

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

1907  
March 12.

DIRGAJ DEO  
v.  
KALI CHARAN SINGH.\*

*Res judicata—Adjudications—Decision of Court under Land Acquisition Act (I of 1894)—Apportionment of Compensation—Property held under the same title.*

A decision of the Court with respect to the apportionment of compensation money under the Land Acquisition Act should not be treated as *res judicata* affecting other parts of the claimant's property held under the same title.

*Nobodeep Chunder Chowdhry v. Brojendro Lall Roy*(1) and *Mahadevi v. Neelamani*(2) referred to.

*Ram Chunder Singh v. Madho Kumari*(3) distinguished.

APPLICATION for leave to appeal to His Majesty in Council.

The applicant, Rai Bhaia Dirgaj Deo Bahadur, stated in his petition that mauza Garhwa appertained to an estate of which he was the proprietor, the estate being impartible and governed by the rule of primogeniture, and that the opposite party were *khorposhdars* under him; that the *khorposh* grants were mere life grants resumable on the death of each grantee, and that they were not transferable except with the consent of the proprietor of the estate. He further stated that some lands in mauza Garhwa were acquired under the provisions of the Land Acquisition Act, that the Collector having awarded the entire amount of the compensation money, being Rs. 1,059-1-3, to the opposite party there was a reference to the Court under section 18 of the Land Acquisition Act; that the Court confirmed the award made by the Collector, and this decision was modified by the High Court on appeal when it was held that mauza Garhwa with 43 other villages were held by the opposite party under *khorposh* grants which gave them an alienable and a heritable estate resumable only on failure of descendants in the male line, and only a

\* Applications for leave to appeal to His Majesty in Council, Nos. 98 to 107 of 1906.

(1) (1881) I. L. R. 7 Calc. 406, 409 (2) (1896) I. L. R. 20 Mad. 269.

(3) (1885) I. L. R. 12 Calc. 484.

nominal sum was awarded to him out of the compensation money. He stated that the value of the entire mauza Garhwa was Rs. 1,12,194, and he submitted that the decision of the High Court directly affected his title to all the villages in which the lands acquired were situate the value of which was over 10 lakhs, and indirectly it affected his title to all the 43 villages. He prayed for a certificate that the case was fit for appeal to His Majesty in Council.

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*Mr. Hill (Babu Mahendra Nath Roy and Babu Sarat Chandra Basak with him), for the petitioner, contended that the High Court had adjudicated on the question of title and held that the opposite party had a permanent heritable and alienable title in all the villages resumable only on failure of male heirs. The decision of the High Court has affected a question of title relating to property worth 10 lakhs of rupees. That decision would be res judicata between the parties hereafter: Ram Chunder Singh v. Madho Kumari(1).*

*Dr. Rash Behary Ghose (Babu Golap Chandra Sarkar and Babu Surendra Nath Guha with him), for the opposite party. The decision of the Court relates only to the apportionment of the compensation money awarded; the observations on the question of the title of the parties to the 43 villages cannot operate as res judicata. The decision relied upon as res judicata in Ram Chunder Singh v. Madho Kumari(1) was not given in a proceeding under the Land Acquisition Act, but in a separate suit created in the ordinary Civil Court: see Ram Chunder Singh v. Rajah Mahomed Jowhirusuma Khan(2). The jurisdiction of the ordinary Civil Court in the exercise of that jurisdiction cannot be treated as res judicata in a subsequent suit in the ordinary Civil Courts: Nobodeep Chunder Chowdhry v. Brojendra Lall Roy(3); Mahadevi v. Neelumani(4).*

*Mr. Hill, in reply, contended that the decision in Ram Chunder Singh v. Madho Kumari(1) must be taken as res judicata and should not be overruled by the decision in Ram Chunder Singh v. Rajah Mahomed Jowhirusuma Khan(2). The jurisdiction of the ordinary Civil Court in the exercise of that jurisdiction cannot be treated as res judicata in a subsequent suit in the ordinary Civil Courts: Nobodeep Chunder Chowdhry v. Brojendra Lall Roy(3); Mahadevi v. Neelumani(4).*

(1) (1885) I. L. R. 12 Calc.

(3) (1881) I. L. R. 7 Calc. 41

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(2) (1875) 23 W. R. 376.

(4) (1896) I. L. R. 20 Mnd. 269.

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*Chunder Singh v. Madho Kumari*(1). The case of *Mahadevi v. Neelamani*(2) does not decide the point; there is only a reporter's note to that effect.

MACLEAN C.J. This is an application for a certificate for leave to appeal to His Majesty in Council. The dispute arises in certain proceedings under the Land Acquisition Act, and there are in all 10 cases, separate amounts being awarded in each case. The aggregate amount awarded is well under Rs. 10,000. The value then of the subject matter of the suit in the Court of first instance is under Rs. 10,000, and the value on appeal to His Majesty in Council is also under that sum. The decree sought to be appealed against is one of affirmance.

In these circumstances a certificate cannot *prima facie* be properly granted, having regard to section 596 of the Code of Civil Procedure. But it is contended that the decree involves indirectly a question respecting property over Rs. 10,000 in value. The decree, however, only directly dealt with the question of apportionment of the compensation money, amounting to about Rs. 3,660. The decree only dealt with the land taken in one mauza, Garhwah. The Subordinate Judge upheld the finding of the Collector, and this Court affirmed the Subordinate Judge.

It is now urged that this decision involved the question of title to 43 mauzas, the aggregate value of which is over 10 lakhs of rupees, and that the decision amounts to *res judicata* upon this question. But the Court was only deciding how the compensation money, far below Rs. 10,000 in value, was to be apportioned and any reference in the judgment to the 43 mauzas was incidental only. The question of title to these 43 mauzas does not appear to have been put in issue and tried out. The necessary parties were probably not before the Collector, nor would he have had jurisdiction to try it. I adopt the view stated by Pontifex, J., in *Nobodeep Chunder Chowdhry v. Brijendra Lal Roy*(3), that a decision of the Court with respect to the apportionment of compensation money under the Land Acquisition

(1) (1855) I. L. R. 12 Calc. 484. (2) (1896) I. L. R. 20 Mad. 269.

(3) (1881) I. L. R. 7 Calc. 406, 409.

Act should not be treated as *res judicata* affecting other parts of the claimant's property held under the same title. The same view was taken in *Mahadevi v. Neelamani*(1). In the case of *Ram Chunder Singh v. Madho Kumari*(2) it looks from the report as if the previous decision, which was treated as *res judicata*, was pronounced, not in a proceeding under the Land Acquisition Act, but in an independent suit to obtain the Rs. 15,125 odd compensation money which had been deposited in the Government Treasury, and that in that suit the question of title was directly and substantially in issue between the parties. We do not think that the present decree, against which it is sought to appeal to the Privy Council, and which deals only with the apportionment of certain compensation money, can be said within the meaning of sec. 596 to involve indirectly a question as to the title to the 43 mauzas and to be *res judicata* as regards that title, which is the proposition for which the petitioner contends. It is always open to their Lordships of the Judicial Committee to grant special leave to appeal, if they think the case a proper one for such leave being granted.

We dismiss this application with costs. This order will also govern applications for leave to appeal to His Majesty in Council, Nos. 99 to 108, which are also dismissed.

*Leave refused.*

S. CH. B.

(1) (1896) I. L. R. 20 Mad. 269.

(2) (1885) I. L. R. 12 Calc. 484.

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