

(1959) 03 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 20 of 1957

Pateshwari Parshad Singh

APPELLANT

Vs

A.S. Gilani
 A.S. Gilani Vs Pateshwari Parshad Singh

RESPONDENT

Date of Decision : 30-03-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1959 P&H 420

Hon'ble Judges : K.L. Gosain, J;A.N. Grover, J

Bench : Division Bench

Advocate : A. Hussain, D.C. Gupta and J.N. Kaushal, for the Appellant; F.C. Mittal and D.D. Khanna, for the Respondent

Judgement

A.N. Grover, J.—This appeal is directed against a decree for Rs. 18,000/- granted in favour of the plaintiff-respondent against the defendant-appellant.

2. According to the allegations of the plaintiff he was appointed in the year 1923 as agricultural adviser of the Balrampur Estate belonging to the defendant with benefit of provident fund contribution by the U. P. Court of Wards and by the plaintiff. The Estate was released from the superintendence of the Court of Wards in the year 1937 and thereafter the defendant agreed to retain the plaintiff as agricultural adviser and he continued in service of the Estate.

The plaintiff was given an option either to continue to enjoy the benefit of the contributory provident fund as before or to agree to accept on retirement such pension as might be fixed by the defendant at the time of retirement "or in default of such fixation, as may be permissible under the rules of the Raj on the condition of the plaintiff refunding the amount contributed by the Estate towards the provident fund" (vide paragraph 4 of the plaint). The plaintiff opted for the second alternative and refunded Rs. 17,000/- odd which had been contributed by the Estate towards the provident fund and agreed to pension being given to him after his retirement.

In the year 1944 the plaintiff retired from the defendants service with his permission, and the defendant in pursuance of the agreement mentioned above, and also because the amount contributed by the Estate towards the provident fund had been refunded, fixed Rs. 500/- per mensem as the plaintiff's pension which was agreed to be paid wherever the plaintiff might be. The defendant had been paying the plaintiff's pension up to January 1951 when it was stopped.

The plaintiff instituted a suit for recovery of pension for the month of February 1951 amounting to Rs. 500/- in the Court of Judge, Small Causes, Simla, on 9-3-1953 in which issues were framed and decided and the suit was decreed. The plaintiff claimed that the aforesaid judgment operated as *res judicata* in the present case so far as all the points which had been decided previously were concerned. The plaintiff further alleged that a sum of Rs. 32,500/- was due from March 1951 to the end of July 1956 on account of the arrears of pension, but the plaintiff sued only for the recovery of Rs. 18,000/- as pension due from 1-8-1953 to 31-7-1956 and the balance of the claim was given up.

The suit was resisted by the defendant and a large number of pleas were raised which need not be stated in their entirety. It was denied that any contract had been made with the plaintiff for payment of the pension. According to the defendant, the sum of Rs. 17,000/- contributed out of the income of Balrampur Raj towards the provident fund was also paid to the plaintiff in 1944 at the time of his retirement with an additional amount of Rs. 8,000/-, the total being Rs. 25,000/-, and this payment was *ex gratia* and an annuity of Rs. 500/- per mensem was further awarded purely "as a favour for such time as the defendant so wished."

The defendant also denied any personal liability to pay the pension to the employees of the Raj after the Raj had ceased to exist. It was, however, not admitted that the defendant was liable personally to make payment periodically of the sum of Rs. 500/- per mensem. According to the defendant, the alleged agreement was without consideration and unenforceable at law and the plaintiff's claim was barred by limitation. The defendant denied that the judgment given by the Court of Small Causes on 9-3-1953 operated as *res judicata*.

3. On the pleadings of the parties the trial Court framed the following preliminary issues:

1. Has this Court territorial jurisdiction to hear the suit?
2. Does the judgment dated 30-4-1954 in suit No. 23 of 1953 operate as *res judicata*? If so on what points?
3. Is the plaint not correctly valued for the purposes of court-fee? If so, what is the correct valuation?

All the issues were found in favour of the plaintiff with the result that the suit was decreed. It would be best to state the conclusion of the trial Court in its own

words--

"In my opinion, the judgment dated 30-4-1954 operates as res judicata on all the points decided therein. No other point arises for decision in the present suit. The issue is accordingly decided in favour of the plaintiff."

4. It has been contended on behalf of the appellant that the previous judgment given by the Judge, Small Cause Court, Simla, could not operate as res judicata in the present case. The suit was for recovery of Rs. 500/- alleged to be due to the plaintiff on account of pension for the month of February 1951 and the allegations were practically the same as they are in the present suit.

It is submitted, however, that the present suit being for recovery of Rs. 18,000/- was beyond the jurisdiction of the Judge, Small Cause Court, and therefore, Section 11 of the CPC could not apply. This matter was conceded even by the trial Court, but it proceeded to decide in favour of the plaintiff on the authority of *Ishwar Datt v. General Assurance Society, Ltd.*, AIR 1937 Lah 346.

In that case Bhide J., had occasion to consider the applicability of the general principle of res judicata in cases where Section 11 of the Code did not apply. A suit had been instituted for about Rs. 109/- in the Small Cause Court claimed by way of commission. That suit had been dismissed on the finding that the plaintiff had violated the terms of the agreement.

