

(1956) 01 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 363 of 1954

Chuhar Singh Lachhman and Others	Vs	APPELLANT
Raghbir Singh and Others		RESPONDENT

Date of Decision : 17-01-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 115

Citation : AIR 1956 P&H 241

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : P.C. Pandit, for the Appellant; D.N. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Harnam Singh, J.—In village Balachaur Co-operative Society Patti Darapur Shikoh, hereinafter called the plaintiff-Society, was formed on 24-8-1930, for the maintenance and preservation of the shamilat belonging to that Patti. In this connection copy of the proceedings of the meeting held on 24-8-1930, Ex. D. 7, may be seen.

2. On 21-10-1942. the plaintiff-Society Passed resolution authorising Shri Rattan Chand to institute a suit for the possession of an open site against Co-operative Society Patti Balachaur, hereinafter called the defendant-Society, Pursuant to that resolution. Civil Suit No. 674 of 1942 was instituted by the plaintiff-Society on 11-11-1942.

3. In Civil Suit No. 874 of 1942 the dispute between the parties was settled by judgment of the High Court, Ex. D. 4, passed on 28-3-1946.

4. In Civil Suit No. 874 of 1942 the trial Judge found the property to be shamilat deh and parties to be the joint owners of the Kite in suit.

5. From the decree passed by the Court of first instance the plaintiff-Society appealed in the Court of the District Judge while the defendant-Society cross-

objected.

6. In appeal the District Judge found:

- (1) that field No. 1716 of 1852 belonged to the plaintiff-Society;
- (2) that the site in suit was not a part of field No. 1716 of 1852; and
- (3) that the site in dispute has never been in possession of the plaintiff-Society.

7. As a result of the findings summarised above the appeal was dismissed and the cross-objections were allowed with the result that the suit was dismissed with costs.

8. From the decree passed in appeal the plaintiff Society preferred second appeal in the High Court. That appeal failed and was dismissed with costs.

9. From what I have said above it is plain that in the previous litigation it was found that the proprietors of Patti Darapur Shikoh had no right or interest in the open site which was the subject-matter of Civil Suit No. 874 of 1942.

10. On 25-5-1953, some proprietors of Patti Darapur Shikoh instituted Civil Suit No. 169 Of 1953 for declaration that the proprietors of Patti Darapur Shikoh owned the site and that defendants 1 to HO and 179 had no right in that site.

11. In the suit it was common ground that the open site which was the subject-matter of Civil Suit No. 169 of 1953 was the open site which was the subject-matter of Civil Suit No. 874 of 1942. In Civil Suit No. 169 of 1953 the contesting defendants objected that the suit was barred by the rule of res judicata.

12. In deciding the preliminary issue the Court observed:

"It is admitted by both the sides that the property in dispute is the same as was in suit in the previous litigation and that the previous litigation was bona fide inasmuch as it went up to the High Court."

Finding, however, that the plaintiffs were not members of the Co-operative Society Patti Darapur Shikoh, the Court has found that the suit was not barred by the rule of res judicata.

13. From the decision given by the Sub-Judge on the preliminary issue contesting defendants have come to this Court u/s 115, Civil P. C.

14. Mr. Dwarka Nath Aggarwal urges preliminary objection that from the decision given on one issue in a civil suit no revision is competent in the High Court.

15. In "Lal Chand Mangal Sen v. Behari Lal Mehar Chand" ILR Lah 288 : (AIR 1924 Lah 425) (A), it was held that the word "case" when used with reference to a suit must be taken to mean the whole suit. In plain words, It was held that decision on one issue could not be looked upon as a "case decided".

16. In "Bibi Gurdevi v. Mohammad Bakhsh" AIR 1943 Lah 65 (FB) (B), the decision given in ILR Lah 288: (AIR 1924 Lah 425) (A), was overruled.

17. In AIR 1943 Lah 65 (B), the Court found that the word "case" occurring in Section 115, Civil P. C. was wide enough to include interlocutory orders passed in a suit though a revision will be competent against interlocutory orders if the other conditions expressly laid down in Section 115 are satisfied and the order has resulted or is likely to result in such gross injustice or irreparable injury as can not be remedied otherwise than by the exercise of the extraordinary jurisdiction of the High Court at that stage.

