

Before Mr. Justice Tottenham and Mr. Justice Agnew.

MAHENDRA LAL KHAN (PLAINTIFF) *v.* ROSOMOYI DASÍ AND OTHERS
(DEFENDANTS.)*

1885
August 24.

Evidence—Admissibility in evidence of judgments not “inter partes.”

In a suit for khas possession of land upon the allegation that the defendant refused to give up possession or to pay rent for it, a decree declaring that the land in suit was liable for rent was tendered in evidence. The decree had been obtained by an auction-purchaser against the defendants, but the plaintiff did not claim title through the auction-purchaser who had in fact been treated as a trespasser and ejected.

Held, that the ruling in the case of *Gujju Lal v. Fateh Lal* (1) governed the case, and that the decree was inadmissible in evidence.

Although the case of *Hira Lal Pal v. Hills* (2) decides that in certain cases judgments not *inter partes* may be recorded in evidence, it does not lay down that such judgments can be treated as conclusive evidence of the facts with which they deal.

IN this case the plaintiff sued to obtain khas possession of certain land in the occupation of the defendants after having served them with notices either to quit or to pay a fair rent and grant him kabuliats. His case was that in 1843 or 1844 his predecessors in title mortgaged his zemindari, which included the lands in suit; in 1847 the mortgagees fraudulently obtained a decree for foreclosure, which, however, was subsequently set aside in the year 1852, and his predecessors were declared entitled to redeem the property; pending these proceedings the mortgagees had alienated the property which was sold for arrears of Government revenue, and eventually came into the hands of one Sidhi Nazar Ali Khan as purchaser; in 1860 the plaintiff's predecessor brought a suit to redeem the property and to set aside the various sales, and obtained a decree in their favor in 1866, that decree being ultimately confirmed on appeal in the year 1870; in 1861, while Sidhi Nazar Ali Khan was in possession, he had brought a suit against the present defendants in res-

* Appeal from Appellate Decree No. 637 of 1885, against the decree of H. Gillon, Esq., Judge of Midnapore, dated the 30th of December 1884, affirming the decree of Baboo Upendra Chandra Ghose, Munsiff of that district, dated the 31st of July 1883.

(1) I. L. R., 6 Calc., 171.

(2) 11 C. L. R., 528.

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pect of the lands now in suit, alleging them to be rent-paying tenants, and in that suit he obtained a decree in 1862 declaring the lands held by the defendants to be liable to the payment of rent to the zemindar. The plaintiff now sued for khas possession and mesne profits.

The defendants contended that the decree obtained against them in 1862 by Sidhi Nazar Ali Khan was not binding upon them as the plaintiff was not a party to that suit, and did not claim through Sidhi Nazar Ali Khan; they also pleaded limitation by over 12 years adverse possession, and in the alternative set up a-mourasi mokurari lease purporting to have been executed in their favor by the plaintiff's predecessor, Rani Shiromoni, on the 15th Magh 1174 (26th January 1768).

The first Court held that the potta of the 15th Magh 1174 was a genuine document, and that the plaintiff was bound by it and that he was not entitled to khas possession and dismissed the suit upon that ground.

Amongst the issues raised was one as to whether or not the plaintiff was entitled to rely on the decree obtained by Sidhi Nazar Ali Khan in 1862, and upon that issue the Court held upon the authority of *Gujju Lal v. Fatteh Lall* (1) that the decree was inadmissible in evidence, not being a judgment *inter partes*.

Upon appeal the decree of the first Court was confirmed, upon the ground that the suit was wrongly framed, as being one based upon a resumption decree, and the proper course was to sue for assessment of rent and a kabuliaṭ and not for ejectment and khas possession. As regards the decree of 1862 that Court came to the same conclusion as the lower Court, and held that the decree was not admissible in evidence, inasmuch as the plaintiff did not claim through Sidhi Nazar Ali Khan but treated him as a trespasser; that being so he could not be bound by any acts or admission of Sidhi Nazar Ali Khan, hostile to his interests, and could not therefore be entitled to the benefit of his acts. That Court also considered that the decision in the case of *Gujju Lal v. Fatteh Lall* (1) applied to the case, and that the circumstances of the case did not justify a departure from the rule laid down by the Full Bench or in the case of *Hira Lal Pal v. Hills* (2).

(1) I. L. R., 6 Calc., 171.

(2) 11 C. L. R., 528.

On the hearing of the first appeal it was admitted that if the decree of 1862 were excluded from the record the plaintiff had no case.

Against that decree the plaintiff now preferred a special appeal to the High Court.

Mr. J. G. Apear, and Baboo *Bhobani Charan Dutt*, for the appellant.

Baboo *Unnoda Pershad Banerjee*, for the respondents.

The judgment of the High Court (TOTTENHAM and AGNEW, JJ.) was as follows:—

This case is not distinguishable from those to which the lower Appellate Court refers as having governed his decision that the decree formerly obtained by Sidhi Nazar Ali Khan when in possession as an auction-purchaser is not available as evidence in favour of the plaintiff-appellant, who does not, in any way, claim through that individual; and that decision is in accordance with the ruling of the Full Bench in *Gujju Lal v. Fatteh Lall* (1) which we think should in this case be followed.

The case of *Hira Lal Pal v. Hills* (2), cited for the appellant, shows that in certain cases judgments not *inter partes* may be taken into consideration, but it does not pretend to lay down that such judgments can be treated as conclusive evidence which is what was sought in this case in respect of the judgment and decree in question.

The appeal must be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice Agnew.

BEPIN BEHARI MODUCK AND OTHERS (DEFENDANTS) v. LAL MOHUN CHATTOPADHYA (PLAINTIFF) AND ANOTHER (DEFENDANT)*

1885.
August 31.

Hindu Law—Partition—Purchaser from Hindu widow, Right of, to partition—Alienation by Hindu widow of share in family dwelling house—Decree for partition—Order directing commission of partition to issue, Appeal from—Appealable order—Civil Procedure Code (Act XIV of 1882), ss. 2, 396.

* Appeal from Appellate Decree No. 1008 of 1885, against the decree of Baboo Mahendra Nath Mitter, Subordinate Judge of Burdwan, dated the 10th of March 1885, reversing the decree of Baboo Gopal Chundra Basu, Munsiff of Cutwa, dated the 13th of March 1884.

(1) I L. R., 6 Calc., 171.

(2) 11 C. L. R. 523.