
(2011) 07 AHC CK 0347
In the Allahabad High Court
Case No : C.M.W.P. No. 27130 of 2000

Jagdamaba Prasad and others

APPELLANT

Vs

Vth Addl. District Judge, Allahabad and others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 92
Evidence Act, 1872 — Section 115

Citation : (2011) 07 AHC CK 0347

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—The present writ petition has been filed for quashing the order dated 31.5.2000 passed by respondent No. 1, Annexure-1 to the writ petition. Further prayer is for issuing a writ in the nature of mandamus commanding the respondents not to raise any construction or interfere in any manner in the possession of the petitioners. The facts arising out of the present writ petition are that the property belongs to Sri Ram Janki Trust situate in Mauza Sarai Kydganj, district Allahabad. A registered Will deed dated 16.10.1939 was executed in favour of the father of the petitioners and he became legal heir of the property belonging to Smt. Ram Dei. The original owner of the property in dispute was one Mahant Janki Das and Smt. Ram Dei. The father of the petitioners filed Suit No. 714 of 1990 for injunction directing the respondents not to interfere in their possession. Earlier to this, Suit No. 2/85 was filed by the father of the petitioners against Shitla Prasad Shukla s/o Late Mata Prasad and Shree Ram Housing Finance and Investment Ltd. Before filing a written statement by the opposite parties in the aforesaid suit, there was a compromise outside the Court vide its order dated 20.10.1986. According to Clause 7 of the settlement, the plaintiffs have reserved a right to file a suit in view of the non-compliance of the terms of the registered agreement dated 10.10.1986. An objection was taken on behalf of the defendant-respondents to this effect that the second suit is barred by

principles of res judicata being the fact that in the earlier suit, a compromise had already been taken and the parties are the same, therefore, this issue should be decided as a preliminary issue regarding maintainability of the suit. The trial court after considering the issue, was pleased to hold that the suit is not barred by the principles of res judicata and vide its order dated 13.12.1999 has rejected the claim.

2. The respondents aggrieved by the aforesaid order filed a revision and the revisional court without considering the fact in issue, was pleased to allow the revision by holding that the suit is barred by the principles of res judicata. Hence, the present writ petition has been filed.

3. Sri S.D. Kautilya, learned counsel for the petitioners submits that the judgment and order dated 31.5.2000 is totally illegal by holding that the principle of res judicata will apply. The Court has wrongly interpreted the meaning of res judicata inasmuch as no judicial pronouncement in issue is involved in Suit No. 714 of 1990. The earlier suit No. 2/85 was disposed of before filing the written statement under the terms and conditions arrived between the parties. It is nowhere stated by the present respondents that they have complied with the terms and agreements of the settlement. The judgment passed by the court below is a complete miscarriage of justice and is liable to be quashed.

4. The learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court in the case of Pulavarthi Venkata Subha Rao and others v. Valluri Jagannadha Rao (deceased) by heirs and legal representatives and others, AIR 1967 SC 597, and has placed reliance upon para 10 of the said judgment which is quoted below:

10. The appellants then seek to reach the same result by invoking the principle of res judicata. It is contended that the earlier decision amounts to res judicata and the respondents were not entitled to raise the same issue which by implication must be held to be decided against them by the compromise judgment and decree. In the alternative, it is contended that the earlier compromise decree creates an estoppel against the respondents, because the appellants at that time had shown some concession in the amount which they were claiming and a decree for a lesser amount was passed. This estoppel was said to be an estoppel by judgment. In our opinion, these contentions cannot be accepted. The Act as amended confers this right upon petty agriculturists to save them from the operation of loans taken at usurious rates of interest. No doubt the conduct of the respondents in omitting to press the claim for reduction of the amount of the claim on the first occasion is significant, but this did not constitute res judicata, either statutory or constructive. The compromise decree was not a decision by the Court. It was the acceptance by the Court of something to which the parties had agreed. It has been said that a compromise decree merely sets the seal of the Court on the agreement of the parties. The Court did not decide anything. Nor can it be said that a decision of the Court was implicit in it. Only a decision by the Court could be res judicata, whether statutory u/s 11 of the Code

