
(1948) 02 PAT CK 0003
In the Patna High Court

Lakhan Lal Jha and Another

APPELLANT

Vs

Jiwach Jha and Others

RESPONDENT

Date of Decision : 03-02-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1948 Patna 388

Hon'ble Judges : Sinha, J;Mahabir Prasad, J

Bench : Full Bench

Judgement

Sinha, J.—This is a second appeal on behalf of the defendants first-party from the decision of the learned Subordinate Judge of Darbhanga reversing that of the Munsif of Samastipur in a suit for a declaration that the sale deed, dated 12-11-1938, executed by defendant 3 in favour of the defendants-first party, appellants in this Court, was not binding on the family of which the plaintiff was a member.

2. It appears that the common ancestor, Jairam Jha, had three sons, Earn Sarup, who is defendant 4 in this suit, Sitaram Jha whose son Sukhdeo Jha is defendant 5, and Adhik Lal Jha, who is defendant 3 in this suit. The plot in question, namely, plot No. 1424, along with other plots, had been acquired in the year 1910 in the name of Adhik Lal Jha, defendant 3. It is now common ground that Adhik Lal is not a member of the joint family of which the plaintiff claims to be a member. It also appears that there was a title suit, No. 8 of 1941, in respect of this very plot of land instituted by the plaintiff's father, Ram Sarup, and other members of the family for a declaration that the disputed plot was joint family property, which defendant 3 had no right to sell in its entirety, and that the plaintiff's two thirds share in that plot was not affected by the sale deed executed by defendant 3 in favour of the defendants-first party. It is not absolutely clear whether or not the plaintiff in the present suit was a party; but this much is clear that he was a junior member who was in his minority at the time the previous suit had been instituted. The defendants-first party appellants,

who contested the previous suit also, claimed the entire plot on the ground that it was the exclusive property of defendant 3; who also was a defendant in that suit, and that he was entitled to convey that plot to the contesting defendants. The suit was contested up to the appellate stage, and it was held by both the Courts concurrently that the plot in question was the exclusive property of defendant 3 and that the plaintiffs had failed to prove their interest in the same. That suit ended in July 1943. That may be characterized as the first round in this litigation. The second round began in February 1944, when the present plaintiff who is the son of the leading plaintiff in the previous suit claimed that the sale deed executed by defendant 3 in favour of the defendants first party did not affect the two third interest of the family, inasmuch as Adhik Lal, the vendor, could not have conveyed more than this one-third interest in the plot.

3. The suit was contested again by the defendants first party chiefly on the ground that the previous decision between the parties was *res judicata*, and that, at any rate, the plot was the exclusive property of defendants who could have conveyed a valid title to the defendants first party.

4. The trial Court dismissed the suit, holding that the previous decision was *res judicata* between the parties, and that on merits also the plaintiff had failed to prove that the plot in question was joint family property in which the plaintiff could be interested.

5. On appeal by the plaintiff, the lower appellate Court has held that the previous decision was not *res judicata* chiefly on the ground that the plaintiff in the present suit, though the son of plaintiff 1, in the previous suit, did not claim through his father being a member of a joint Hindu Mitakshara family. It also held that, in view of the partition deed of the year 1922, it was apparent that this property was dealt with as belonging to the entire joint family headed by Jairam Jha. Hence this second appeal by the defendants first party.

6. This appeal came before me sitting singly, and, as it involved a question of *res judicata*, I referred it to a Division Bench for hearing. On going through the decision of the previous case, it is apparent that the leading plaintiff in that suit was the father of the plaintiff in the present suit. He claimed the property on behalf of the whole family and also a declaration that the sale deed executed by defendant 3 in favour of the defendant first party did not bind the interest of the joint family other than that of the vendor himself. Hence, it is apparent that the issues in the two suits were identical, and if it is held that the previous judgment is *res judicata* between the parties, the question on merits need not be gone into. Mr. Janak Kishore, appearing on behalf of the plaintiff-respondent, has argued that the plaintiff in the present suit was a minor and not a party to the previous litigation, and, as he did not claim through his father, the previous judgment cannot be *res judicata* in the present litigation. In my opinion, the decision of their Lordships of the Judicial Committee of the Privy Council in AIR 1927 56 (Privy Council) is a complete answer to this contention. The following observations of their Lordships of the Judicial Committee are in point:

