

## FULL BENCH.

Before Mr. Justice Macpherson, Officiating Chief Justice, Mr. Justice Jackson, Mr. Justice Pontifez, Mr. Justice Birch, and Mr. Justice Morris.

1875  
May 18 &  
June 26.

HURRI SUNKERMOOKERJEE (PLAINTIFF) v. MUKTARAM PATRO  
(DEFENDANT).\*

*Act VIII of 1859, s.2—Res Judicata—Suit for Arrears of Rent—Act X of 1859—Beng. Act VIII of 1869—Jurisdiction of Collector.*

*Held* (JACKSON, J., dissenting), that a judgment by a Collector, in a suit under Act X of 1859, declaring the plaintiff entitled to assess rent upon land alleged by the defendant to be lakhiraj, is not conclusive in a subsequent suit between the same parties for arrears of rent under Beng. Act VIII of 1869.

*Per* JACKSON, J.—A decision in a previous and similar suit upon an issue raised substantially in the same manner by parties in a Revenue Court is binding upon them as evidence in a subsequent suit, which, but for the passing of Beng. Act VIII of 1869, would also have been brought in a revenue Court.

THIS was a suit brought under Beng. Act VIII of 1869 to recover rent at an enhanced rate after notice. As to a portion of the land the tenant pleaded that it was rent-free. It appeared that a similar suit had previously been brought between the same parties in the Collector's Court whilst Act X of 1859 was in force, and the right of the plaintiff to assess rent on this portion of the land was then expressly declared, the declaration being affirmed on special appeal (801 of 1870) by the High Court. The rent, however, was not assessed, the High Court thinking that there were no sufficient materials for doing so. The Munsif accepted the declaration in the former suit as conclusive upon the question of the plaintiff's right to collect rent on this portion of the land, and gave the plaintiff a decree. The District Judge considered that this declaration was not binding, nor even evidence in the

\* Special Appeal, No. 1396 of 1874, from a decision of the Officiating Judge of West Burdwan, dated the first April 1874, affirming a decree of the Munsiff of Bacunda, dated the 17th December 1873.

present suit, and holding that there was no proof that this portion of the land had ever paid rent dismissed the whole suit. On special appeal by the plaintiff to the High Court, the question raised was whether the declaration as to the plaintiff's right in the former suit was binding in the present suit.

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The special appeal was heard by Markby and Mitter, JJ., who differed in opinion; the former being of opinion that it was not conclusive, and the latter referring to *Ooma Churn Dutt v. Beckwith* (1), considering that it was. That being a conflicting decision, the question was referred to a Full Bench. "Whether the judgment in Special Appeal 801 of 1870 is conclusive upon the parties in this suit that the landlord is entitled to recover rent in respect of the lands to which that decision relates?"

The following judgments were delivered in referring the question :—

MARKBY, J. (after stating the facts as above, continued) :— According to the decision of the Privy Council in *Nufferchunder Paul Chowdhry v. Poulson* (2), it was proper in the former suit to determine the right to enhance the rent, although for other reasons the suit failed: that is to say, assuming of course that the Court was competent in that case to make a binding declaration of right between the parties, in the same way as an ordinary Civil Court could do so. The question, therefore, is whether the Collector's Court could make such a binding declaration.

In the case of *Khagowlee Sing v. Hossein Bux Khan* (3), it appeared that, in March 1863, certain persons (whom I may call A and B) brought a suit against another person (whom I may call C) in the Collector's Court. They alleged he was occupier of a small portion of land under a potta and kabuliati. C denied the case set up by A and B: he said that a transaction with reference to this property between himself and A and B, which took place in 1843, was not an absolute sale, but only a conditional sale of the property to A and B, and he produced the

(1) 5 W. R., Act X Rul., 3. (2) 12 B. L. R., 53 (3) 7 B. L. R., 673.

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ikrarnama, and contended that, under a particular stipulation in it, he and another person who joined him in the transaction were entitled to hold 75 bigas rent-free. A and B denied the validity of the ikrarnama. The Collector, after taking the evidence, held that C had proved the ikrarnama, and dismissed the suit. The Zilla Judge on appeal also dismissed the suit, but upon the ground that A and B had not proved that C was a cultivator paying rent, and also upon the ground that their claim was barred by limitation. The Sudder Court in special appeal confirmed the Zilla Judge's decision, observing that the question whether the sale to A and B was absolute or conditional, did not arise in the case. Subsequently, C and others brought a suit against A and B to redeem the property, when the question of the validity of the ikrarnama was again raised. The question was whether the finding of the Collector on this point was conclusive. Upon this the Privy Council say that the Collector's finding that the ikrarnama was genuine, even if final, was " incidental ; " and this for two reasons : first, because the question before him was not the issue raised in the second suit ; and, secondly, because his decision was not that of a Court competent to adjudicate on a question of title. He had only a special jurisdiction to try summary suits for the recovery of rent, consequently the *eadem causa petendi* and a judgment of a Court of competent or concurrent jurisdiction were both wanting.

