

(1922) 06 AHC CK 0051
In the Allahabad High Court

Kammu and Others

APPELLANT

Vs

Musammat Fahiman and Others

RESPONDENT

Date of Decision : 02-06-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1922 All 445 : 76 Ind. Cas. 932

Hon'ble Judges : Sulaiman, J;Stuart, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal arises out of a suit for damages brought in the following circumstances:--The plaintiffs, who alleged themselves to be successor-in-interest of a certain Badlu, claimed title to a house in Agra city. This house had been sold to the predecessors-in-interest of the defendants in 1884. The plaintiffs contested the validity of the transfer. A previous suit had been brought by the plaintiffs against the defendants to obtain an injunction to restrain them from pulling down this house. This suit was brought in the Court of the Munsif of Agra. An appeal was filed in the Court of the District Judge who, by his appellate decree, found in favour of the plaintiffs' title. The suit out of which this present appeal arises was filed subsequently by the plaintiffs on the allegation that the defendants had nevertheless pulled down the house. They, therefore, claimed for damages against them. This suit was filed in the Court of the Subordinate Judge, Agra, the valuation being beyond the jurisdiction of a Munsif. The defendants asserted title to the house as against the plaintiffs. The plaintiffs objected that the question was one of res judicata decided in their favour. The Subordinate Judge repelled this plea. In appeal the District Judge has allowed it, The defendants in second appeal question the correctness of the view taken by the District Judge.

2. The sole point for decision is whether the previous finding that title lay with the plaintiffs is a finding arrived at On an issue in which the matter has been

directly and substantially in issue in a former suit between the same parties, litigating under the same title, in a Court competent to try such subsequent suit in which such issue has been subsequently raised and has been heard and finally decided by such Court. There is no doubt as to the fact that this issue was directly and substantially in issue in a former suit between the same parties, litigating under the same title, and that it was heard and finally decided. The only question is, can the Munsif's Court be held to be a Court competent to try the suit in which such issue has been subsequently raised ? It is clear that it is not. The view which appealed to the learned District Judge was, however, that inasmuch as the District Judge on appeal was, responsible for the decision, the decision must be taken to be the decision of the District Judge, and as the District Judge was a Court of Appeal in the subsequent suit, no question of res judicata could arise. He quoted in favour of his view the decision of the Full Bench in *Balkishan v. Kishan Lal* 11 A. 148 : (1889) A.W.N.42 : 13 Ind. Jur. 309 : 6 Ind. Dec. 523. But we cannot find anything in that decision which supports his view. The matter in our opinion is concluded by the authority of their Lordships of the Privy Council in *Run Bahadur Singh v. Lucho Koer* 11 C. 301 : 12 I.A. 23 : 4 S.P.C.J. 602 : 9 Ind. Jur. 202 : Ind. Dec. (N.S.) 960. (P.C.). There a plaintiff had brought a suit in the Court of a Munsif in which a question of title was raised. The question of title was decided against him and, on appeal to a Subordinate Judge, the decision was affirmed. Their Lordships held that the finding did not operate as res judicata when the same question was raised in the Court of the Subordinate Judge in his original jurisdiction. From that it can only, in our opinion, be inferred that the competent Court to which reference is made in Section 11 of the CPC is the Trial Court and that it does not affect the question whether the decision is a decision of an Appellate Court or whichever the Appellate Court may be. This view is supported by the decision of their Lordships of the Privy Council in *Misir Raghobardial v. Sheo Bakhsh Singh* 9 I.A. 197 : 9 C. 439 : 12 C.L.R. 520 : 7 Ind. Jur. 107 : 4 S. P.C.J. 395: *Rafique and Jackson's* P.C. No. 70 : 4 Ind. Dec. 941 (P.C.) and by the view which was adopted by the Calcutta High Court in *Bharas Lal Chowdhry v. Sarat Chunder Dass* 23 C. 415 : 12 Ind. Dec. 276. and *Shibo Raut v. Baban Raut* 35 C. 353 : 7 C.L.J. 470 : 12 C.W.N. 339. and by the Bombay High Court in *Malubhai Ladhahbai v. Sursangji Jalamsangji* 30 B. 220 : 17 Bom. L.R. 821. We decide, therefore, that the question is not barred by res judicata. This was the only point before us. As the lower Appellate Court allowed the appeal on a preliminary point and the remaining points have not been decided, we set aside the District Judge's decree and send back the appeal to his successor to be reinstated under its original number and determined on its merits according to law. Costs here and hither to will abide the result.