

Calcutta High Court

Mr. K.S. Bonnerjee vs Raj Chandra Dutt on 28 February, 1910

Equivalent citations: 5 Ind Cas 577

Author: L Jenkins

Bench: L Jenkins, Doss

JUDGMENT Lawrence Jenkins, C.J.

1. This case comes before as by way of second appeal, and it arises out of a suit which has the appearance of an inter-pleader proceeding. The plaintiff is the tenant of the lands to which the suit relates and the defendants may be divided into two groups. On the one side being ranged defendants Nos. 1, 2 and 8 whom I will for brevity call the Shavabazar party, and on, the other side, defendants Nos. 3 to 7, whom I will describe for brevity as the Chowdhary party. The plaintiff's grievance is that having, as he says, passed two qabuliabs, one in favour of the Shavabazar party, and the other in favour of the Chowdhary party, he finds himself in the predicament of being sued on both. This he considers gave him title to come to the Court and he has brought this suit praying "that the Court may be pleased to declare which defendant has what right in which of the disputed lands, and in what right the plaintiff holds which of the said lands under whom and for what amount of rent the plaintiff is liable to which defendant) for which land, and to declare that one of the two parties claiming the rent of the said lands is not entitled to the same", a somewhat comprehensive and complicated prayer for an interpleader. There are further prayers which, may be regarded as the sequel of that which I have read. The Munsif before whom the case came in the first instance dismissed the suit as not being maintainable. His decree was reversed on appeal by the Subordinate Judge and a remand was directed. Unfortunately the present appellants did not at that time prefer an appeal and so the case went back to the Munsif. There was an investigation before him resulting in a decree of which defendant No. 1 as the mouth piece of the Shavabazar party complains. This decree was on appeal affirmed by the Subordinate Judge, and it is from that decree of affirmation that the present second appeal is preferred.

2. Two points only are raised on this appeal first, it is said that the Courts below should have held that the suit was barred by the provisions of Section 474 of the Civil Procedure Code of 1882, and should have dismissed the suit; and secondly, that the Courts below should have held that the plaintiff's suit was barred by the principle of res judicata. The plaintiff endeavours to support the decree in his favour by reference to Section 474 of the Civil Procedure Code, and he in effect concedes that unless he can establish to our satisfaction that this suit is sanctioned by Section 474, Civil Procedure Code, it is misconceived. Section 474 is only one of several contained in Chapter XXXIII, which lays down the law as to inter-pleader. Section 470 provides that-"when two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stake-holder and who is ready to render it to the right owner, such stake-holder may institute a suit of inter-pleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself: Provided that if any suit is pending in which the rights of all parties can properly be decided, the stake-holder shall not institute a suit of inter-pleader." Then Section 471 lays down what are the requisites of a plaint in such a suit. It provides that the plaint must state (a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder; (b)

the claims made by the defendants severally; and (c) that there is no collusion between the plaintiff and any of the defendants." Then it is provided in Section 472 that "when the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit." The prayer of this suit seeks a declaration as to the title to land, and if this land is to be regarded as the property that was in dispute, I fail to see how the plaintiff can describe himself as a mere stake-holder of the property, and indeed in view of that obstacle in his way, the learned pleader for the plaintiff has, in the course of his argument before us, urged that the inter-pleader relates to the rent payable under the qabuliat. But there again we are confronted with the difficulty that there are two qabuliats and not one qabuliat, and the amount secured by each is different from that payable under the other, so that I fail to see how it can be said that we have the predicament of two or more persons claiming adversely to one another the same payment or money; and, without elaborating the matter further it appears to me that the case manifestly does not come within the positive provisions of Chapter XXXIII, and that Section 474 is clear in its terms against the plaintiff. On the facts placed before us it is impossible to hold that the rival parties, when their positions in relation to these claims are precisely denned, claim the one through the other. If the plaintiff finds himself harassed in the way he describes it may be that he can take advantage of the protective procedure prescribed by Section 149 of the Bengal Tenancy Act, though as to this I can express no definite opinion on the present materials. But be this as it may, the suit which he has brought is not properly maintainable. It has been urged that having regard to the provisions of Section 578 of the Civil Procedure Code of 1882, no advantage can be taken against him of that fact, having regard to the course this case has taken. I cannot agree with that view of the section, or of the case that the plaintiff has cited to us as the most potent in his favour, that is to say, the decision in *Mohesh Chandra Dass v. Jamiruddin Mollah* 28 C. 324 : 5 C.W.N. 509. There is nothing in that case nor, in my opinion, is there anything in the section which sanctions the view that the appellant has lost his right of appeal to the High Court after remand.

3. The result then is that, in my opinion, the appeal must be allowed and the suit must be dismissed.
4. The appellant will get his costs of this appeal, and also the costs throughout, other than those subsequent to the remand.

Doss, J.

5. I agree.