18. In "AIR 1949 239 (Privy Council) Sir John Beaumont delivering the judgment of their Lordships of the Privy Council observed:

"The cases of " Babu Ram and Another Vs. Munna Lal and Others, and -- "Hari Bhikaji v. Naro Vishvanath" ILR 9 Bom 432 (E), -may be mentioned as cases in which a subordinate Court by its own erroneous decision (erroneous that is in the view of the High Court), in the one case on a point of limitation and in the other on a question of res judicata, invested itself with a jurisdiction which in law it did not possess, and the High Court held wrongly, their Lordships think, that it had no power to interfere in revision to prevent such a result."

19. Plainly, in the present case the decision is likely to result in such gross injustice or irreparable injury as cannot be remedied otherwise than by the exercise of the extraordinary jurisdiction of the High Court at this stage.

20. In my judgment there is no substance in the preliminary objection.

21. On the merits. I think that Civil Suit No. 169 of 1953 is barred by Section 11, Explanation B, Civil P. C. hereinafter called the Code.

22. Explanation 6 to Section 11 of the Code provides:

"Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

23. In order to bring a suit within Explanation 6, it is essential to prove;

(1) that there must be a right claimed by one or more persons in common for themselves and others not expressly named in the suit;

(2) that the parties not expressly named in the suit must be interested in such right; and

(3) that the "litigation must have been conducted bona fide on behalf of all parties interested."

In plain words Expln. 6 of the section extends the meaning of the words "under whom they or any one of them claim" by enacting that where persons litigate

bona fide in respect of a public right or of a private light claimed in common for themselves and others, all persons interested in such right shall, for the purposes of Section 11 of the Code, be deemed to claim under the persons so litigating. As examples of suits of a representative character may be mentioned suits under Sections 91 and 92, suits under Order 1, Rule 8 of the Code, suits by or against the manager of a Hindu family, suits by or against a trustee and suits by or against an administrator.

24. From the copy of the plaint, Ex. D. 8, it appears that in the previous litigation the plaintiff-Society claimed the site in suit for all the proprietors of Patti Darapur Shikoh. In this connection paras 2, 4 and 9 of the plaint may be seen.

25. In para 2 the plaintiff-Society pleaded that the site A B C D E E F G H I J K L M N O P Q R S T U V W was owned and possessed by the proprietors of Patti Darapur Shikoh. In para. 4 of the plaint the plaintiff-Society maintained that so far as the maintenance and preservation of Shamlat of Patti Darapur Shikoh was concerned, the plaintiff-Society represented the proprietors of Patti Darapur Shikoh.

In para 9 it was pleaded that the suit was for the benefit of the proprietors of Patti Darapur Shikoh. Prima facie the proprietors of Patti Darapur Shikoh other than those who were members of the plaintiff-Society should be deemed to be claiming under the proprietors of Patti Darapur Shikoh who in 1942 were members of the Cooperative Society Patti Darapur Shikoh.

26. In " AIR 1933 183 (Privy Council) Lord Blanesburgh delivering the Judgment of their Lordships of the Privy Council on examination of the case law observed at page 189, column 2-

"And the result of the decisions has shown that the explanation is not confined to cases covered by Rule but extends to include any litigation in which, apart from the Rule altogether, parties are entitled to represent interested persons other than themselves."

Again at page 190, column 8, Lord Blanesburgh observed-

"..... they would not exclude the possibility of a decree being within the benefit of the explanation where the litigation having been bona fide the omission to comply with the conditions of the rule has been inadvertent, and no injury from the omission has been sustained by the plaintiff in the second suit."

27. In my Judgment the case, falls within Explanation 6 to Section 11, Civil P.C.

28. For the foregoing reasons I allow Civil Revision No. 363 of 1984, set aside the finding on the preliminary issue and dismiss Civil Suit No. 169 of 1953 on the finding that the suit is barred by the rule of res judicata,

29. Parties are left to bear, their own costs throughout.