1891

DWARKA NATH DASS v. BANKU BEHARI BOSE.

Chetti v. *Mutturamalinga Chetti* (1), it seems to have been assumed that if the section applied to immoveable property, as it was held to do, this construction of the section must be adopted and applied.

The case of *Bykant Nath Shaha* v. *Rajendro Narain Rai* (2) is, however, binding upon us; it has been followed in this Court; we agree with it; and we do not think it necessary to discuss in this case the reasons on which it is founded.

The appeal is dismissed with costs.

Appeal dismissed.

H. T. H.

Before Mr. Justice Pigot and Mr. Justice Gordon.

1890
August 5.

HURRY BEHARI BHAGAT AND OTHERS (PLAINTIFFS) *v.* PARGUN AHIR (DEFENDANT).*

Res judicata—Rent suit—Decree as to rent payable for former years—Rate of rent payable—Decree on admission of defendant.

The plaintiff, in a suit for rent which was contested, having failed to prove that the rent was payable at the rate claimed by him, the Court, in trying the issue "what is the amount of the jama," after considering the whole of the evidence and the circumstances of the case, held that the plaintiff had entirely failed to prove his allegation of the jama, and gave him a decree for the amount admitted by the defendant, which was less than that claimed by the plaintiff.

In a later suit the plaintiff sued the defendant, in respect of the same holding, for rent for a subsequent year, and he claimed at the same rate as he had claimed in his previous suit. It was contended on behalf of the defendant that the question as to the rate at which the rent was payable was *res judicata*, it not being alleged that there had been any agreement subsequent to the first suit by which the rate was altered.

Held, that the question as to the rent payable for the period covered by the first suit was *res judicata*; but that it did not follow that the decree in that suit operated as *res judicata*, and conclusively determined the rate of the rent payable for the year in respect of which the subsequent suit was brought. That depended on whether the previous decision was that the plaintiff should recover from the defendant the sum admitted by him to be due, or that the sum so admitted to be due was the proper amount of rent payable for the period in question.

Appeal from Appellate Decree No. 895 of 1890, against the decree of J. G. Charles, Esq., District Judge of Shahabad, dated the 11th June 1890, affirming the decree of M. Amir Ali Khan, Munsiff of Arrah, dated the 15th January 1890.

(1) I. L. R., 7 Mad., 47. (2) I. L. R., 12 Calc., 333.

1890

HURRY BEHARI BHAGAT v. PARGUN AHIR.

Held, that in this case the previous decision was to the latter effect, and that the question of the rate at which the rent was payable by the defendant was *res judicata*.

Punnoo Singh v. *Nirghin Singh* (1) and *Jeo Lal Singh* v. *Surfun* (2) referred to.

THIS was an appeal heard under the provisions of section 551 of the Code of Civil Procedure, and the only question raised was whether or not the finding and decree in a former suit between the same parties operated as *res judicata*.

The suit was brought for recovery of rent for the year 1296 F., and the parties were at issue as to the rate at which the rent was payable. The plaintiffs came into Court alleging that the rent had not been altered since the year 1293 F. It appeared that in a former suit for rent for the first instalment of 1294 F., and an 8-anna instalment of the year 1295 F., it was held by the Subordinate Judge, to whom the case went on appeal, that the plaintiffs had entirely failed to prove their allegation of the jama, and that they were therefore entitled only to a decree for the rent at the rate admitted by the defendant. In this suit the defendant admitted the rent to be due at the rate covered by that decree, and pleaded that the question as to the rate was *res judicata*. The Munsiff having held that this contention was correct, the plaintiffs appealed, contending that the question was not *res judicata*, and that they had proved the rate at which they claimed the rent.

Upon the first question, after referring to the nature of the previous suit, and stating that the first issue fixed by the Subordinate Judge in appeal was "what is the amount of the jama," the lower Appellate Court observed as follows:—"After discussing this issue in an elaborate judgment and reviewing the evidence on both sides, the Subordinate Judge came to the following finding on this issue:—'Considering the whole evidence and the circumstances of the case, I hold that the plaintiffs have entirely failed to prove their allegation of the jama. They are therefore entitled to the jama admitted by the defendant.'

"This finding on the question of jama is a most clear one, and having been upheld on special appeal to the High Court is *res*

(1) I. L. R., 7 Calc., 298.
(2) 11 C. L. R., 483.

1890

HURRY BEHARI BHAGAT v. PARGUN AHIR.