of Civil Procedure, or constructive as a matter of public policy on which the entire doctrine rests. The respondents claim to raise the issue over again because of the new rights conferred by the Amending Act, which rights include, according to them, the re-opening of all decrees which had not become final or which had not been fully executed. The respondents are entitled to take advantage of the amendment of the law unless the law itself barred them, or the earlier decision stood in their way. The earlier decision cannot strictly be regarded as on a matter which was "heard and finally decided." The decree might have created an estoppel by conduct between the parties; but here, the appellants are in an unfortunate position, because they did not plead this estoppel at any time. They only claimed that the principle of res judicata governed the case or that there was an estoppel by judgment. By that expression, the principle of res judicata is described in English law. There is some evidence to show that the respondents had paid two sums under the consent decree, but that evidence cannot be looked into in the absence of a plea of estoppel by conduct which needed to be raised and tried. The appellants are, however, protected in respect of these payments by the proviso to Clause (iii) of Section 16 of the Amending Act.

5. In support thereof the learned counsel for the petitioners submits that as the compromise decree is not decision by the Court, therefore, it will not operate as res judicata. Further submission has been made that in view of the terms and conditions of the earlier compromise, it was mentioned that in case there is a violation of the terms and conditions mentioned in the compromise, the parties will be at liberty to file a suit. Therefore, the revisional court has completely overlooked the conditions of the terms of compromise. The court below has wrongly interpreted the meaning of res judicata being the fact that unless and until there is a judicial pronouncement, it cannot be held that principles of res judicata will apply in another suit. Further for the purpose of application of principles of res judicata, a finding to that effect has to be recorded that issue in which the matter directly and substantially in issue has been directly and substantially in issue in former suit between the same parties or between the parties under whom they or any of them are litigating for the same property. Meaning thereby if parties are the same and the property in dispute substantially is the same in the earlier suit, then in a subsequent suit, it can be held that the principles of res judicata will apply. But in the present case admittedly, the plaintiffs who have filed the present suit were not a party to the proceeding in the earlier suit of 1985. Therefore, the revisional court has erred in law in ignoring this aspect of the matter as well as the Apex Court judgment mentioned above.

6. On the other hand, Sri A.K. Gupta, learned counsel appearing for the respondents has submitted that Suit No. 2/85 was filed by one Devi Prasad Shukla, (father of the present plaintiffs) and his two sons Jagdamba Prasad Shukla and Vijai Kumar Shukla for injunction restraining the defendants from alienating property in suit. The suit was decided in terms of the compromise on 10.10.1986. It was duly signed by all the parties. It was presented before the

Court on 20.10.1986 and a decree to that effect was passed on the same date. According to the compromise decree, it was admitted that the property in dispute belongs to a private trust and therefore, Section 92, C.P.C. will not be applicable. Possession of the property was also given to the defendants. The terms of the compromise was complied with and plaintiff received the consideration. Subsequently this suit has been filed with a mala fide intention for injunction restraining the defendants from interfering in the possession. The properties in the suit No. 2/85 and in this suit are the same. In the present suit plaintiff concealed this fact regarding the compromise made in the earlier suit. During pendency of the suit Devi Prasad Shukla died and his sons were impleaded as the plaintiffs. The trial court decided the issue in negative but the revisional court allowed the revision holding therein that Suit No. 714 of 1990 is barred by the principles of res judicata against the present petitioners. It has further been submitted that suit No. 2/85 was filed by the father of the petitioners. Therefore, it cannot be said that the parties were different. It has further been submitted on behalf of the respondents that compromise decree is binding upon the parties unless and until it is found that the said compromise decree is vitiated by fraud, mis-representation, mis-understanding or mistake, therefore, the compromise decree passed thereon has a binding force of res judicata and plaintiffs were estopped from re-agitating the matter. Reliance has been placed upon a judgment rendered in the case of Shankar Sitaram Sontakke and Another Vs. Balkrishna Sitaram Sontakke and Others, . Admittedly the present suit has been filed for the same cause of action, for the same property and between the same parties. Judgment by the consent or default is as effective an estoppel between the parties as judgment. He has placed reliance upon a judgment rendered in the case of Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa, , and relied upon para 8 of the judgment which is quoted below:

