

(1935) 02 PAT CK 0017

In the Patna High Court

District Board, Darbhanga and Another

APPELLANT

Vs

Suraj Narain Sinha

RESPONDENT

Date of Decision : 19-02-1935

Acts Referred:

Bengal Ferries Act, 1885 — Section 17
Court of Wards Act, 1879 — Section 51

Citation : AIR 1936 Patna 198

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This appeal arises out of an action in which the plaintiff claimed arrears at the rate of Rs. 250 per annum for compensation under a contract by which the Government had taken over a ferry under Regulation 6 of 1819. The ferry appears to have been handed over to the District Board of Darbhanga under a contract by which the District Board was to pay this compensation. There was no dispute as to whether a contract between the proprietors of the estate and the Government could be enforced against the District Board, as apart from the common law, in India, it is clear that an action of that kind would be maintainable. I need not discuss that question further. The two main questions upon which the Courts below have founded their judgments are on the provisions of the Bengal Ferries Act (Bengal Act 1 of 1885), and the question of whether the matter in the action could be considered res judicata having regard to the following facts: there was a previous action which had gone on appeal to the District Judge against whose decision a second appeal has been preferred to the High Court which second appeal had abated on the failure, to make substitution in place of the deceased sole appellant. It was upon that case that the question of res judicata was argued in the Court below. The learned Judge in the Court below has come to the conclusion that the dispute was not res judicata on a ground which in my judgment was wholly untenable. His reason for so holding was that, as an appeal had been preferred, the decision of the previous Court had lost its finality. As I understand the judgment of the Court below, it must

mean that it has no finality because it has lost its effect.

2. Although it is true that a judgment appealed from loses finality for the time being; if the appeal fails or is not proceeded with, the judgment appealed from becomes final. That was the case in the matter which I have before me. But the question of whether, apart from the point relied upon by the Judge in the Court below, a judgment is *res judicata* is a somewhat difficult one. In order to decide that question it is necessary to state briefly what happened in that case apart from the facts which I have already related. A judgment had been pronounced by the trial Court on the merits. The Judge in appeal, who was the District Judge, had not considered the merits of the case at all, but had come to the conclusion that u/s 17, Bengal Ferries Act, which after its passing applied to this ferry as well as others taken over, the claim could be made only to the District Magistrate. His decision in that regard was obviously wrong for the reason, that Section 17, upon which the District Judge relied, referred to the assessment of compensation in the first instance and had no relation to the question, of recovery of compensation. But it was pointed out in *Tarini Charan Bhattacharya v. Kedar Nath Haider* 1928 Cal 777 that a decision is nonetheless *res judicata* even if in point of law that decision is wrong. But the important point in this regard is that what the Judge decided was a pure question of jurisdiction as to whether the action was maintainable in the civil Court or whether, as he held, the plaintiff's claim lay before the District Magistrate.

3. That brings me to the question whether a question of law can be said to be subject to the principle of *res judicata*. That matter amongst others was considered in the decision to which I have already referred. That was a Full Bench decision of the Calcutta High Court and amongst the points there decided was the one to which I have already made reference. Sir George Bankin, C.J., in discussing the various classes of cases which might be considered *res judicata* came to this conclusion; questions of law are of all kinds and cannot be dealt with as though they were all the same. Questions of procedure, questions affecting jurisdiction, questions of limitation, may all be questions of law. In such questions the rights of parties are not the only matter for consideration. The Court and the public have an interest. When a plea of *res judicata* is raised with reference to such matters it is at least a question whether special considerations do not apply. It will be seen that this Full Bench judgment of the Calcutta High Court delivered by Rankin, C.J., the other four Judges agreeing, did not definitely decide this question but suggested that the matter was capable of other and special considerations. Now this matter was dealt with in a case which came from Australia. I refer to the case of *Broken Hill Proprietary Co. v. Broken Hill Municipal Council* (1926) AC 94. That was a question between the Broken Hill Proprietary Company and the Municipal Council and related to a matter of rating. There had been a previous question between the same parties for previous years, and the substance of the question was in what manner under the statute was the rating to be calculated? It was calculated in the one way in the action to which I have made reference; and then when the matter came up on appeal

before their Lordships of the Judicial Committee, it was contended that the decision ought- to be considered as res judicata.

4. Their Lordships of the Judicial Committee made, this statement referring to the previous case. The decision of the High Court related to a valuation and a liability to a tax in a previous year and no doubt as regards that year the decision could not be disputed. The present case relates to a new question namely, the valuation for a different year and the liability for that year. It is not eadem question and therefore the principle of res judicata cannot apply. The point which was raised in the case to which I have just referred was so stronger in favour of the plea that the matter was res judicata, than the present one before me. In the question of jurisdiction not only the par ties themselves but the Court and the public had an interest. In my judgment to hold that the decision of the District Judge between these parties in a previous case was res judicata would be wrong. There are obvious objections to that matter to which I need not refer. But amongst them I might mention the fact that as regards these parties, the Magistrate of the district had jurisdiction whereas for other persons claiming under the Act there would be an order to proceed in the civil Court. I would therefore hold that this matter was not res judicata. The other point made was that the Bengal Ferries Act not only governed the ferries taken over subsequent to the Act, but in a previous transaction of the same kind relating to ferries they were precluded from having more than the average of five years of the annual net profit; and in this case it was contended that the plaintiff had received a sum in excess of that amount.

5. In my view the Judge in the Court below was right in holding that that point had no substance. There was no evidence what the annual profits were; and the admission which had been referred to by the learned Munsif, an admission made by the pleader in the former suit that the minimum fixed by Section 17 had already exceeded, is a matter which in my judgment could not be taken in evidence. Disposal of these points would clear the way for the success of the plaintiff in this action but for a point which is raised by the learned Advocate appearing on behalf of the appellant, a point which was not raised in the notice of appeal nor in the Court below, and leave is asked now to raise it. The point is that the plaintiff named in the suit in any event is not entitled to succeed. The plaintiff named was Mr. G.C. Blake, Manager of the Court of Wards, and it is contended that it is incumbent for him to bring a suit on behalf of the estate. It is not suggested that he represents the proprietor; it is not suggested that he is the guardian or the next friend u/s 51, Court of Wards Act, 1879 (Act 9, B-C of 1879), because it is admitted that at this moment it is impossible to say who was the proprietor as there was dispute between the interested parties as to the proprietorship. Now Section 51 of the Act quite clearly lays down that a proprietor shall be described as a "Ward" of the Court, and the Manager shall be named the next friend. Nowhere can it be suggested is there any provision which abrogates the rule under the Civil Procedure Code, the fundamental rule for the administration of justice that a suit must be brought by the person having the

cause of action and in his name.

6. The Government pleader relies on Sections 13 and 14 of the Act for this purpose. Section 13 quite clearly does not deal with the matter. Section 14 merely allows the Court through the Manager to do certain acts. It would be impossible to hold that that section in any way abrogated the general rule that the person who has got the cause of action must bring the suit in his own name. The estate which Mr. Blake here represents is not a legal entity; he could not represent it. If it were a legal entity, the action would have to be brought in the name of the estate or of some person allowed by the CPC as being the representative of the estate. No such form of action is known to the law, and it is impossible to hold under any consideration that the Manager was entitled to bring the suit. He has got no cause of action nor has the estate, inasmuch as I have said already the estate is not a legal entity. The only person entitled to bring the suit is the proprietor. In those circumstances it seems to me that the point which is now taken must succeed and the action in its present form held to be incompetent. With these observations I would allow the appeal and dismiss the claim without costs. Leave to appeal under the Letters Patent is refused.