
(1955) 02 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ No. 67/5 of 1954-55

Bhoom Reddi and others

APPELLANT

Vs

Hyderabad State and another

RESPONDENT

Date of Decision : 28-02-1955

Acts Referred:

Citation : (1955) 02 AP CK 0003

Hon'ble Judges : Palnitkar, C.J.;Taki Bilgrami, J

Bench : Division Bench

Advocate : D.M. Deshmukh, for the Appellant; Gopalrao Tuljapurkar, Govt. Advocate (for Respondent No. 1) and S.R. Kagalkar (for Respondent No. 2), for the Respondent

Final Decision : Dismissed

Judgement

1. This application for issue of an appropriate Writ, under Arts. 226 and 227 of the Constitution is directed against the order of the Revenue Minister, dated 2-9-1954, reversing the order of the Board of Revenue in revision, and rejecting the applicant's claim to be the adopted son and the heir of Raj Reddy, and sanctioning the succession in the name of the widow, Tulsamma the opposite party No. 2.

The sole ground on which this order is challenged is that in a Civil Suit No. 58/1 Civil of 1347-F., Alam Palli Raja Luchami v. Bhoom Reddy and others the question of the applicant being the adopted son of Raj Reddy arose between the applicant and opposite party No. 2 Tulsamma, and it was decided in the applicant's favour. The matter has, therefore, become a "res judicata" and the Revenue authorities are bound by it. Hon'ble the Revenue and Excise Minister in disregarding this decision has acted without jurisdiction.

We went through the judgment of the Civil Court carefully. The suit was for recovery of a debt due to the plaintiff from Raj Reddy who was dead. The opposite party No. 2 Tulsamma, the widow of the deceased, and the applicant as

his adopted son, were sued as his heirs and legal representatives. Proceedings were ex parte against the applicant from the very beginning. Tulsamma in her written statement, had denied that the applicant was an adopted son of Raj Reddy.

An issue regarding this matter was joined between the plaintiff and Tulsamma, which was decided in favour of the plaintiff. The decree, however, was passed against the assets of the deceased, and not against any defendant personally. The opposite party No. 2 and the applicant were co-defendants in that case. For any decision to become a "res judicata" between them following three conditions must be fulfilled, as laid down by their Lordships of the Privy Council in -- AIR 1950 17 (Privy Council)

(1) There must be a conflict of interest between the co-defendants. (2) It should be necessary to decide the question. (3) There should be a final decision of that question between the co-defendants.

(2) In the case under consideration the issue was joined between the plaintiff and Tulsamma, and decided in the plaintiff's favour. The applicant did not appear and assert that he was the adopted son of Raj Reddy. There was no conflict between him and Tulsamma on this point. Hence the first and the third of the above conditions are not fulfilled, and it cannot be said that the matter has become "res judicata" between them.

The learned advocate of the applicant argues, that an ex parte decision can also operate as res judicata. This is quite true, but it will so operate between the plaintiff and the defendant but not between co-defendants. If a defendant does not appear, or does not file a written statement, the claim will be deemed to have been denied. The matters at issue and decided in that case therefore become "res judicata" between them. There is no presumption that if the defendant does not appear it will be deemed that he has admitted the plaintiff's claim.

In the case under consideration merely because the applicant did not appear, it cannot be assumed that he had admitted the plaintiff's allegation that he is the adopted son of Raj Reddy. There was no conflict between him and his other co-defendant, Tulsamma on this point. The issue was joined between the plaintiff and Tulsamma and what the plaintiff has succeeded in proving against her cannot operate as "res judicata" between her and the applicant.

3. We, therefore, are of opinion that Hon"ble the Revenue Minister did not act without jurisdiction in holding that the Civil decision did not operate as "res judicata", nor was his decision contrary to principles of natural justice, or based on any error apparent on the face of the record, which can be challenged by issue of any Writ under Art. 226; nor is this a case of grave dereliction of duty on the part of the authority passing the order which can justify the exercise of powers vested in us under Art. 227 of the Constitution.

4. In the result, this petition fails and is hereby dismissed. We estimate the costs of the petition as Rs. 100 which are awarded from the applicant to the opposite party No. 2.