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Bukhta v. *Gunga* (2)—are to be distinguished from the one before us. They were cases under Act XIX. of 1863, and there had been an adjudication apparently on the title, but the procedure observed had been irregular. A case was brought to our notice at the hearing—*Har Sahai Mal* v. *Maharaj Singh* (3)—that was also a case of partition made under Act XIX. of 1863 and the same remarks apply to distinguish it from the case before us.

I would reverse the decree of the lower Courts and remand the case to the Court of first instance for trial on the merits. Costs to abide the result.

PEARSON, J.—I concur.

Case remanded.

FULL BENCH.

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April 22.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

MOHAN LAL (PLAINTIFF) *v.* RAM DIAL AND ANOTHER (DEFENDANTS).*

Act X of 1877 (Civil Procedure Code), s. 13—Res judicata.

M sued *R* in the Court of the Munsif for a bond, alleging that he had satisfied the bond-debt, and for a certain sum which he alleged had been paid by him to *R* in excess of the bond-debt. On the 24th November, 1875, the Munsif, having taken an account and found that Rs. 188-7-4 of the bond-debt were still due, made a decree dismissing the suit. *R* appealed to the Subordinate Judge, who on the 16th September, 1876, finding that Rs. 520-2-2 of the bond-debt were still due, affirmed the Munsif's decree. *M* appealed to the High Court on the ground that an appeal by *R* did not lie to the Subordinate Judge, as *R* was not aggrieved by the Munsif's decree. The Division Bench before which the appeal came, on the 10th August, 1877, holding that *R* was not competent to appeal to the Subordinate Judge, set aside the proceedings of the Subordinate Judge. In deciding the case the Division Bench made certain observations to the effect that the account between the parties was not finally settled, but might be taken again in a fresh suit. In November, 1877, *M* instituted a fresh suit against *R* to recover the bond on payment of Rs. 188-7-4, the sum found by the Munsif in the former suit to be due by him to *R*. *Held*, on the question whether the finding of the Munsif in the former suit was final and conclusive between the parties or the account

(2) H. C. R., N.-W. P., 1868, p. 161. (3) I. L. R., 2 All., 294.

* Second Appeal, No. 1246 of 1878, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 27th August, 1878, affirming a decree of Munshi Bansi Dhar, Munsif of Mainpuri, dated the 28th March, 1878.

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might be again taken, that that finding, being a finding on a matter directly and substantially in issue in the former suit which was heard and finally decided by the Munsif, was final and conclusive between the parties and the account could not be again taken.

Held also that the observations of the Division Bench in the former suit were mere "*obiter dicta*" which did not bind the Courts disposing of the fresh suit.

This was a reference to the Full Bench by a Division Bench (SPANKIE, J. and OLDFIELD, J.) The facts giving rise to the reference and the point of law referred appear from the order of reference which was as follows:

OLDFIELD, J.—The facts of this case are stated in our order of remand dated the 19th May, 1879. The plaintiff intrusted a sum of Rs. 5,000 to his agent, with the object of paying off some mortgages, under certain bonds due to the defendants, on property which plaintiff had purchased, and the agent was directed to effect mutation of names. The agent had an account taken with the defendants, and the result was that the mortgage-debts under two bonds were held to be satisfied by the payment of the above money, and those bonds were returned by defendants, and the property mortgaged restored, and mutation of names effected in plaintiff's favour, but a third bond for Rs. 850, dated 16th February, 1869, was retained by the defendants, a balance in their favour being found due. The plaintiff, being dissatisfied with his agent's acts and the account taken, instituted a suit in the Court of the Munsif of Mainpuri to recover the said bond as satisfied, and also a surplus sum of Rs. 20-15-7, including interest, which he alleged was due to him out of the sum of Rs. 5,000, which he had sent by his agent and which had been paid to defendants. The Munsif dismissed the suit on 24th November, 1875; he held, after going into the accounts on all the bonds and crediting plaintiff with the Rs. 5,000 which he had paid, that Rs. 188-7-4 were still due by the plaintiff to the defendants. The defendants appealed and the Subordinate Judge, on 16th September, 1876, while affirming the decree dismissing the suit, held that Rs. 520-2-2 were due by plaintiff to defendants. A special appeal was preferred to the High Court by the plaintiff who objected that the defendants could not appeal from the Munsif's decree to the Subordinate Judge. The High Court allowed this

