APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Holmwood.

1907
May 22.

GADADHAR BOSE
v.
RADHA CHARAN PODDAR.*

Res judicata—Representative in interest—Purchaser at a sale for arrears of revenue—Persons claiming under paramount title.

The purchaser of an entire estate at a sale for arrears of revenue does not claim title through the defaulting proprietor but claims under a paramount title, and a decree against the latter cannot constitute *res judicata* as against him.

Moonshee Buzlool Rahman v. *Pran Dhun Dutt*(1) and *Radha Gobind Koer* v. *Rakhal Das Mukherji*(2) followed.

Boykuntnath Chatterjee v. *Ameeroonissa Khatoon*(3) and *Tara Pershad Mitter* v. *Ram Nursingh Mitter*(4) referred to.

SECOND APPEAL by Gadadhar Bose and others, the defendants Nos. 1 to 7 and 12 to 24.

The suit out of which this appeal arose was brought by the plaintiff Radha Charan Poddar for recovery of possession of certain lands on a declaration that they appertained to his auction purchased mehal No. 6047. The material allegations in the plaint were that the plaintiff had purchased the entire taluk No. 6047 at a sale for arrears of revenue on the 26th of March 1901; that the disputed lands were demarcated in the *thak* survey as appertaining to the said estate and that the defendants in collusion with one another kept him out of possession from the said lands.

* Appeal from Appellate Decree, No. 1829 of 1905, from the decree of S. B. Chowdhury, Additional District Judge of Dacca, dated June 29, 1905, reversing the decree of Woopendra Chandra Ghose, Subordinate Judge of Dacca, dated March 29, 1904.

(1) (1867) 8 W. R. 222.
(2) (1885) I. L. R. 12 Calc. 82.
(3) (1865) 2 W. R. 191.
(4) (1870) 14 W. R. 283.

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The material allegations of the defendants were that the lands in suit appertained to taluk No. 7647 and not to taluk No. 6047; that the *thak* measurement relied on by the plaintiff had been cancelled and set aside by the Civil Court in a civil suit brought by the *maliks* of taluk No. 7647 against the *maliks* of taluk No. 6047, and that the possession of the said lands by the former remained confirmed as before; that the then *maliks* of taluk No. 6047 and the Government having been parties to the said suit, plaintiff's claim was barred by *res judicata*.

The Subordinate Judge who tried the suit found on the evidence that the lands in dispute appertained to the defendants' taluk, and dismissed the suit.

On appeal by the plaintiff, the Additional District Judge held that the fact that the lands had been *thakked* as appertaining to the plaintiff's taluk was *primâ facie* evidence that they formed part of that taluk; that the decree relied on by the defendants in suit No. 90 of 1865 brought by them could not be held to be *res judicata* against the plaintiff, and that it was not proved that the former suit related to the lands in dispute. He accordingly allowed the appeal and decreed the plaintiff's claim.

The defendants appealed to the High Court.

Dr. Rashbehary Ghose (*Babu Harendra Narayan Mitter* with him), for the appellants. The cases no doubt show that a decree is not *res judicata* against a purchaser at a revenue sale: *Radha Gobind Koer* v. *Rakhal Das Mukherji*(1) and *Moonshee Buzlool Rahman* v. *Pran Dhun Dutt*(2); but in the former case there was no judgment but merely an award; the other case holds that because the purchaser at a revenue sale is not bound by the act or laches of the previous owner, he would not also be bound by a judgment against the latter; that reasoning is not quite conclusive; judged by that test a reversioner under the Hindu law, who claims not under the widow but under a paramount title, and is not barred by limitation which would bar the widow, would not be bound by a judgment obtained against the widow. The purchaser of a putni taluk at a sale under the Putni Regulation

(1) (1885) I. L. R. 12 Calc. 82, 90. (2) (1867) 8 W. R. 222.

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claims by a title paramount to that of the defaulting putnidar in the same way as a purchaser at a revenue sale may be said to claim by a title paramount to that of the defaulting proprietor; but *Tara Pershad Mitter* v. *Ram Nursingh Mitter*(1) shows that a purchaser at a putni sale is not entitled to ignore a judgment obtained against the defaulting putnidar; the same principle would apply to the case of a purchaser of an entire estate at a revenue sale: see *Boykunt Nath Chatterjee* v. *Ameeroonissa Khatoon*(2). The consequence otherwise would be disastrous; there would be no finality to any litigation regarding land if it happened to be within a revenue-paying estate; any question, for instance, as to the liability of a tenant on the estate to enhancement of rent, may be re-agitated as often as the estate may be sold for arrears of revenue. In the present case the plaintiff's claim is based on the *thak;* but that *thak* no longer exists as it was ordered to be amended by the decree of a competent Civil Court.