This is an exposition of the law by the highest authority, which is binding upon us.

I do not think the declaration in the former decree is excluded in the present case on the first of the grounds mentioned by the Privy Council. The former was a suit to recover rent at a higher rate than was paid before, after notice : so is the present suit. The question raised in both cases is the same, whether the land is liable to pay rent at all.

The only ground, therefore upon which the former decree can be excluded is the second of the grounds mentioned by the Privy Council, namely, that the Collector had only a special jurisdiction to try summary suits for rent, and was not competent to adjudicate (*i. e.*, finally determine) a question of title. This

appears to me to be a ground perfectly distinct and separate from the other, and the decision of the Privy Council being based upon both grounds, each *ratio decidendi* is binding upon us.

The question then is reduced to this:—Whether the question before the Collector in the former suit between these parties was a question of title which the Collector had not jurisdiction finally to decide. Upon this point it seems to me that the judgment of the Full Bench in *Chunder Coomer Mundul v. Nunnee Khanum* (1) is material. In that case one Backer Ali had brought a suit for possession against his landlord in the Collector's Court claiming to hold the land under a maurasi potta. The landlord denied the genuineness of the potta, and, upon an issue raised, the potta was found to be genuine, and Backer Ali got a decree, for possession. Subsequently, the landlord brought a suit against Backer Ali to get back the possession of the same lands. The decision of the Collector, which had been affirmed on appeal up to this Court, was held not to be conclusive. The late Chief Justice, sir R. Couch, in delivering Judgment, says:—"The deputy Collector had no jurisdiction to give effect to the potta as a permanent title. He could only use it as showing that at that time the plaintiff had a right to the possession of the land." Phear, J., says:—"Now it must be observed at the outset that the Collector's Court was a Court of limited jurisdiction, and that it had no power to determine between the parties a question of right to the land larger than the bare right to possession. It so happened that the plaintiff's right to possession, as he alleged it, was clothed with maurasi incidents; but the Collector's Court had not authority to determine whether such incidents existed or not: and indeed it is for this very reason that the Munduls are undoubtedly entitled, notwithstanding the Collector's decision against them in the former suit, to come in to the Civil Court to have the question as to the maurasi right tried in the present suit. If they are here to be successfully met with the objection that the Collector has already finally determined the question of the validity of the potta, then it is obvious the result is that the

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(1) 11 B. L. R., 434.

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Collector has indirectly, if not directly, determined a question between the parties which was beyond his powers, and has in effect ousted the Court of superior jurisdiction; for the latter will have nothing left to it, but to, in effect, register the Collector's decision." My own judgment in that case is based entirely upon the decision of the Privy Council in the case above cited. Ainslie, J., concurred with the Chief Justice, and Jackson, J., expressed no decided opinion. Subsequently, when speaking of that case, Jackson and Ainslie, JJ., expressed their opinion that the judgments of all the Judges proceeded entirely upon the limited and exclusive character of the jurisdiction of the Revenue Court (1). Other considerations are certainly adverted to by the Chief Justice and by Phear, J., but the passages I have quoted show that both those learned Judges consider that the question was one upon which the Collector had not power finally to adjudicate. The opinion of Phear and Ainslie, JJ., is further illustrated by the case of *Meer Babur Ali v. Shaikh Dowlut Ali* (2). There a suit had been

(1) In *Mohima Chunder Mozoomdar v. Asradha Dassia*, post, p. 251.

(2) Before Mr. Justice Phear and Mr. Justice Ainslie.

The 3rd March 1873.

MEER BABUR ALI AND] ANOTHER  
(PLAINTIFFS) v. SHAIKH DOWLUT  
ALI AND OTHERS (DEFENDANTS).\*

Act VIII of 1859, s. 2—*Res Judicata*  
—Suit for Rent—Jurisdiction of  
Collector.

In a suit for rent under Act X of 1859 the Collector has no jurisdiction to decide a question of mukarrari title otherwise than so far as it may be incidental to the determination of the amount of rent, if any, due; and his decision on such a question is therefore not binding in a subsequent suit to establish the mukarrari right.

This was a suit to establish a mukarrari tenure. The plaintiff in this case was defendant in a previous suit for arrears of rent brought against him before the Collector. He there stated in answer that he had a mukarrari tenure of the land. The Collector disbelieved his story and gave a decree against him. He then brought the present suit and sought an adjudication of his mukarrari rights. The defendant objected that the question of mukarrari had already been determined by the Collector in the previous suit, and that the plaintiff could not ask to have the same question tried again. The Munsif made a decree in favor of the plaintiff. On appeal the Judge reversed the Munsif's judgment and decided against the plaintiff on

\* Special Appeal, No. 288 of 1872, against a decree of the Judge of Zilla Tirhoot, dated the 29th June 1871, reversing a decree of the Munsif of Muzzaffarpore, dated the 22nd February 1871.