objection and set aside the proceedings in the Subordinate Judge's Court; they remark in their judgment, which is dated the 10th August, 1877: "Inasmuch as the suit was dismissed, the plaintiff now urges in special appeal that the defendants could not appeal: they were not aggrieved by the decree, but by the Munsif's judgment on a particular issue collateral to the issue decided by the decree. We must allow the force of the objection. It is to be regretted that, if the parties are again obliged to come into Court, the account must be again taken, and the plaintiff's suit might and should have been so framed as to avoid this; but as it was framed, the plaint merely claiming to get back the bond for Rs. 850, the Munsif properly passed a decree simply dimissing the suit, and it was not competent to the defendants to present an appeal from that decree,—*Pan Kooer* v. *Bhugwant Kooer* (1). We must set aside the proceedings in the Subordinate Judge's Court, but as the plea was not taken in that Court and the frame of the suit has led to the unsatisfactory result that the account has not been finally settled, we order each party to bear his own costs in the lower appellate Court and in this Court."

The plaintiff has now instituted the present suit in the Court of the Munsif of Mainpuri for recovering the same deed, by payment of the sum which the Munsif, in the former suit, found to be still due by him. The Munsif dismissed the suit on the ground that he had no jurisdiction with reference to the value of the claim. On appeal to the Subordinate Judge, he disallowed this ground of dismissal, but dismissed the suit on another ground, namely, that the plaintiff was bound by the act of his agent, when he settled the accounts with the defendants. The plaintiff has preferred a second appeal before us, and considering that the Subordinate Judge had not properly tried the issues which he had laid down for trial, as to whether the agent acted within the scope of his authority and whether his acts were collusive, we remanded the case with directions that he should re-try those issues. The Subordinate Judge has now found that there was no clear authority given for adjusting the account of the mortgage-debt.

(1) H. C. R., N.-W. P., 1874, p. 19.

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We accept this finding and at the same time observe that, under any circumstances, the plaintiff would be at liberty to set aside the adjustment of the account, if he could show mistake or fraud. But another question is raised in the appellant's third ground of appeal, namely, that the Munsif in his judgment dated 24th November, 1875, has decided that a sum of Rs. 188-7-4 is due by plaintiff to defendants, after account was taken, on the several mortgage-bonds, and that this decision, which was not set aside when the decision of the Subordinate Judge in appeal from it was set aside by the High Court, by their judgment dated the 10th August, 1877, is final and conclusive on the matter between the parties, and the account cannot be re-opened, notwithstanding anything said to the contrary in the judgment of this Court dated the 10th August, 1877.

We think it desirable that this question be referred for the opinion of the Full Bench of the Court and we refer it accordingly.

Pandits *Ajudhia Nath* and *Nand Lal*, for the appellant.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) and Munshi *Hanuman Prasad*, for the respondents.

The following judgments were delivered by the Full Bench;

STUART, C. J.—On full consideration of this case and of the former appeal which was disposed of by Turner, J. and myself, I am not prepared to dissent from the conclusion arrived at by my colleagues. I am always unwilling to prevent the re-opening of an account where any material error can be shown, and I am not clear that s. 13 of the Procedure Code would bar such a proceeding in the present case, but the inconvenience of again opening up such an account as this would be so great and the result so uncertain, (in no event, I believe, material) that I feel quite willing that the case should be decided according to the opinions recorded by the other members of the Court.

PEARSON, J.—The remark of the High Court Bench in the judgment of the 10th August, 1877, that "if the parties are again obliged to come into Court, the account must be again taken"

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must, in my opinion, be regarded as a mere *obiter dictum* which does not bind the Courts disposing of the present suit.

I am further of opinion that the Munsif's finding in the former suit that Rs. 188-7-4 was due by the plaintiff to the defendants was a finding on a matter directly and substantially in issue between the parties in that suit, and has become final. In that suit not only was the recovery of the bond claimed on the ground that the bond-debt had been discharged, but Rs. 20-15-7 were also claimed as having been over-paid, and, for the purpose of disposing of the latter claim, it was necessary to determine by taking accounts whether Rs. 20-15-7 as claimed were due to the plaintiff or whether on the contrary as pleaded by the defendants a larger sum was due to them.

SPANKIE, J.—I am disposed to hold that the account cannot now be re-opened. On looking into the former case it seems clear that the state of the account was really in issue. The plaintiff could not under any circumstances claim the return of the mortgage-bond, if there were still any sum due under it, and the defendants had contended that the entire sum had not been paid off. As this contention referred to the particular deed which the plaintiff sued to recover, the question whether the money had been paid or not had to be determined.