Mr. Hill (*Babu Lal Mohan Dass* with him), for the respondent. The authorities are clear on the question. An estate is security for the public revenue, and if neighbouring proprietors could whittle away an estate by litigation that security would be seriously impaired. The position of a purchaser at a revenue sale is not therefore analogous to that of a purchaser at a rent sale; a Hindu widow represents the entire estate, but a proprietor for the time being does not represent that part of the estate which is the property of the Government, namely, the revenue and the security. The *thak* has never in fact been amended.

Babu Harendra Narayan Mitter, in reply.

MACLEAN C.J. The real question in this suit is a question of boundaries. The question was whether the land in dispute appertained to the plaintiff's mehal or to the defendants' *jaigir* taluk. The learned Subordinate Judge dismissed the suit, and the District Judge has decreed it. The question of boundaries is

(1) (1870) 14 W. R. 283. (2) (1865) 2 W R. 191.

generally a question of fact. But it is urged for the appellants, the defendants who have appealed, that in arriving at his conclusion, the learned Judge has fallen into certain errors of law. If they can establish that, there may be grounds for setting aside the decree.

It appears that there was a decree in a previous suit, No. 90 of 1865 of the Munsif of Naraingunge, in which it is said that a certain *thak* map, to which I shall have occasion to refer more minutely in a moment, was directed to be amended, I ought to have stated that the plaintiff is an auction purchaser at a sale for arrears of revenue of taluk No. 6047 held on the 26th of March 1901, and the object of the suit is to recover possession of the land which he so purchased. The respondents contend that that decree is not binding upon the plaintiff. He was no party to the suit nor was his predecessor in title a party to the suit. No doubt, the defaulting proprietor, who failed to pay the revenue, was a party to the suit: but the plaintiff does not claim title through him but claims under a paramount title. The contention of the appellants is that that decree must be treated as *res judicata* against the plaintiff, but I do not think that argument can properly prevail; neither the plaintiff nor his predecessor in title was a party to that suit: it cannot therefore constitute *res judicata* as against the plaintiff.

If authority be required, I may refer to *Moonshee Buzlool Rahman* v. *Pran Dhun Dutt*(1) and *Radha Gobind Koer* v. *Rakhal Das Mukherji*(2). Those cases are authorities for the proposition that the decree in the previous suit is not binding upon the plaintiff. The case in 8 Weekly Reporter has stood the test of forty years, and that in 12 Calcutta of twenty years. No doubt there is an *obiter dictum* in the case of *Boykunt Nath Chatterjee* v. *Ameeroonissa Khatoon*(3) and in the case of *Tara Pershad Mitter* v. *Ram Nursingh Mitter*(4) which may be taken as supporting a contrary view; but it is worthy of comment that one of the learned Judges who was a party to the decision in 14 W. R. p. 283 was a party to the previous decision in 8 Weekly Reporter 222.

(1) (1867) 8 W. R. 222.
(2) (1885) I. L. R. 12 Calc. 82, 90.
(3) (1865) 2 W. R. 191.
(4) (1870) 14 W. R. 283.

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For these reasons, the earlier decree is not binding upon the plaintiff.

The next point is that the lower Appellate Court in coming to its decision relied almost exclusively upon the *thak* map of 1858. The Subordinate Judge says that it is admitted that the land in suit was surveyed by the *thak* measurement in 1858 as appertaining to the plaintiff's taluk, and, the revenue survey which followed in 1859 is also to that effect. But it is now urged that the lower Appellate Court was not justified in relying, as it did, upon the *thak* map, because in the previous suit No. 90 of 1865 there was a direction that the *thak* map should be amended. That was in 1865. The judgment now appealed against was given in 1905, forty years afterwards, and in the meantime the map was not amended. The only map which was before the lower Appellate Court was the map in its original form. The Court could only deal with the map as it found it. It seems to me, therefore, that the second point fails.

Then we come to the third point. The lower Appellate Court finds that "the presumption, as is admitted to have been settled by the rulings, is that the land has formed part of this taluk from the time of the Permanent Settlement." It has not been challenged, that there is that presumption. But it is urged by the appellants that that presumption has been rebutted by reason of the fact that the defendants have been in possession of the land in dispute for a large number of years. But there is no finding to that effect. On the contrary, the finding is that the lands of which the defendants were in possession are not identified with the lands now in dispute. This disposes of that point.

There is one other point. It is urged that the Judge erred in saying that the decree in suit No. 90 of 1865 was 'no evidence against the plaintiff.' I think he only meant by that it was no evidence in the sense in which it was desired to be used in evidence. Decrees not *inter partes* may be used as evidence for certain purposes; and, I do not think that the learned Judge by this observation meant to contravene any such ruling.

I may point out that the final conclusion of the learned Judge is this: "I hold therefore that the defendants have not been able to prove that the previous suit related to the land in suit in this

case, or, secondly, that this land, 180 bighas, is or can possibly be a part of the 39 bighas which they got settlement of, and that decree was a right one."

On these grounds, I think the appeal fails and must be dismissed with costs.

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HOLMWOOD J. I agree.

Appeal dismissed.

S. CH. B.