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August 13.

Before Mr. Justice Knox, Acting Chief Justice, and Mr. Justice Blair.

CHANDI PRASAD (DEFENDANT) *v.* MAHARAJA MAHENDRA MAHENDRA SINGH (PLAINTIFF).*

Res judicata—Civil Procedure Code, section 13—*Assignment of the Government revenue of a village divided into "khatas"—Claim for interest on revenue in arrears—Decision as to one khata res judicata in respect of other khatas.*

The plaintiff was assignee of the Government revenue of a certain village. The village was divided into *khatas*, but the title to the revenue in respect of each and every *khata* was one and the same. The plaintiff sued to recover arrears of revenue due in respect of *khata* No. 29 with interest. On his right to receive interest being disputed, it was held that a previous decision of a competent Court between the same parties, but dealing with a claim for interest due on arrears of revenue payable in respect of *khata* No. 47, operated as *res judicata* as to the claim with regard to *khata* No. 29. *Ex parte Ador* (1), *Madhavi* v. *Kelu* (2), *Kunji Amma* v. *Raman Menon* (3) and *Balkishan* v. *Kishan Lal* (4) referred to.

The plaintiff in the suit out of which this appeal arose was the assignee of the Government revenue payable in respect of a certain village. The village was divided into a number of "khatas," and in the present suit the plaintiff claimed arrears of revenue due in respect of khata No. 29, with interest on such arrears. Both the Court of first instance and the District Judge on appeal decided in favour of the plaintiff that interest was payable; but on appeal by the defendant to the High Court it was held (5) that, as no interest on arrears of revenue was recoverable by Government, an assignee from Government could be in no better position, and that the plaintiff was therefore not entitled to recover interest on the arrears claimed by him. The respondent thereupon raised the further question whether his right to recover interest on arrears was not concluded in his favour by a former judgment between the same parties. In that former case the respondent had sued the appellant for arrears of revenue in respect of another khata of the same village, namely, No. 47, and for interest on such arrears. The Court of first instance (Assistant Collector) held that interest was not allowable; but on appeal the District Judge took a different view and held that the plaintiff was entitled to the interest

* Appeal No. 42 of 1900, under section 10 of the Letters Patent.

(1) (1891) 2 Q. B. D., 574.
(2) (1892) I. L. R., 15 Mad., 264.
(3) (1891) I. L. R., 15 Mad., 494.
(4) (1888) I. L. R., 11 All., 148.
(5) Weekly Notes, 1900, p. 173.

claimed. That decree was not appealed and became final as between the parties to the present suit. The question of *res judicata* thus raised led to a difference of opinion between the Judges composing the Bench by which the appeal was heard. In accordance with section 575 of the Court of Civil Procedure the Judgment which prevailed was that of Aikman, J., who held that the former decision made the plaintiff's claim for interest a *res judicata*. From this judgment the defendant appellant preferred an appeal under section 10 of the Letters Patent.

Pandit *Madan Mohan Maliviya*, for the appellant.

Munshi *Ratan Chand*, for the respondent.

KNOX, ACTING C.J. and BLAIR, J.—This case has been argued with great force and ability by the learned vakil for the appellant. The matter which is before us for determination is whether the liability of the appellant to pay interest on certain arrears of land revenue over a particular area is or is not *res judicata*. No other point is before us. In order to understand what led up to the present plea it is only necessary to set out that the respondent in a previous suit instituted a claim for arrears of Government revenue to which he alleged that he was entitled and which arose out of what is known as *khata* No. 47 in mauza Fatehpura. In addition to the arrears of Government revenue which he claimed, he also sued for interest. The respondent is assignee of Government revenue in mauza Fatehpura, and apparently this mauza consists of several *khatas*. In that suit the present appellant was defendant. He contested *inter alia* the liability to pay interest. His contention was that arrears of Government revenue did not carry interest with them. The Government could not have claimed interest, and an assignee of Government revenue was in no better position and therefore could not claim interest. The issue whether the defendant was liable to pay interest on arrears of assigned land revenue was heard and determined, and the final determination was that the defendant was liable. In the suit out of which the present appeal arises the claim was for arrears due on account of *khata* No. 29 and not on account of *khata* No. 47. The same matter, namely, whether the appellant was liable to pay interest upon arrears of Government revenue, was put in issue. Curiously