It is to be regretted perhaps that a remark in the judgment of this Court in the former case has induced the defendants to contend that the accounts are still open and can be gone into again. But the wording of s. 13 as amended is peremptory. I would, therefore, say that the account was settled by the Munsif's judgment of the 24th November, 1875, and cannot be re-opened.

OLDFIELD, J.—It appears clear to me that the decision of the Munsif dated 24th November, 1875, has never been set aside and that it has finally decided that a sum of Rs. 188-7-4 was due by plaintiff to defendants on the several mortgage-bonds, and I hold that the accounts cannot now be re-opened.

The plaintiff in the former suit averred that a debt due to defendants on those bonds had been satisfied; and he sought to have

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one of those bonds returned to him and to recover a sum of Rs. 20-15-7, including interest, due to him after satisfaction of the debt due on the bonds. The defendant pleaded that a large sum of money was still due to him on the bonds. The question as to what was the unpaid balance was necessarily on these pleadings directly and substantially in issue between the parties, and the decision on it has become final and cannot be re-opened in a fresh suit.

I am altogether unable to agree in the remarks made by the learned Judges in their order dated 10th August, 1877, in second appeal in that case, that the accounts could be re-opened in a fresh suit; and obviously those remarks cannot amount to a judicial determination that the accounts might be re-opened, for that was a point which could only be determined judicially at the hearing of any fresh suit which might be brought and by the Court deciding such suit. Moreover, holding as the learned Judges did that no appeal lay from the Munsif's judgment, they were powerless to make any decision on the merits of the case.

STRAIGHT, J.—I am of opinion that the objection raised by the plaintiff-appellant in his third ground of appeal should prevail, and that the finding of the Munsif of the 24th November, 1875, is a bar to the defendants re-opening the accounts between themselves and the plaintiff. The claim of the plaintiff in his original suit was to recover the bond for Rs. 850, and to recover the Rs. 20-15-7, which he alleged had been improperly paid by his agent in excess of the amount due from him to the defendants for redemption of the bond. Two specific heads of claim were therefore included in his plaint, both of which the defendants were called upon to answer or in default judgment must have passed against them. As to the Rs. 20-15-7, not only did they deny it was due, but they alleged a much larger amount was owing to them by the plaintiff. Here therefore was a matter alleged by the plaintiff and expressly denied by the defendants, in respect of which the relief asked by the plaintiff was refused him, and not only that, for the decree went on to state that Rs. 188-7-4 was due and owing from the plaintiff to the defendants. The judgment of the Munsif was final except in so far as he could have altered it on review, and equally so that of the lower appellate Court until it was disturbed by the

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decision of this Court, which had the effect of restoring the Munsif's findings and his determination of the whole case. The state of the litigation, then, was that the plaintiff's claim was dismissed, and he was decreed to owe the defendants Rs. 188-7-4. With great respect to the two learned Judges who decided the former appeal to this Court, it would appear as if they had entirely lost sight of the second head of the plaintiff's claim and the provisions contained in s. 216 of the Civil Procedure Code, so far as they affected the plea put forward by the defendants. Moreover, it appears to me that the terms of s. 43 of Act X of 1877 were imperative upon the plaintiff, in suing for the recovery of the bond, to claim the Rs. 20-15-7, for that was directly involved and had reference to the question whether the bond had or had not been satisfied. I take it to be a well-established principle that, unless there is any specific provision prohibiting a plaintiff from joining causes of action, he is bound to do so when they accrue at the same time and in respect of the same subject-matter. For a defendant is not to be subjected to the unnecessary expense and annoyance, either of defending or bringing a second suit, when all matters in difference between himself and a plaintiff can be disposed of in one. The state of the pleadings was such in the original suit between the now appellant and respondents, that the whole of the monetary dealings and accounts between them were opened up and evidence was taken and full consideration given to the proofs put forward on the one side and on the other. In the result the Munsif decreed Rs. 188-7-4 to be due and owing by the plaintiff to the defendants, and the latter appealed to the lower appellate Court, with the result that the full amount of their counter-claim was admitted by the Judge. It is beside the question now before me to criticise the decision of the learned Chief Justice and Turner, J., the effect of which was to leave the defendants entitled only to what the Munsif had decreed them. The plaintiff has accepted the Munsif's finding as binding on him, and has tendered the Rs. 188-7-4 to the defendants, who have refused to accept it. Hence the present suit. The remarks made by the two learned Judges in their judgment which are set out in the reference to the Full Bench are mere "*obiter dicta*," and can have no force or effect to alter the legal rights and disabilities of the parties.