

PATNA HIGH COURT

Dalip Narain Singh

Vs

Deokinadan Prasad Singh

(Wort, J.)

05.05.1939

JUDGMENT

Wort, J.

1. This seems to be a reasonably clear case. The plaintiff-respondent in the action claimed a declaration against two persons (one of them being defendant second party, the appellant before us) of his title to plot No. 1034 under Khata No. 422. The suit has been decreed against both defendants. The question which arises is whether as against the plaintiff and in favour of defendant 1 the matter is res judicata. The facts shortly are these. The plaintiff brought a previous suit against the defendant first party claiming rent, and it appears that the issues framed in that suit were first, what was the jama, and secondly, whether the plea of payment had been established. I am using my own words and not the actual words of the issues as framed by the learned Judge. That suit was dismissed, and it is contended that it was dismissed on the ground that the plaintiff had failed to establish his title to the land which I have mentioned. It seems to me that the solution of the problem is arrived at on one very simple ground.

2. The contention of Mr. Mahabir Prasad is that as the question of title was decided in the previous suit, it was concluded at least in favour of defendant first party who was stated there to be tenant, and it was faintly contended that the matter was also decided in favour of defendant second party, a person also claiming title to the property. That is an impossible argument; the second party defendant was not a party to the previous suit, and therefore it necessarily follows that the plaintiff could agitate the question of title as against him (the defendant second party).

3. With regard to defendant first party the answer is this: the question which was decided in the previous suit, as I have indicated by stating the issues settled in that suit, was the question purely between landlord and tenant. It may very well be that in order to decide whether relationship of landlord and tenant existed, the matter was disposed of on the footing of status: that is to say, that the plaintiff attempted to establish that he was the proprietor of the land and that he being the proprietor of the land, the defendant (being on the land) was necessarily his tenant: I say possibly

it was decided on the footing of status and not ex contract, but all the same it was abundantly clear that the question of title was only raised incidentally, and, if raised incidentally only, it does not preclude the plaintiff from agitating the question in an action both against defendant first party and defendant second party.

4. There is one other point which is raised, and that is, that the plaintiff was not entitled to the relief by way of injunction. Section 54, Specific Relief Act, provides for cases in which a perpetual injunction can be granted. After stating in Clauses (a), (b), (c) and (d) the circumstances under which such an injunction can be granted, Clause (e) provides "where the injunction is necessary to prevent a multiplicity of judicial proceedings."

5. The present seems to me to be a case coming within that clause, and therefore the plaintiff was entitled to re-strain the defendant second party from collecting rent from defendant first party and to restrain the defendant first party from paying rent to defendant second party. If he was not entitled to that, he would be obliged to bring proceedings against one or other of the parties either for rent as against defendant first party or as against defendant second party if he persisted in collecting rent from defendant first party as money had and received to the plaintiff's use.

6. In those circumstances, the decision of the learned Subordinate Judge is right; it must be affirmed and the appeal dismissed with costs.

Fazl Ali J.

7. I agree.

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