
(1951) 01 KAR CK 0004
In the Karnataka High Court
Case No : Second Appeal No. 35 of 1950-51

Madappa

APPELLANT

Vs

Basavalingappa

RESPONDENT

Date of Decision : 04-01-1951

Acts Referred:

Citation : AIR 1951 Kar 36 : (1951) ILR (Kar) 396 : (1952) 30 MysLJ 165

Hon'ble Judges : Mallappa, J;Balakrishnaiya, J

Bench : Division Bench

Advocate : H. Venkatesamurthy, for the Appellant;

Final Decision : Dismissed

Judgement

Balakrishnaiya, J.—This appeal arises from a suit filed by the plaintiff, the appellant before us, for recovery of as. 1,800 alleged to be due on a registered hypothecation deed dated 18-7-1931 executed by defendant 1 in favour of defendant 3 who is the brother of the plaintiff. The suit hypothecation debt is averred to have been allotted to the share of the plaintiff in the family partition. Defendant 9 is the only contesting defendant who denied all the plaint averments except the fact that he is in possession of the property. He pleaded that the schedule property is the self-acquisition of the father of defendant 1 who sold the same to him under a registered deed dated 10-11-1937 and that in a suit, O. S. No. 724 of 42-43, filed by the plaintiff, it was decided that the suit property was the self-acquisition of defendant 1's father and defendant 1 had no right to alienate it and that decision was confirmed in S. A. No. 481 of 45 46 by this Court. The said decision operates as res judicata for this suit.

2. The plaintiff while denying the allegations stated that there was an earlier suit, O. S. No. 351 of 41-42, between the parties the decision in which barred the defence set up by defendant 2. Amongst the issues raised in O. S. No. 724 of 43-43, issue 6 is to the following effect: "Has defendant 1 any right to hypothecate the suit schedule property ?" The said issue was answered in the

negative by holding that the suit schedule property was the self-acquired property of the father of defendant 1 and defendant 1 had no manner of right to hypothecate the same. Issue? 2 and 3 in the present suit covet the same ground. Issue 4 is "Whether the suit is barred by res judicata," The trial Court dismissed the suit holding that the previous decision operates as res judicata which is confirmed in the first appeal.

3. The short point urged by Sri H. Venkateamurthy, the learned counsel for the appellant, was that the decisions of the Courts below were erroneous as the judgment in O. S. No. 724 of 42-43 was not final. It was argued that the plea raised by the plaintiff in that suit to the effect that the decision in O. S. No. 354 of 41-42 operated as res judicata against defendant 2 was left open without any finding and the judgment was based on facts. On a perusal of the exhibits and the facts involved in the case it is found that the property in the suit was held to be the joint family property in O. s No. 354 of 41-42 and as the self-acquired property of the father of defendant 1 in a latter suit, O. S No. 724 of 42-43. There are thus conflict of "decisions about the nature of the property in the two suits. The contention that the decision on facts does not; operate as res judicata is untenable. This Court has held in 6 Mys. L. J. 133 that a res judicata is a judicial opinion pronounced by a competent tribunal and is conclusive whether it is rendered upon a technical rule of law or of evidence. There are two decrees operating as res judicata, one against the plaintiff and the other against the defendant; the earlier adjudication was pleaded as a bar in the later suit, but was not specifically decided; but the effect of the later decision does supersede the earlier and the question cannot be reopened for reconsideration on the mere fact that no finding was recorded. This aspect was considered by Sadasiva Aiyar J, in Rukmani Ammal v. Narasimba AIR 1921 Mad. 612 ; (63 I. c. 730) who was of opinion that

"the later adjudication should be taken as superseding the earlier whether or not the earlier adjudication was pleaded as a bar to the trial of the suit in which the later adjudication was made."

In Amar Singh and Another Vs. Gobind Ram and Another, the Allahabad High Court held that

"It is the later decree that must prevail over the former, because the later shuts out consideration of the former."

The Calcutta High Court is also of the opinion that when there are two conflicting decrees, the last should prevail on the ground that in the eye of law it is binding between the parties and the previous decree should be taken as pleaded in the later suit and not given effect to, or must henceforth be regarded as dead (Vide Rajani Kumar Mitra and Others Vs. Ajmaddin Bhuiya, .

4. In the light of the authorities, we have no hesitation to told that when there ace two conflicting decisions operating as res judicata, the later decision is effective and should be deemed to have superseded the former decision whether

there be an express adjudication or not. There is thus no substance in the contention as to call for interference with the decisions of the Courts below. This appeal is, therefore, dismissed without notice.