APPELLATE CIVIL.

Before Rankin C. J. and C. C. Ghose J.

1932

Feb. 23.

HAREKRISHNA DATTA

v.

GOURHARI SETNA PODDAR.*

Landlord and Tenant—Co-sharer landlord, rent suit by, making co-sharer landlord averring previous purchase of tenancy a party—Jurisdiction of court to decide the validity of the said purchase—Res judicata—*Code of Civil Procedure (Act V of 1908), s. 11—Bengal Tenancy Act (VIII of 1885), ss. 148A, 158B.*

In a rent suit by a co-sharer landlord under section 148A of the Bengal Tenancy Act against the tenant and the other co-sharer landlord, the latter averring in his written statement the purchase of the holding in execution of his previous rent decree in a similar rent suit, and also his liability to pay the rent after his purchase, the court is competent to decide the question of the validity of the said purchase, which decision would be *res judicata* between the said co-sharer landlords.

SECOND APPEAL by a defendant.

The plaintiff purchased one half share of some *nishkar* lands, which the defendant No. 6 held as a tenant, and then brought the rent suit No. 937 of 1925 under section 148A of the Bengal Tenancy Act in the First Munsif's court at Tamluk against the defendant No. 6 as tenant and joined the defendant No. 1 (the plaintiff's co-sharer landlord) as a *pro forma* defendant. The defendant No. 1 averred in her written statement in that suit that she had purchased the holding in execution of a rent decree passed by the Munsif's court in rent suit No. 1453 of 1920, which was also under section 148A of the Bengal Tenancy Act, and that the holding had vested in her and that she, and not the defendant No. 6, was liable for the rent of the

*Appeal from Appellate Order, No. 466 of 1930, against the order of Praphullakrishna Ghosh, Subordinate Judge, 2nd Court, Midnapore, dated 5th Aug. 1930, reversing the order of Surendranath Palit, Munsif, 4th Court, Tamluk, dated 17th Sept. 1929.

holding from the date of the purchase. Notice of the execution proceedings in suit No. 1453 of 1920 under the old section 158B [now partly incorporated in sub-section (7) of section 148A] of the Bengal Tenancy Act was served upon the plaintiff; and the court passed a decree in favour of the plaintiff and against the defendant No. 1 on the basis of the aforesaid defence and made her liable for the rent accruing after her purchase. Thereafter the plaintiff brought this title suit No. 344 of 1928 in the Munsif's court, *inter alia*, for a declaration that the decree and the execution sale thereunder in rent suit No. 1453 of 1920 and also the decree in rent suit No. 937 of 1925 were invalid and not binding upon him. The defendant No. 1, *inter alia*, contended that this suit was barred by *res judicata*. The trial court dismissed the plaintiff's suit on the ground of estoppel and *res judicata*. The lower appellate court reversed the aforesaid decision of the trial court and remanded the case to the trial court for trial on the merits. Hence the defendant No. 1 preferred this appeal; but, she having died after the filing of the memorandum of appeal, the present appellant was substituted in her place.

Amarendranath Basu (with him *Kshirodenarayan Bhuiya*) for the appellant. The court, trying the rent suit No. 937 of 1925, had jurisdiction to decide the question whether the plaintiff in that suit was bound to recognize the previous purchase of the holding by the defendant co-sharer landlord as also the latter's liability to pay rent after the purchase. Therefore, the parties being the same, that decision will operate as *res judicata* in this suit. See *Lodai Mollah* v. *Kally Dass Roy* (1) and *Sri Sri Sri Krishna Chendra Gajapati Narayana Deo Maharajulungaru* v. *Challa Ramanna* (2). See also Hukum Chand on "*Res* "*Judicata*", section 174.

Bipinchandra Mallik (with him *Prabodhkrishna Shome*) for the respondents. The co-sharer landlord defendant in the rent suit No. 937 of 1925 (whose

(1) (1881) I. L. R. 8 Calc. 238. (2) (1931) 36 C. W. N. 365.

