to make further enquiries,—and in this case we are not in a position to hold that there was any such obligation on the part of the respondents—it cannot be said that the word "intentionally" as used in section 115 of the Evidence Act has not been satisfied. We may

(1) (1892) I. L. R. 20 Calc. 256; L. R. 19 I. A. 203.

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state that nothing has been shown to us which would even faintly suggest that the respondents had the least suspicion that the representation was not in fact true.

Then it is contended that the question as to whether the persons left out and not substituted were heirs or were not heirs of Raja Mia is a question of law and, therefore, it is not a "thing" within the meaning of the section. The representation that was made was that the interest of Raja Mia had devolved upon some of the plaintiffs. That, in our judgment, is a "thing" within the meaning of the section, not being a question of law but a mixed question of law and fact, because it may have been in various ways that the interest of Raja Mia had passed on to other persons and not merely by heirship.

The matter may be looked at from another point of view also. There is the fact of the omission on the part of the present appellants to bring to the notice of the lower appellate court the fact of the death of Raja Mia and also the fact that he had other heirs. Now, "omission" also is one of the things that is mentioned in section 115. If in addition to the active representation contained in the plaint of 1925 there was the omission on the part of the present appellants to allege before the lower appellate court that the heirs of Raja Mia had not been substituted, it is only reasonable to hold that the respondents were confirmed in their belief as to the truth of the statement contained in the plaint, and if being confirmed in that belief they did not take any steps to make an application for getting an order for substitution, the appellants in our opinion are doubly estopped by reason of the provisions of section 115. We are clearly of opinion that the question that is sought to be raised by the appellants is one, which they are not permitted to raise by reason of the provisions of section 115.

We, accordingly, find against the contention that has been urged on behalf of the appellants and we dismiss the appeal with costs.

MALLIK J. I agree.

G.S. *Appeal dismissed.*