

PRIVY COUNCIL.

P. C.*
1885
July 1.

MADAN MOHAN LAL AND OTHERS (PLAINTIFFS) v. LALA SHEO-SANKER SAHAI (DEFENDANT.)

[On appeal from the High Court at Calcutta.]

Civil Procedure Code, Act X of 1877, s. 43—Splitting claims.

A decree for damages in a suit instituted on 2nd June 1879 (27th Joist 1286 F.) on a breach of contract for not having given possession of land according to the terms of a zar-i-peshgi potta, awarded the profits of the land for 1283 F., which would have been received by the plaintiff had the contract been performed.

The decree-holder then brought the present suit (14th June 1880 or 21st Joist 1287 F.), for damages on the breach of the same contract, claiming the profits accrued during 1284, 1285 and 1286 F. (1876-77 to 1878-79).

Held, that the High Court had rightly decided that, in regard to Act X of 1877, s. 43, the plaintiff could not recover so much of the profits as had already accrued at the date of the institution of the prior suit, inasmuch as the claim in respect of such profits might have been included therein, *viz.*, the profits for the two years 1284 and 1285 F., which had expired when that suit was brought.

APPEAL from a decree (14th April 1882) of the High Court, partly confirming and partly reversing a decree (3rd September 1880) of the Subordinate Judge of Tirhoot.

The main question here was as to the application of s. 43 of the Code of Civil Procedure, Act X of 1877, that section having been held applicable by the High Court (1).

The suit was brought by the father of the appellants, Hridi Narain, who died pending this appeal, for Rs. 20,998, for damages on account of the withholding possession of land by the defendants who, making a potta for a term to secure a zar-i-peshgi advance, had agreed to deliver possession and had failed so to do.

By the potta (30th Sawan 1282, corresponding to August 17th, 1875) the defendant made a lease of mouzah Badsam, with its appurtenances, for a term of eleven years, from the beginning of 1283 F. to the close of 1293 F., at an annual *jumma* of

* *Present*: SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH and SIR A. HOBHOUSE.

(1) *Sheo Sunker Sahoy v. Hridi Narain*, I. L. R., 9 Cal., 143,

Rs. 3,714 having taken the sum of Rs. 30,000 as zar-i-peshgi, charged with interest at one per cent. per mensem. The lessee was to take possession of the leased land from 1283 F., and, after paying the Government revenue and other charges, to pay himself annually the sum of Rs. 3,600 (estimated to be what would remain over), being the interest on the zar-i-peshgi, retaining whatever balance there might be. Among other agreements the lessor agreed that, if he failed to perform his part, the lessee might recover the amount with interest from his property.

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The plaintiff did not obtain possession of the property until August 1876; and then only under a decree in a suit which he brought for it.

On the 2nd June 1879 (22nd Jeyt 1286) the plaintiff sued Lala Sheosanker Sahai for damages, according to the terms of the zar-i-peshgi potta, such damages being estimated by the profits for the year 1283 F., for which he obtained a decree on 16th July 1879. Again, on the 18th June 1880, the plaintiff sued the present respondent for damages sustained owing to his having been kept out of possession during the years 1284, 1285, and 1286 F; this being the suit out of which this appeal arose.

Lala Sheosanker Sahai, among other defences, objected that part of the claim was barred under ss. 42 and 43 of Act X of 1877.

The Subordinate Judge held that the omission to include a claim for damages for the years 1284 and 1285 in the former suit did not preclude the plaintiff from now making the claim. He adopted the method of calculation of the previous decision of 16th July 1879, and decreed accordingly.

The defendant appealed on the ground that the suit should be held to be barred under ss. 42 and 43 of Act X of 1877. There was a cross appeal on the ground that certain other terms of the lease, entitling the plaintiff to damages, should have been made the basis of a decree.

The High Court (MITTER and MACLEAN, JJ.) held the defence to be good so far as the claim to the profits for 1284 and 1285 F. was concerned, but confirmed the decree for the profits of 1286 F.

The cross appeal was dismissed. The High Court held that

1885 the parties were bound by the former decision; but that
 MADAN s. 43 barred the suit, so far as it related to damages, which,
 MOHAN LAL having been already sustained at the time when the prior suit
 v. was brought, might have been included therein. The judgment
 LALA SHRO- was brought, might have been included therein. The judgment
 SANKER of the Court is reported in I. L. R., 9 Calc., 145.
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From this decree the plaintiff, Hridi Narain Sahu, obtaining special leave, appealed.

On his death, the present appellants, as heirs of their father, obtained substitution of their names for his on the record.

On this appeal,—

Mr. R. V. Doyne, and Mr. C. W. Arathoon, appeared for the appellants.

Mr. J. Graham, Q.C., and Mr. H. Cowell, for the respondent.

For the appellants it was argued that the claim for damages, as measured by the profits of the years 1284 and 1285 F. was not, as regards so much of the damages as had been incurred in that period, barred by the provisions of the Code.

Their Lordships, however, without calling on counsel for the respondents, intimated that the judgment of the High Court was correct as regarded the matters in question.

C. B. *Appeal dismissed with costs.*

Solicitor for appellants: Mr. T. L. Wilson.

Solicitors for the respondent: Messrs. Barrow and Rogers.

P. C. * RAM CHUNDER SINGH (PLAINTIFF) vs. MADHO KUMARI AND OTHERS
 1885 (BY THE COURT OF WARDS) (DEFENDANTS.)
 June 19, 20, [On appeal from the High Court at Calcutta.]
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 July 11.

Res-judicata—Civil Procedure Code Act X of 1877, s. 13—Matters directly and substantially in issue in a suit—Limitation—Adverse possession.

Where a decree, awarding to one of the parties money deposited in a Treasury by a third party, as the compensation for land taken by the latter for railway purposes, was based upon the right to the land, the question of title having been directly and substantially in issue between the parties: *Held*, that the contest of title was conclusive between them under s. 13 of Act X of 1877.

* *Present*: LORD MONKSWELL, LORD HOBHOUSE, SIR B. PEACOCK and SIR R. COUCH.