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representative is the present appellant) was only a *pro forma* defendant in that suit. The decree in that suit only made her liable to pay rent to the plaintiff. But that did not necessarily mean that the plaintiff was bound to recognize her as tenant under the purchase.

Basu, in reply.

RANKIN C. J. In this case, the superior interest in the holding with which we are concerned belonged originally, as regards eight annas, to defendants Nos. 2 and 3 in the present suit and the other eight annas belonged to the defendants Nos. 4 and 5. The tenant was the defendant No. 6. Defendants Nos. 4 and 5 granted a *mourasi mokarrâri* settlement of their eight annas to the first defendant in the present suit and he, in 1920, by suit No. 1453 of 1920, sued the tenant for rent, making the defendants Nos. 2 and 3—the other eight annas sharers—parties to the suit. He obtained a decree on the 7th of January, 1924 and proceeded to sell in execution and purchased the property in execution on the 22nd of April, 1924. The plaintiff in the present suit is a purchaser from the other eight annas co-sharers—defendants Nos. 2 and 3—and, after his purchase in 1925, he brought a suit (No. 937 of 1925) against the tenant, making the defendant No. 1 a party, as being a co-sharer landlord. We are informed, and we may take it, that the suit was intended to be framed under section 148A of the Bengal Tenancy Act. The tenant did not defend the plaintiff's suit for rent. The claim in the case was for a period partly before the execution sale to the defendant No. 1 in April, 1924. The defendant No. 1—the appellant before us—filed a written statement, setting up that he had bought the holding and was the tenant thereof after April, 1924. He claimed that the plaintiff should not be allowed to recover rent after April, 1924 against the original tenant, but could get rent only from himself. The Munsif in that rent suit held in favour of the defendant No. 1's contention. He held that the decree

for rent against the original tenant must be confined to the rent accruing due up to April, 1924 and he gave a decree against the first defendant for rent after that date.

In the present suit, the plaintiff desires to have it established that the defendant No. 1 is not entitled to this holding. He makes the case that, in the first suit, which was by the defendant No. 1 against the tenant in 1920, all processes were suppressed so far as the plaintiff's predecessors—the defendants Nos. 2 and 3 before us—were concerned. In making that case, however, he had a preliminary obstacle to overcome—the judgment in his own rent suit No. 937 of 1925 and the question, which arises before us and upon which the courts below have differed, is the question whether or not the decision in that rent suit No. 937 is a bar to the plaintiff's contending that the proceedings in the suit of 1920 were invalid and the sale to the defendant No. 1 of the holding inoperative and void. The trial court took the view that the plaintiff could not overcome this plea in bar. The lower appellate court has taken the view that the decision in the second suit does not debar the plaintiff from making the case which he seeks to make. It has come to the conclusion that it was no part of the business of the Munsif, trying the rent suit, to decide whether or not the defendant No. 1 had made out a good title to the holding. Its view is that the claim was a claim for rent against the original tenant, that the only matter in issue was whether the original tenant was liable to pay rent and, if so, how much, and that the question, as between the plaintiff and the present defendant No. 1, was a question which was unnecessarily raised —the plaintiff in that suit claiming no relief at all against the present defendant No. 1. We have to consider what the correct view is upon that point.

