

ous rulings of this Court have been cited in support of this objection: and it appears to us that the ruling in *Enayetoolah v. Shaikh Meajan* (1) is on all fours with the present case. Therefore, following that ruling, we hold that the preliminary objection must prevail.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Markby and Mr. Justice Prinsep.

GOPEE MOHUN MOZOOMDAR (PLAINTIFF) v. HILLS (DEFENDANT).*

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March 21.

Res judicata — Suit for Rent.

The plaintiff sued the defendant in the year 1873 for arrears of rent at a certain rate per biga. The defendant pleaded that the land had been held by him at an uniform rent for more than twenty years, and this contention was supported by the Court. The plaintiff then gave the defendant notice of enhancement, and sued to recover rent for two years at the rate stated by the defendant, and for one year at an increased rate. To this suit the defendant raised substantially the same defence. *Held*, that the decision in the previous suit was not a bar to the present suit, there being two questions for consideration,—one, whether there had been an uniform payment of rent for twenty years, and, if so, whether the presumption, which the law directs to be drawn from an uniform payment of rent for twenty years, had been rebutted by the plaintiff; neither of which questions were concluded by the previous decision.

THE plaintiff in the year 1873 sued the defendant for arrears of rent due on a certain jote, alleging that it was an ootbundee tenure, and that the defendant was liable to pay rent at the rate of Re. 1 for every biga found by measurement annually. The defendant, among other things, pleaded that the jote was a kaimee tenure, and held by him at an uniform rent of Rs. 16 for more than twenty years, and this contention was supported by the Court. The plaintiff then gave the defendant notice of enhancement for increase of area found by measurement and holding below the prevailing rates, and now sued to recover rent for two years at the rate of Rs. 16, and for one year at an

* Special Appeal, No 1915 of 1877, against the decree of A. J. R. Bainbridge, Esq., Judge of Zilla Moorshedabad, dated the 5th of June 1877, affirming the decree of Baboo Bepro Dass Chatterjee, Munsif of Azgemunge, dated the 15th March 1877.

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increased rate upon a larger area. The defendant made substantially the same defence as in the previous suit. The Court of first instance decided that the judgment in the first suit was no bar to the institution of the second suit, and held on the facts that the plaintiff had failed to establish a right to enhancement of rent for the year claimed, but gave the plaintiff a decree for arrears of rent for the three years at the rate of rent which, according to the admission of the defendant, the land had hitherto been liable. The lower Appellate Court reversed the decision, on the ground that the present suit was *res judicata*. The plaintiff appealed to the High Court.

Baboo *Gooroodas Banerjee* for the appellant.

Baboo *Bipro Das Mookerjee* for the respondent.

The judgment of the Court was delivered by

MARKBY, J.—We think that there must be a remand in this case. There were two questions for consideration: one was whether there had been an uniform payment of rent for twenty years, and, if so, whether the presumption which the law directs to be drawn from an uniform payment of rent for twenty years had been rebutted by the plaintiff. The previous decision is not conclusive upon either of these two points. One of these questions was not and could not be gone into in the previous suit. It has nothing whatever to do with the former case whether the landlord received different rates of rent at some earlier period. No doubt the Court in that former case did express an opinion that, for twenty years, rent had been paid at an uniform rate; but even that was not a question in issue in the former suit, and in such a manner as to make the decision in the former suit conclusive upon that point. The District Judge will have to consider the case upon the evidence on the record, and determine whether or not he agrees with the Munsif, who has found in favor of the defendant, that this is a tenure the rent of which cannot be enhanced.

Case remanded.