

(1936) 12 AHC CK 0008
In the Allahabad High Court

Namdar Khan and Others

APPELLANT

Vs

Naimul Khan and Others

RESPONDENT

Date of Decision : 23-12-1936

Acts Referred:

Citation : (1936) 12 AHC CK 0008

Hon'ble Judges : Niamatullah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Niamatullah, J.—This is an appeal from an order of remand passed by the Subordinate Judge of Jaunpur. The trial Court had dismissed the suit of the plaintiff-respondents on the ground that it was barred by res judicata. The lower appellate Court has taken a different view and has held that the present suit is not so barred. Accordingly it remanded the case to the trial Court for disposal on the merits. The only plea taken in second appeal is that the plaintiffs' suit is barred by res judicata, as held by the trial Court. The plaintiffs are some of the cultivators of village Banjaripur in the district of Jaunpur. The defendants are some of the residents of village Murki in the same district. The two villages are co-terminus. The plaintiffs claim a right to irrigate their fields from certain tanks situate in village Murki, to which objection is taken by the defendants. Accordingly the plaintiffs claim the relief of perpetual injunction restraining the defendants from interfering with the plaintiffs taking water from the tanks in question to their fields in village Banjaripur. The defendants pleaded that a similar suit, brought by some other persons of Banjaripur for similar reliefs, was decided in a certain manner and that the decision in that suit operated as res judicata in the present suit, with the result that the latter must be dismissed.

2. The pleadings of the earlier suit and the judgment are not before me, but a copy of the decree is on the record. It is stated in the judgment of the lower appellate Court, which probably had the whole record of the earlier case before it, that the procedure, prescribed by Order 1, Rule 8, Civil P.C., had not been

taken in that case. On this ground alone the lower appellate Court has held that the decision in that case is not binding on the present plaintiffs, who were no parties to it. This view is based on AIR 1933 183 (Privy Council) Apart from this aspect of the case, it seems to me that the decision in the earlier case is not res judicata for two other reasons". Firstly, the relief claimed by the plaintiffs in the earlier suit was that the defendants be restrained from interfering with their right to irrigate their fields. It does not appear that they claimed a right for themselves as well as for all the other residents of village Banjaripur. It may be that the right claimed by them was similar to the right which other residents of village Banjaripur were interested in claiming. That does not, however, make the suit a representative one. It is only if the relief claimed by the plaintiffs is so comprehensive that, if granted, it will confer a benefit on a class of persons, including the plaintiffs of the suit, that the decision can operate as res judicata against those not actually impleaded. Secondly, it appears that the previous suit was not decided on contest. The parties to it referred the dispute between them to a certain arbitrator, who gave an award.

3. The decree in that case was based on the award. It is not disputed that no one outside the parties to that case agreed to refer to arbitration. The decree in such a case can have no more sanctity than the award on which it is based; and if the award, wholly apart from the decree, was not binding on persons other than those who made the reference to arbitration, the decree following it cannot have a greater effect. I am satisfied that the plea of res judicata, taken by the defendants, cannot be sustained. The appeal is accordingly dismissed with costs.