In the ease of a Hindu family where all have rights, it is impossible to allow each member of the family to litigate the same point over and over again, and each infant to wait till he becomes of age, and then bring an action or bring en action by his guardian before; and in each of these cases, therefore, the Court looks to the Expln. 6 of Section 11, Civil P.C., 1908, to see whether or not the leading member of the family has been acting either on behalf of minors in their interest, or if they are majors, with the assent of the majors. In this case there is no question of majors. It seems clear that the plaintiff in the previous suit was acting on behalf of himself and his minor children to try to exclude a collateral branch from a share of the family property. If he had succeeded the judgment would have inured for the benefit of the children, and as he has failed, they must take the consequences.

7. In the present case it would further appear that all the adult members of the plaintiff's family were parties to the previous suit, and the claim was laid on behalf of the entire family, that is to say, 2/3rd of the plot excluding the 1/3rd which the plaintiffs then admitted and now admit to belong to Adhik Lal, the vendor of the appellants. The position, therefore, is that the plaintiff in the present suit, who was then a minor, was not impleaded apparently because his father sued as the leading member of the family. The judgment given in that case clearly indicates that the present plaintiff's father was the karta of the family, and had sued in that capacity. But, even if there had been no such statement in the judgment in that case, if it could be shown that substantially it was a suit on behalf of the entire family, the result would be the same, namely, that a judgment rendered in that litigation would bind the entire family, irrespective of the question of whether or not there were some minors who were or were not impleaded in that question.

8. Mr. Janak Kishore has sought to get rid of the effect of the decision in the previous suit on the ground that the partition deed of the year 1922, chiefly relied upon by the lower appellate Court, which decided in the plaintiff's favour, had not been adduced in evidence in the previous litigation presumably on account of the negligence of the persons who were in charge of the litigation. This is not a suit to get rid of the decision rendered in the previous litigation; it is a simple suit for declaration on the ground that the previous judgment between the parties did not affect the rights of the present plaintiff. If the suit had been constituted with a view to having the previous judgment rendered null and void not only against the plaintiff but as against the whole family, other and further considerations may have been relevant; but, as the suit has been so framed, that question does not arise. I do not by any means suggest that there is any justification for the contention that the previous suit had not been litigated bona fide.

9. In view of these considerations, it must be held that the previous decision is res judicata between the parties, and that this suit was misconceived. The appeal is accordingly allowed, the judgment and decree passed by the lower appellate

Court set aside and those of the trial Court restored with costs throughout.

Mahabir Prasad, J.

10. I agree. I just want to add this, the learned Subordinate Judge in disposing of the question of res judicata observed:

The previous judgment would no doubt have operated as res judicata if the plaintiff had derived his title through his father but in this case the matter is different. The father and the son both had a right in the joint family property and each of them is at liberty to vindicate his right in a Court of law.

11. It is evident that his approach to the question was erroneous. The decision of the Judicial Committee cited by my brother Sinha J. in the judgment just delivered proceeds on the footing that, when there is a suit on behalf of a joint family, all the members of the joint family should be deemed to be represented fully and completely, and, when a subsequent suit is brought as against that family, the objection that one member of the joint family was not a party to the previous suit cannot be raised. It is not a question of the plaintiff claiming under the title derived from his father, and, therefore, the principle that in a coparcenary each member has an independent right and does not claim under another does not arise.

12. As already stated, the previous suit was instituted by Ramsarup alone for the whole family, and, therefore, even if the present plaintiff was not specifically named as a party, he must be deemed to have been a party to that suit.