8. The plea of estoppel is sought to be founded on the compromise decree Ex. "O" passed by the Patna High Court on 2.5.1945, in F.A. No. 15 of 1941. The compromise decree is utilized in the first place as creating an estoppel by judgment. In-"In the South American and Mexican Co., Ex parte Bank of England", (1895) 1 Ch 37 (C), it has been held that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case. Upholding the judgment of Vaughan Williams, J. Lord Herschell said at page 50:

The truth is, a judgment of consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end.

And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action.

To the like effect are the following observations of the Judicial Committee in-"Kinch v. Walcott", 1929 AC 482 at p. 493 (D) : 1-

First of all their Lordships are clear that in relation to this plea of estoppel it is of no advantage to the appellant that the order in the libel action which is said to raise it was a consent order. For such a purpose an order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an order of the Court made otherwise than by consent and not discharged on appeal.

The same principle has been followed by the High Courts in India in a number of reported decisions. Reference need only be made to the cases of-Secy. of State v. Ateendranath Das, 63 Cal 550 at p. 558 (E); Bhaishanker v. Morarji, 36 Bom 283 (F) and Raja Kumara Venkata Perumal Raja Bahadur, v. Thatha Ramasamy Chetty, 35 Mad 75 (G). In the Calcutta case after referring to the English decisions the High Court observed as follows:

On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded.

When we say "every step in the reasoning" we mean the findings on the essential facts on which the judgment or the ultimate conclusion was founded. In other words the finding which it was necessary to arrive at for the purpose of sustaining the judgment in the particular case will operate as estoppel by judgment.

The correctness of these principles laid down in the decisions is not disputed by Mr. P.R. Das. Proceeding on the basis that there is such a principle of estoppel by judgment, he contends that the test laid down in the decisions referred to above is whether the judgment in the previous case could have been passed without the determination of the question which was put in issue in the subsequent case, where the pleas of estoppel by previous judgment is raised. This leads us to a consideration of the facts, which are material to this question.

8A. On 4.2.1936 the predecessor-in-title of the plaintiff brought a suit (O.S. No. 7 of 1936) in the Court of the Subordinate Judge of Cuttak against the Secretary of State for India in Council praying for a declaration that the plaintiff had a good and indefeasible title to the beds of certain rivers, by expressed or implied grant from the East India Company alternatively for a declaration that the plaintiff had acquired an indefeasible right and title to the beds of the said rivers by prescription or adverse possession and for permanent injunction against the defendant restraining him from interfering with the rights of the plaintiff in the beds of the said rivers and the churs formed on them.

The suit was founded on, amongst others, the following allegations. In Paras 3 to 6 of the plaint was pleaded that the plaintiff's ancestors were the rulers of Killa Kanika owing allegiance to the Hindu Gajapati Kings of Orissa and were absolute owners of all lands and waters within the ambit of their territories including the two rivers therein mentioned and that after the fall of the Hindu Kingdom in Orissa, and during the Afghan, Moghal and Maratha occupation of Orissa, the

Rulers of Killa Kanika, the ancestors of the plaintiff continued to be the absolute owners of the Killa including the said rivers.

In para 7 of the plaint reference was made to the Engagement and Kaoolnama of 1803, whereby the Raja was said to have been confirmed in his Rajgee or proprietorship of the entire Killa and it was submitted that the said grant was intended to and did, in fact, confirm his title to the said rivers.

In para 9 of the plaint, it was acknowledged that subsequently the status of the rulers of Killa Kanika was gradually reduced to that of a Zemindar and that they were divested of all administrative powers, but it was claimed that nevertheless, their proprietary rights in the Killa consisting of land and water including the disputed rivers remained intact and that the tribute which had been fixed by the engagement of 1803 remained so in perpetuity as Peshkush payable by the proprietors.