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enough, the appellant in his written defence expressly stated that the claim for interest was barred by section 13 of the Code of Civil Procedure. The issue as framed by the Court of first instance runs thus:—"Is the plaintiff entitled to receive interest on the principal amount claimed, and has this point been previously decided." This issue was determined by that Court in the respondent's favour. The question was again raised by the appellant in appeal, and the lower appellate Court held that interest was payable. Neither of the Courts below in so many words touched upon the question of *res judicata*. Whatever determination there had been was in favour of the respondent; and as he won in both Courts he was under no necessity of raising it. In this Court, however, the learned Judges came to the conclusion that interest was not payable, and the learned counsel for the respondent seems at once to have put forward the plea that this liability had been in issue, had been previously heard and determined, and could not be put in issue again. The learned Judges before whom the plea was raised held different views. The result was that the order of our brother Aikman, which affirmed the decree of the Court below, prevailed. But as our brother Banerji differed from him, the matter was open to appeal and has resulted in the appeal which is now before us.

The learned vakil for the appellant admitted in his argument that in both the suits, namely, that which was decided by the District Judge on the 1st of June, 1897, and that out of which the present appeal has arisen, the parties are the same; they are litigating under the same title; and the Court in which the issue was previously raised was a Court of jurisdiction competent to try the suit in which the issue has now been subsequently raised. He, however, contends that inasmuch as the suit of 1897 was for arrears of revenue due upon *khata* No. 47, and the present suit is for arrears of revenue due out of *khata* No. 29, the matter in issue in the previous suit cannot be said to be directly and substantially in issue in the present suit. In other words, according to him, identity of subject-matter is a material ingredient in all questions of *res judicata*, and where the subject-matter in both the suits is not identical, it would not be safe for Courts of Justice to hold that an issue, however apparently the same in

both cases, was in reality the same. Other considerations might easily be conceived to arise which would alter the whole aspect of the two cases and make them materially different. In his argument he adopted the reasoning which appears to have had great weight with our brother Banerji. He asks us to consider whether if two bonds are executed by the same debtor in favour of the same creditor on exactly similar terms with no point of difference between them, and if in a suit brought on the basis of one of the bonds the question arose whether under the terms of that bond interest was payable, a decision on that point would operate as *res judicata*, were the same question to arise upon a suit brought on the second bond. The fallacy which underlies this argument appears to us to be that in the case of the two bonds two separate titles exist, and the holder of the bonds when litigating upon bond *A* is not litigating upon the same title as when he litigates upon bond *B*. Now such circumstances are widely different from those which we have to consider in the present appeal. The title under which the plaintiff claims the arrears of revenue, whether they accrued due on *khata* No. 29 or on *khata* No. 47, is one and the same title. Putting aside, however, the case of the two bonds, we really have to come back to consider whether under the Statute Law in India identity of the subject-matter is or is not material whenever a plea of *res judicata* has to be considered. In coming to a conclusion upon this we cannot fail to take notice of the difference between the language in which section 2 of Act No. VIII of 1859, and that in which section 13 of Act No. XIV of 1882, is couched. There is no express allusion to the subject-matter in section 13. The result or the fruit of the litigation at which the parties are aiming is no longer a matter for consideration of the Courts. What is to be considered is, if the metaphor may be extended, the root of the difference between them, and the Courts are now forbidden to try any issue in which the matter directly and substantially in issue in the subsequent suit had been directly and substantially in issue in the former suit. This is more in accordance with the principles on which the rule of *res judicata* is founded. Those principles are two in number—the one, public policy, that it is in the interest of the State that there should be an end of litigation; and

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the other, the hardship on the individual that he should be vexed twice for the same cause. The root of the matter between the parties, whether it related to *khata* No. 29 or to *khata* No. 47, is the liability of the defendant to pay interest on arrears of Government revenue. The defendant put that into issue in the previous suit of 1897. He was unsuccessful in the litigation which then ensued. Can he, or should he now be allowed to re-open that litigation merely because he says that since that suit was decided there is another plot of land, the revenue of which is held under the same title and under precisely the same circumstances under which the revenue of the former parcel was held, but as it is a different parcel, I ask now to be allowed to commence a new litigation in the hopes that the Court may arrive at a different conclusion with regard to parcel *B* from that at which it arrived with regard to parcel *A*? There would be no end to the litigation which might ensue if in respect of each parcel the litigation might be re-opened. Both the principles upon which the plea of *res judicata* rests would be violated if we allowed this contention to prevail. It is not as if the respondents were able to say to us there exists with regard to plot No. 47 a fact which did not exist in the case of plot No. 29, and which so materially alters the circumstances of the case that the matter directly and substantially in issue in the two cases is only apparently and not in reality the same. Again, it would be different if the appellant were able to say that the matter directly and substantially in issue in the former suit fell short of going to the very root of the title upon which the claim rests. Neither of these assertions are or can be made in the present case. The previous judgment affirms positively the title of the plaintiff to recover interest upon arrears of the Government revenue which has been assigned to him in respect of mauza Fatehpura, and the plaintiff cannot now reagitate the same question of liability upon the pure and simple incident that the subject-matter of the present suit is geographically distinct from the subject-matter of the previous suit.

