Before Mr. Justice Pontifex and Mr. Justice Field.

1881 *May* 20.

NOBODEEP CHUNDER CHOWDHRY (DEFENDANT) *v.* BROJENDRO LALL ROY AND OTHERS (PLAINTIFFS).*

Land Acquisition Act (X of 1870), s. 39—Title—Res Judicata.

Under s. 39 of the Land Acquisition Act, it is the duty of the Judge, in apportioning the compensation-money which he is directed to apportion, to decide the question of title between all persons claiming a share of the money.

Semble.—No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to other parts of the property belonging to persons who may come before the Judge under s. 39.

IN appeal No. 14.—Mr. *R. E. Twidale* for the appellant, and Baboo *Ishur Chunder Chucherbutty* for the respondents.

Nos. 121 to 124.—Baboo *Ishur Chunder Chucherbutty* for the appellant, and Mr. *R. E. Twidale* for the respondents.

Nos. 95 to 97.—Baboo *Gurudas Banerjee* and Baboo *Kishory Mohun Roy* for the appellant, and Baboo *Boido Nath Dutt* for the respondents.

The facts of these cases fully appear from the judgments of the Court (PONTIFEX and FIELD, JJ.), which were delivered as follows:—

PONTIFEX, J.—The compensation case under the Land Acquisition Act, out of which appeal No. 14 of 1879 arises, was tried by Mr. Verner, who had to decide as to the manner in which the sum of Rs. 99 should be apportioned amongst certain persons claiming to be joint mourosidars. Mr. Verner decided that only one of these persons was entitled as mourosidar to compensation for the particular land taken under the Act

Appeals from Original Decrees, Nos. 14, 95, 96, 97, 121, 122, 123, and 124, of 1879, against the decree of W. Verner, Esq., Additional Judge of Nuddea, dated the 23rd of September 1878.

in that case; and he directed that the amount should be paid to him. Against that decision, appeal No. 14 of 1879 has been preferred. The cases of compensation, out of which appeals Nos. 121, 122, 123, and 124 of 1879 arise, were tried by Mr. Tottenham for apportioning compensation in those four cases, amounting respectively to Rs. 9, 18, 20, and 37, between the same mourosidars as claimants. He came to the conclusion that the person to whom Mr. Verner had directed, in appeal No. 14 of 1879, that the compensation should be paid, did not prove his exclusive title to the money, but that he was jointly entitled with the other mourosidars. He, therefore, directed that the several amounts of compensation should be divided among them according to their respective shares.

Now, Mr. Verner, in trying the case before him, seems to have considered, that, under s. 39 of the Land Acquisition Act, it was not necessary for him to decide the question of title; and he expressly states in his judgment that he had no materials before him to decide the question of title. He, therefore, decided the case solely on the evidence as to possession. Mr. Tottenham, on the other hand, decided, in all the cases before him, the question of title. We think it right to say that, under s. 39, it is the duty of the Judge, in apportioning the compensation-money which he is directed to apportion, to decide the question of title between all persons claiming a share of the money. These cases having come before us at the same time, we think that the judgment of Mr. Tottenham in appeals Nos. 121, 122, 123, and 124 must be affirmed. He has taken a right view of the evidence in holding that the person to whom Mr. Verner directed the compensation-money to be paid did not prove an exclusive title thereto. We think, therefore, that Mr. Tottenham's order, that the amounts should be divided amongst the several claimants, was correct.

In respect to appeal No. 14 from the judgment of Mr. Verner, we think we are entitled to decide it upon the evidence already taken in the case; for although Mr. Verner seems to have been under the impression that, under s. 39, he was not bound to decide the question of title, yet the parties could not be aware that such would be his decision, and they were bound

1881

NOBODEEP CHUNDER CHOWDHRY v. BROJENDRO LALL ROY.

to adduce evidence both on the question of possession and title. As the party to whom Mr. Verner has directed the compensation-money to be paid exclusively has furnished no evidence, which in our opinion proves his exclusive title, we set aside Mr. Verner's order, and direct that the amount of compensation given in appeal No. 14 of 1879 be divided amongst the several claimants in the same proportion as in appeals Nos. 121, 122, 123, and 124 of 1879.

We now come to the other appeals by the dur-mourosidars, *viz.*, appeals Nos. 95, 96, and 97 of 1879. All these cases were tried by Mr. Tottenham. Claims were made much in the same way as the claims to the compensation for the mourosi tenure. One of the dur-mourosidars claimed to be exclusively entitled to the money awarded for the dur-mourosi tenure. But Mr. Tottenham, upon the evidence, came to the conclusion that he failed to prove such exclusive title; and therefore, he held that all the dur-mourosidars were entitled to have the money awarded distributed amongst them according to their respective shares. We agree with Mr. Tottenham in the conclusion which, upon the evidence, he has come to in the matter. But an objection has been taken that, in a case (No. 68), which was for compensation-money paid for certain other portions of land belonging to these very dur-mourosidars, and held upon the same title, and which was tried before Mr. Verner, Mr. Verner decided that one of these dur-mourosidars was entitled exclusively to the compensation-money so awarded, against which decision there has been no appeal, and it is argued before us that the decision of Mr. Verner, which has not been appealed against, must be treated as *res judicata* affecting these appeals, the land being held under the same dur-mourosi title, and the parties being the same. Now, for my part, and speaking for myself, I should be extremely reluctant to hold that any decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to other parts of the property belonging to persons who may come before the Judge under s. 39, because although a decision under s. 39 with respect to the particular money then before the Court is a decision which is final with respect thereto unless appealed from, and any party who

has been summoned before the Judge and has not appeared is bound by such decision, I do not think that a decision of the Judge with respect to compensation-money, where the amount may be extremely unimportant (as in one of these cases it is only Rs. 9), and where the parties, although summoned, may not think it worth their while to set up a claim to a share, should be treated as *res judicata* affecting other parts of the claimant's property held under the same title. For it must be remembered that the parties are brought before the Judge compulsorily; and the proceedings differ considerably from a regular suit. However, in these cases we think, that the decision of Mr. Verner, in case No. 68 before him, cannot otherwise be treated as *res judicata*, for this reason that in his judgment he expressly states that he has not tried the question of title; and if he has not tried the question of title, his judgment cannot possibly be treated as *res judicata* in these appeals, Nos. 95, 96, and 97, in which the question of title has been raised and tried. We are of opinion, therefore, that appeal No. 14 of 1879 must succeed; that appeals Nos. 121, 122, 123, and 124 of 1879 must fail, and appeals Nos. 95, 96, and 97 of 1879 must also fail. We do not think it proper to give any costs in any of these appeals.

FIELD, J.—I concur in this judgment, but as to the question of *res judicata*, I think it unnecessary to decide what would be the effect of the former decision in the case under the Land Acquisition Act if the question of title had been put in issue and fairly tried. As Mr. Verner expressly refrained from trying this question, it was not heard and determined: and therefore the former judgment cannot have the effect of *res judicata* upon the title of the parties.