In para 33, what is stated that having regard to the fact that prior to the British conquest of Orissa; the plaintiff predecessors-in-title had been independent rulers of Killa Kanika and as such had valid title to the said rivers within their territory and that after the British conquest the East India Company confirmed the title of the then Raja of Kanika to whatever had been in the possession of the said Raja prior to the said conquest and maintained him in possession thereof, the plaintiff claimed good and valid title to the beds of the said rivers by an express or implied grant by the said East India Company.

A claim of title to the beds of the said rivers by prescription and adverse possession was also pleaded by way of alternative plea. The written statement of the Secretary of State was filed on 29.5.1936, traversing the allegations in the plaint. In para 7 it was definitely pleaded that the Raja, with whom engagement had been entered into in 1803, was deposed for misrule and his status was reduced to that of a Zamindar as a punishment and that it was as an act of mercy that he was allowed to retain the estate without an enhancement of his Peshkush.

It was submitted that in view of the treatment of the estate during the past 100 years it was idle for the plaintiff to suggest that he retained the rights comparable to those of a Ruling Chief. Reading the pleadings and the issues raised in the case fairly and as a whole it appears quite clear that although the Engagement and Kaoolnama of 1803 was referred to as a grant, express or implied, from the East India Company, the plaintiff was, in substance, founding his claim on his antecedent title as the Ruling Chief of Killa Kanika which, according to him, had been confirmed by the Engagement and Kaoolnama of 1803, which were, therefore, construed as a grant, express or implied, from the East India Company.

That the real issue on which the suit was fought out in the trial court was whether the plaintiff was an independent Ruling Chief and as such entitled to the beds of the rivers passing through his territory or was a mere Zemindar and as

such having no such right is apparent from the following passage in the judgment of the Subordinate Judge :

It is, therefore, too late now to suggest that the status of the plaintiff in relation to his Killa is something higher than or superior to that of a holder of an estate. In my view, it is of no consequence, as respects the point now under consideration whether the estate is a permanently settled estate or it is a temporarily settled estate.

The question is whether the plaintiff is the holder of an estate or it is that he owns a State. But as I have just pointed out, a private individual cannot own a State in the sense a sovereign authority owns the same." After referring to the Regulations of 1805 and 1806, the learned Subordinate Judge proceeded to say;

Thus it is apparent that with the advent of the British the question of status of the plaintiff was never left in any degree of uncertainty. All these various Regulations taken together will go to establish in an unmistakable term, that the plaintiff in his relation to his Killa, was recognised from the time of the advent of the British in Orissa as that of a Zamindar, i.e., a holder of an estate.

That being so, in relation to these rivers, or to their beds, the plaintiff's position shall be nothing more than or superior to that of a riparian owner.

Again referring to the Engagement and Kaoolnama of 1803 the learned Subordinate Judge stated as follows:

Now taking these two documents together, it is difficult to read in them that any grant was made either expressly or impliedly by the sovereign authority in favour of the holder of the Killa. The main provisions are that the revenue was fixed for ever, and that the holder was asked to be loyal to the Company's Government. Thus initially, I have been enabled to associate any idea of grant as to be flowing from these engagements.

All that can be said, and perhaps the learned counsel for the plaintiff maintains to that effect, is that what rights the holder of the Killa had, in reference to the Killa, were fully and without any limitation or restriction, recognised. It is, therefore, that the question will now be set at large for a discussion as to what rights the proprietor of the Killa had at the time when these engagements were made.

7. Constructive bar of res judicata-It has further been submitted that estoppel by judgment as held in various decisions is in fact synonym of the word "res judicata" and it should not be meant for the principle of estoppel u/s 115 of the Evidence Act as erroneous constituted by the trial court. Placing reliance upon Salkia Businessmen's Association and Others Vs. Howrah, Municipal Corporation and Others, , learned counsel for the petitioners submitted that the terms of compromise mentioned in the compromise application are binding between the parties. It is not permissible to go behind such order to ascertain its substance or nature of compliance required when the manner, mode and place of compliance

have been stipulated.