judicata. [Compare *Jeo Lal Singh* v. *Surfun* (1) and *Monmohinee Debee* v. *Binode Beharee Shaha* (2).] The appellants' pleader has relied upon the decision in *Punnoo Singh* v. *Nirghin Singh* (3), but in my opinion that case is clearly distinguishable from the present, as in that case the ruling of Garth, C.J., proceeded upon the fact that 'the District Judge professedly did not determine what was the proper rent due by the defendants,' while in the case now under consideration the Subordinate Judge most certainly did so. This most important distinction is pointed out by Garth, C.J., in *Jeo Lal Singh* v. *Surfun* (1). The learned Chief Justice adds that the Judge has as much right to act upon the admission of the defendant as upon the plaintiff's evidence, and as he found for the defendant, acting upon that admission, his finding was decisive and unobjectionable on the issue of rental. The learned Chief Justice has explained his views very clearly on this point, and I am not aware of any distinction whatever between findings on evidence and findings on the admission of one of the parties. The presumption is that the rental found in 1294 and 1295 continued in 1296, and in fact, far from alleging any alteration, the plaintiffs' own case is that the rental has continued since 1293 unchanged. Under all these circumstances, the question of rental seems to me to be *res judicata* between the parties, and, moreover, I think it would be grossly unjust to allow the plaintiffs to re-open in 1296 an issue authoritatively settled for 1295, and if such latitude were allowed to the plaintiffs in this suit, the defendant might fairly claim the same privilege to re-open the question of rental for subsequent years, if the decision in this case on the fresh evidence adduced were in favour of the plaintiffs."

The appeal having been accordingly dismissed, the plaintiffs now preferred this second appeal to the High Court, contending that the lower Courts were wrong in holding the question to be *res judicata*, and that the lower Appellate Court had misapprehended the effect of the rulings referred to by it and misconstrued the decision of the Subordinate Judge in the previous suit.

(1) 11 C. L. R., 483.
(2) 25 W. R., 10.
(3) I. L. R., 7 Calc., 298.

Baboo *Saligram Singh* appeared on behalf of the appellants.

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

In this appeal the appellants challenge the decision of the lower Appellate Court, treating as binding upon the plaintiffs the finding in a former suit as to the amount of rent payable for the properties in respect of the rent of which the suit is brought. The present suit is brought for the rent of the year 1296 and a rent decree for the year 1295, and the proceedings in the suit in which that is the decree have been put in, and the lower Appellate Court has held that the plaintiff is bound by that decree and is not entitled to recover more than the amount recovered under that decree. It is contended in appeal that the plaintiff is not bound by that decree under the principle of *res judicata*. We think he is to this extent: we think that he is bound by the rule of *res judicata* upon the question of what was the rent for the year 1295, and we think so after having had read to us the portion of the judgment in the former suit relating to the question then decided. We have been referred to the cases *Punnoo Singh* v. *Nirghin Singh* (1) and *Jeo Lal Singh* v. *Surfun* (2), and it is urged upon us that where a plaintiff claims as rent a particular sum, and it is held by the Court that he has failed to establish that to be due, and the Court upon an admission by the defendant gives a decree for a lesser sum, that cannot operate under the rule of *res judicata* as determining conclusively the due amount payable for the year, the rent of which is sued for. That proposition is too large. It may or may not be *res judicata* according to what the Court actually finds. It may be discovered from an examination of the proceedings in the suit that all that was determined in it was that the plaintiff should recover from the defendants, as rent for the period in question, the sum admitted by them to be due, or it may be that what was decided was that the sum admitted by the defendants was the proper amount of rent payable for the land in suit, for the year or years in question.

That may be ascertained from a common sense view of the judgment by seeing what was the issue decided: perhaps it would

(1) I. L. R., 7 Calc., 298.
(2) 11 C. L. R., 483.

1890

HURRY BEHARI BHAGAT v. PARGUN AHIR.

not be too much to hazard the opinion that, as a general rule in these cases, the amount found due, upon the failure of the plaintiff to prove his alleged jama, upon the admission of the defendants, was probably found due as the proper amount of jama payable. In the present case we so construe the decision in the former case, and we think that the decision of the lower Appellate Court was right, and that the plaintiff was bound by the former decision as to what was the rent for 1295. That being so, and it being admitted, as we understand the learned pleader, that no attempt was made to establish a subsequent agreement for a different rent, section 51 of the Bengal Tenancy Act applies, and the present rent for 1296 must be presumed to be the same as that for 1295. We therefore reject the appeals in this case.

Appeal rejected.

H. T. H.

PRIVY COUNCIL.

P.C. 1891 *December* 4, 10, 11, 14, 17, *and* 18. 1892 *March* 19.

RAJKUMAR ROY AND OTHERS (SOME OF THE DEFENDANTS) *v.* GOBIND CHUNDER ROY (PLAINTIFF) AND THE REMAINING DEFENDANTS.*

[On appeal from the High Court at Calcutta.]

Limitation—Act XV of 1877, *Sch. II, Arts.* 142, 144—*Boundaries, dispute as to—Ownership of land reclaimed from a bhil contested between proprietors of contiguous estates—Prior possession of land by one of two claimants—Presumption as to continuance of possession of land by original owner, limitation being pleaded by party in possession—Appellant, duty of—Burden of proof.*

In suits relating to disputed boundaries where the decision of the lower Court as to the ownership involves questions of the correctness of surveys, maps, recorded description, and other such evidence, the appellant should do more than show points requiring explanation. He should be prepared to show in what respect the decision has been wrong in regard to the evidence, and what other course would be right.

The question was as to the ownership of land reclaimed from a *bhil* within the confines of one or other of two adjoining revenue mehals, the one belonging to the plaintiff, the other to the defendants, and involved the identification of the land in suit with some that had been covered with

* *Present:* LORDS HOBHOUSE, MORRIS, and HANNEN, SIR R. COUCH, and LORD SHAND.