

(2010) 11 JH CK 0039
In the Jharkhand High Court
Case No : S A No. 126 of 2007

Bajnath Sao @ Bajnath Shaw and Another	APPELLANT
Vs	
Pradip Kumar Khaitan and Others	RESPONDENT

Date of Decision : 04-11-2010

Acts Referred:

Citation : (2011) 2 JCR 143

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—This is the Plaintiffs' second appeal against the judgment and decree of affirmance passed by learned lower Appellate Court in Title Appeal No. 150/05.

2. The Plaintiffs had filed suit before learned Sub-ordinate Judge, Dhanbad praying for a decree for declaration of title and confirmation of possession. He had also prayed for a decree for permanent injunction against the Defendants. The suit land appertains to CS Plot No. 1525 under khata No. 136 of mouza-Hirapur, District-Dhanbad.

3. The Plaintiffs' case was that the suit land was the khatiani land of Jharia Raj Estate and the ex-landlord had made several settlements and set up the tenants. An area of 5 katha of the suit land was settled in the name of the original Plaintiff Kalwa Devi, who died during the pendency of the suit. Since thereafter, the Plaintiffs had been coming in possession of the suit land on payment of rent to the ex-landlord and subsequently to the State Government. The Plaintiffs had got valid right and title over the suit land. It was further stated that the Defendants had illegally and falsely claimed their right and title over the suit land on the basis of the settlement. The Plaintiffs claimed that the Defendants had obtained a decree in their favour in Title Suit No. 121/258 of 1960-62 and the Defendants are trying to dispossess the Plaintiffs on the

strength of the said decree in Execution Case No. 98/1973.

4. The Defendants contested the suit stating, inter alia, that the present suit has been filed only to frustrate the decree passed in Title Suit No. 121/1960-63 which was contested by the Plaintiffs husband. The decree passed in the trial Court was confirmed up to the second Appellate Court in SA No. 697/1966. The Defendants' right and title over the suit land was declared after thorough consideration of the settlement of the Plaintiffs and other documentary and oral evidences adduced by the parties in the said suit. The Plaintiffs have sought re-opening of the same issue which was finally decided in the said title suit and confirmed up to the High Court in second appeal.

5. Learned trial Court after thorough discussion and consideration of the facts, evidences and materials on record made to the finding that the suit was barred by the principles of res judicata. It was already decided by the Civil Court of competent jurisdiction in TS No. 121/1960 that the Plaintiffs have got no right, title and interest over the suit property by virtue of the settlement made by the ex-landlord in the year 1944 (Ext.3). Learned trial Court held that the Plaintiffs failed to prove any valid cause of action for the suit and that the suit is not maintainable. Learned trial Court, thus, dismissed the Plaintiffs' suit.

6. The Plaintiffs then preferred appeal before the District Judge, Dhanbad being Title Appeal No. 150/05. The said appeal was finally heard and decided by learned 6th Additional District Judge. Dhanbad.

7. Learned lower Appellate Court after elaborate discussion of the facts and evidences on record, independently came to the finding that the Plaintiffs' suit was not maintainable and the same was barred by the principles of res judicata, as the right, title of the Defendants-Plaintiffs over the suit property was already decided and decreed in Title Suit No. 121/1960. The decree of the trial Court was confirmed up to the second Appellate Court. Learned lower Appellate Court further held that the Plaintiffs have not been able to prove their right, title over the suit land and the Plaintiffs are not entitled to any relief. Learned lower Appellate Court, thus, dismissed the appeal by the impugned judgment.

8. Mr. Rohit Roy, learned Counsel appearing on behalf of the Appellants, submitted that learned trial Court as well as learned lower Appellate Court has not properly appreciated the evidences on record and has erroneously applied the principles of res judicata in dismissing the claim of the Plaintiffs-Appellants. Learned Counsel submitted that in the earlier suit though the same land was involved, the area of the land was different. In the instant suit the area of the land was more than the subject matter of the earlier suit. The principle of res judicata, even if are applicable, cannot be stretched to the extent of an area, which was not involved in the earlier suit.

9. Mr. Prashant Kumar Singh, learned Counsel appearing on behalf of the Respondents, on the other hand, submitted that in order to apply the principles of res judicata, the area is not an important consideration. The issues, which

arose in the instant suit, were exactly similar and between the same parties and they also litigated under the same title. It does not make difference for application of the principles of res judicata, even if some more area is shown in the instant case. The other description is same and similar and the issue is also same, which has been adjudicated upon by the Civil Court of competent jurisdiction and the decree of which was confirmed up to the High Court. Learned Counsel submitted that this Court, sitting in second appeal, cannot re-appraise the evidences, even if any other conclusion is possible on reading the evidences. Learned trial Court as well as learned lower Appellate Court has discussed the facts, materials and evidences in detail and they have concurrently recorded their findings of facts against the Plaintiffs-Appellants. No ground is made out for entertaining the second appeal against the said judgment and decree.

10. I have heard learned Counsel for the parties and perused the impugned judgment and decree of the lower Appellate Court. From the record, it is evident that learned trial Court as well as learned lower Appellate Court has thoroughly discussed the facts and evidences on record and they have recorded the concurrent findings of facts holding that the same issue was earlier decided in the judgment and decree passed in Title Suit No. 121/1960 which was confirmed up to second Appellate Court.

11. I And substance in the submissions of learned Counsel for the Respondents that the principle of res judicata has to be applied on the basis of the issues decided between the parties by proper adjudication by a competent Court. Difference in area of land is not material as the issues in the instant case was directly and substantially involved in the earlier suit between the same parties, which was decided by the competent Court of law. The same issue cannot be allowed to be re-opened in the subsequent suit. Learned lower Appellate Court having considered all the relevant aspects of the matter has rightly come to the conclusion that the Plaintiffs have got no cause of action and the suit is barred by the principles of res judicata and has rightly dismissed the appeal.

12. I find no error in the impugned judgment and decree of learned lower Appellate Court giving rise to any substantial question of law to be framed and decided by this Court in this second appeal.

This appeal is, accordingly, dismissed.