8. In such circumstances, learned counsel for the respondents submits that the finding recorded by the court below is perfectly right and justified after considering the various judgments of the Apex Court and this Court that the present suit is barred by the principles of res judicata. It may not strictly operate as res judicata but principle of estoppel by conduct will apply. Therefore, the decree passed in the earlier suit on the basis of compromise will create an estoppel by conduct of the parties. The revisional court has considered each and every aspect of the matter, even the terms of the agreement in the earlier suit and has held that as the parties are common in both the suits and property in dispute is also the same, therefore, the principles of res judicata will come into play and the subsequent suit is barred.

9. I have considered the submissions of the parties and perused the record. From the perusal of the compromise decree in Suit No. 2/85 respondents No. 1/1 to 1/4 and their father Devi Prasad filed the suit alleging that Gata No. 240 was the property of Janki Trust. Instead of contesting, it was decided in terms of compromise and title and ownership of the property was admitted to the defendant-revisionists. Now in Suit No. 714 (present suit) the same question of title has been raised by the prior plaintiff Jagdmba Prasad and his brothers" sons of prior plaintiff Devi Prasad Shukla. The revisional court has recorded a finding that the subject-matter of suit in both the suits are the same and parties are also the same. Learned trial court was of the view that as the defendants in the earlier suit had not filed the written statement and the copies of the suit of 1985, therefore, it cannot be held that Suit No. 714 of 1990 was barred by res judicata. Suit No. 2/85 was decided in terms of the compromise between the parties. Therefore, there was no occasion to file the written statement before the Court in Suit No. 2 of 1985. But the revisional court after taking into consideration the various other factors has recorded a finding that the property is the same and parties are the same, therefore, the principles of res judicata will come in to play and only on the basis, that copy of the written statement was not filed, it cannot be held that principles of res judicata will not apply. The revisional court has recorded a finding that it is an admitted case of the parties that Suit No. 2/85 was instituted u/s 92 of the Code of Civil Procedure. A finding has been recorded that as the complete record of the previous suit was before the lower court, therefore, such finding should not have been recorded. In *Sundar Bai v. Deva Ji*, AIR 1954 SC 1982, the Apex Court has held where the right claimed in both the suits is the same, subsequent suit shall be barred as res judicata. In the present case right claimed by the plaintiffs in both the suits is the same and therefore, the case law relied upon by the petitioners will not be applicable. Even if *Sundar Bai* case (supra) it has been held in para 14 that estoppel is a rule of evidence of the general rule as enacted in Section 115 of the Evidence Act. This is rule of estoppel by the conduct as distinguished from an estoppel by record which constitute bar of res judicata.

10. After consideration of the various judgments the court below has recorded a finding that consent decree also operates as res judicata. It is an estoppel by the judgment.

11. I am of view that the judgment cited by the leaned counsel for the petitioners is not applicable to the facts of the present case being the fact that that was a matter relating to some money decree in the Madras Agriculture Relief Act. But in the present case from the fact and the compromise decree which was part of the record, it is clear that present plaintiffs' father was the party and property in dispute was the same, therefore, if compromise has taken place, on certain terms and conditions, will be barred by the principles of res judicata. In the case of Parma Nand Vs. Champa Lal and Others, , the Full Bench of this Court has observed in para 8 that in the English Law estoppel are of three kinds, estoppel by judgment, estoppel by deed and estoppel in Pais. Estoppel by judgment is embodied in the English Law in the doctrine of res judicata.

12. From the perusal of the compromise decree, it clearly appears that as the matter in issue was substantially the same, therefore, the revisional court was justified in holding that the suit filed by the petitioners is barred by principle of res judicata.

13. In view of the aforesaid facts and circumstances, I see no justification to interfere in the present writ petition.

The writ petition is devoid of merit and is hereby dismissed. No order is passed as to costs.