The learned vakil called our attention to the case *Ex parte Ador* (1). In our opinion that case lends no support to the

(1) (1891) 2 Q. B. D., 574.

appellant's contention. It is one of a highly exceptional character, and from it no general conclusions can be drawn adverse to the principle of *res judicata*. The debtors had guaranteed the repayment of a loan of £1,000 with interest. The loan was to be repaid by a gradual amortisation of 20 per cent. from a given date. The first annual instalment was due in April, 1890, but before that date the debtor Ador had become a bankrupt, and a receiving order had been made against him. From that date the status of the parties was essentially altered. Instead of the creditor being entitled to gradual repayment as stipulated in the guarantee, he was under the bankruptcy law entitled to immediate payment. The order by which it was contended that the claim of the creditor for interest was precluded by the principle of *res judicata* was an order rejecting his claim to interest for a short period before and up to the receiving order. From that moment the status of the parties was materially altered, their rights were substantially modified by the provisions of the law of bankruptcy, and their claim had ceased to be based upon and limited by their purely contractual relation. The creditor was therefore suing under a different title and was not prevented in the fresh litigation from re-opening the question of the debtor's liability to pay interest. In the words of the judgment of the Court "the point before the Court now is a totally different one and ought to be decided on its merits, although that course renders it necessary to reconsider the construction of the letter in question," that is, of the letter which had received a different construction in the previous order.

He also referred us to *Madhavi* v. *Kelu* (1). Undoubtedly there is a portion of the judgment in that case which is in his client's favour; but we notice that the learned Chief Justice, who was a party to that decision, was also a party a month later to the decision in *Kunji Amma* v. *Raman Menon* (2), in which (at p. 497) he laid down that "It is the matter in issue in the "suit that forms the essential test of *res judicata—Pahlwan* "*Singh* v. *Risal Singh* (3). The matter in issue in the present "suit, *viz.* the title of the *tarwad* or of the *devasom*, was one

(1) (1892) I. L. R., 15 Mad., 264. (2) (1891) I. L. R., 15 Mad., 494.
(3) (1881) I. L. R., 4 All., 55.

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"within the cognizance of the Subordinate Court, and it having "been decided in the former suit, we do not think that the "plaintiffs are entitled, by merely adding the Raja of Cochin as "a party defendant, to call upon the District Court to decide an "issue which has already been decided by a Court of concurrent "jurisdiction." Now this is precisely what we hold in the present appeal. It is the matter in issue by which we are to be guided in deciding whether a plea of *res judicata* should or should not prevail. The matter in issue here, namely, the liability to interest upon arrears of Government revenue having been decided in the former suit, we do not think that the defendant is entitled, by merely pleading that the fraction to which the matter in issue refers in the present suit is not the same fraction to which it referred in the previous suit, to call upon the Courts to decide an issue which has already been heard and determined by a Court of competent jurisdiction. Lastly, he referred as to the case of *Balkishan* v. *Kishan Lal* (1). As we understand that judgment, it is against the appellant. We should be prepared to hold that where the previous judgment negatives the liability, the main obligation itself, the defendant cannot re-agitate the same question of liability by saying that it refers to another portion of the property over which the whole liability, whatever its nature may be, is one and the same. It is always a serious matter to perpetuate a wrong decision, and we can quite understand our brother Banerji's reluctance to affirm the liability which in his view has been wrongly imposed by the Judge of Agra. But where the provisions of the law are so clear and emphatic as in section 13 of the Code of Civil Procedure, we find no option but to follow them. The question, moreover, arises whether it is not a more serious matter that opportunities should be given for protracted litigation than that a judgment apparently wrong should be affirmed. For these reasons we hold that the question of liability of the defendant to pay interest on arrears of land revenue is *res judicata*, and is a bar to the re-determination of that issue. The appeal is dismissed with costs.

Appeal dismissed.

(1) (1888) I. L. R., 11 All., 148.