The first thing we have to observe is that a suit, which is framed under section 148A of the Bengal Tenancy Act, is, notionally at all events, a suit for the entire rent. If the plaintiff does not know what rent

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has been paid to his co-sharers, he, by impleading them, gives them a chance to raise any case they may have on that point. The intention is that the suit for the period covered is to deal with the whole of the rent, so that the tenant is not subjected to a multiplicity of suits in respect of the same matter. When the plaintiff sued the defendant No. 6 for rent, he was met by a claim on the part of his co-sharer that the co-sharer himself had become tenant and the co-sharer was, as it seems to me, entitled to object to any decree being passed in his presence against another for the whole or a part of the rent of the holding after his alleged purchase in April, 1924. Had he permitted such a decree to be passed in his presence he would have great difficulty in maintaining, as against the plaintiff, that he himself was the tenant after April, 1924. At its lowest, he would have been allowing a cloud to come over his title, whatever his title was to the holding. In these circumstances, in the rent suit, this defendant objected to the plaintiff's getting any decree in his presence for rent after April, 1924 against the original tenant. The plaintiff, in these circumstances, might have taken the attitude "I do "not wish to contest now and here the validity or effect "of the execution sale to the first defendant. I will "give up my claim against the original tenant for any "rent after April, 1924. I do not want in this suit to "contest with the defendant No. 1 the question whether "the defendant No. 6 is liable after April 1924". He might have done that. But, it is quite certain that he did not do that. It is quite certain that he went on to claim that he was entitled, in that suit, to get rent for the whole period in suit against the defendant No. 6 before us. It is not quite certain whether the line he took was "If I cannot get rent beyond April, "1924 from the defendant No. 6, then I do not want "any judgment for rent at all" or whether the line he took was "If I cannot get rent after April, 1924 from "the original tenant, then I want my rent from the "defendant No. 1". On the whole, I prefer to assume in his favour that he did not say the latter, and I

propose to ignore the circumstance that the Munsif in this case not only decided that the plaintiff could only get rent from the original tenant up to April, 1924, but went on to give a decree against the defendant No. 1 for the subsequent rent. Let us ignore that altogether. But the position was that the defendant No. 1 was objecting and had an interest and right to object when a decree was being asked in that suit and in his presence against the original tenant on a footing inconsistent with the holding having passed to himself. In order to determine whether any rent after April, 1924 should be decreed against the original tenant, the Munsif had to decide whether, after April, 1924, the original tenant remained a tenant or whether somebody else, so far as the plaintiff was concerned, took his place. That being so, on examining into the facts which were put in issue, the Munsif found from the sale-certificate that the defendant No. 1 had bought the holding. He also found that he had bought it in an execution case to which the plaintiff was a party in the place of his vendor, that the sale under which the defendant No. 1 wanted to claim was a sale which had been procured by the plaintiff amongst others, and that it was impossible, in these circumstances, for the plaintiff to say that the original tenant had transferred a non-transferable occupancy holding in a way that did not bind the plaintiff. In that way, he decided first, and quite competently, as I venture to think, that the original tenant could not be charged with rent after April, 1924. Whether he was right in going further and giving a judgment against the first defendant depends upon matters which are not plain on the scanty materials produced in the present case. It depends on whether or not he thrust that judgment upon the plaintiff or whether the plaintiff's attitude was that if he could not get subsequent rent from one he wanted to get a decree for it against the other. But in no view of this case does it seem to me reasonable to say that, in trying that question, the Munsif was trying something which he had no business to consider. It

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seems to me that, in order to determine in the presence of the defendant No. 1, whether or not the plaintiff could get a judgment nominally for the whole of the rent against the original tenant, the Munsif was deciding something that reasonably and properly arose before him. Whether it was absolutely necessary or not to decide it would depend apparently upon the attitude taken by the plaintiff. But, in any case, it is quite clear that the parties joined battle upon that point and the point was decided.

Whatever may be said about fraud in the first suit, there can be no question as regards the second suit. The plaintiff knew of the defendant No. 1's purchase of the holding and all about the circumstances so far as they appeared from the record, and it is expressly conceded that the plaintiff in this suit has made no case of fraud so far as the second case is concerned.

In these circumstances, it appears to me that this Second Appeal should succeed, that the judgment of the lower appellate court should be set aside and the judgment of the trial court restored with costs in all the courts. Hearing-fee assessed at three gold mohurs.

GHOSE J. I agree.

Appeal allowed.

A. K. D.