Subsequently another suit was filed by the same person in the Court of Subordinate Judge, IVth Class for an account. It was not denied that the plaintiff's claim was based on the same agreement in both the suits. Bhide. J., observed as follows--

""But the principle of res judicata is of wider application, as pointed out by their Lordships of the Privy Council in *G. H. Hook v. Administrator-General of Bengal* ILR Cal 499: (AIR 1921 PC 11); and *Ram Chandra Rao v. Ramchandra Rao* ILR 45 Mad 320: (AIR 1922 PC 80). It has been: held to govern cases where the matter in issue is the same and has been previously decided by a competent Court. For instance, when a Court has exclusive jurisdiction to try any matter its decision on that point will operate as res judicata."

The learned Judge affirmed the decisions of the Courts below that the subsequent suit was barred in view of the principle referred to above. Bhide J., relied mainly on *Velji Dayalji v. Nand Lal* AIR 1026 Sind 236, which was followed in *Hemraj Har-nam Das v. Hargolal*, AIR 1934 Sind 112, and reference was made by him to *Champat v. Toti Bam* AIR 1934 Lah 324; *Daulat Ram v. Munshi Ram* AIR 1932 Lah 623; and *Mauj v. Sardara* AIR 1929 Lah 586.

5. In AIR 1926 Sind 236, *Kennedy and Rup-chand Bilaram A. J. Cs.*, laid down that Section 11 of the Code was not exhaustive and the plea of res judicata was not limited to a judgment of a Court of concurrent jurisdiction being pleaded as a bar to the subsequent suit but it extended also to a judgment of a Court of exclusive jurisdiction. In that case also the previous judgment was of a Court of

Small Causes.

The basis of the decision was that the Court of Small Causes was a Court of exclusive jurisdiction and, therefore, by the application of the wider provisions of *res judicata* it would have the force of finality, and any points decided by such Court would be conclusive in any subsequent litigation. In AIR 1934 Sind 112, *Aston A. J. C.*, referred to several cases "but appears to have been influenced naturally by the strong opinion expressed in the earlier Bench decision of that Court,

In AIR 1934 Lah 324, *Hilton J.*, referred to the decision of the Sind Court in. AIR 1926 Sind 236, and observed that the Judgment of a Court of exclusive jurisdiction could operate as *res judicata* only on a matter which that Court could exclusively decide. In the case decided by him it was held by the learned Judge that the Small Cause Court had not exclusive jurisdiction to decide the question of title, nor to decide the character of the plaintiff or defendant's possession.

In AIR 1932 Lah 623, the question was whe-ther the decision of a revenue Court would operate as *res judicata* in a civil Court. It was held by Dalip Singh J., that a revenue. Court's decision was binding on the civil Court so far as the issue raised then was raised again. In AIR 1929 Lah 586, *Shadi Lal C. J. and Broadway J.*, expressed the view that the decision of a revenue Court in matters in which it had exclusive jurisdiction would be *res judicata* in a subsequent suit in a civil Court.

In *Hayat Mohammad v. Bar Gaushala Ltd.*, Lyallpur AIR 1938 Lah 811, *Skemp J.*, agreed with the view of *Bhide J.*, that if a Small Cause Court decided a matter on which it had exclusive Jurisdiction, then that decision would be binding on subsequent Courts. In that case, however, the decision of the Small Cause Court on title in a suit for rent was not accepted to have the force of *res judicata* by the learned Judge in a subsequent suit for rent and ejection on the ground that the prayer for ejection took the suit away from the jurisdiction of the Court of Small Causes.

6. The learned counsel for the appellant does not and indeed cannot challenge the correctness of the view expressed in several English cases and in *Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others*, that the condition regarding the competency, of the former Court to try the subsequent suit is one of the limitations engrafted on the general rule of *res judicata* by Section 11 of the Code and has application to suits alone and a plea of *res judicata* on general principles, can be successfully taken in respect of judgments of Courts of exclusive jurisdiction.

It is urged that a Small Cause Court is not a Court of exclusive jurisdiction but it is a Court of preferential jurisdiction and cannot be put in the same category as a Revenue Court, Land Acquisition Court, Administration Court, Insolvency Court, Guardian Court, Probate Court and the like. It is pointed out that Courts of exclusive jurisdiction are those which have been conferred exclusive powers to

decide certain matters and a Court of Small Causes cannot be regarded to be such a Court as has exclusive jurisdiction to decide a particular matter.

It certainly has preferential jurisdiction with regard to certain suits where, such a Court exists; otherwise a suit which is of a Small Cause nature is triable by any civil Court of competent jurisdiction. By way of illustration it is pointed out that Courts of Small Causes in the Punjab State exist only in some places like Amritsar and Simla and have not been established anywhere else.

If the suit which was instituted by the present plaintiff at Simla on the previous occasion had been instituted anywhere else, it would have been cognizable by any Court of competent jurisdiction there. Even in Simla if the Court of Small Causes had not been established, the suit would have been triable by the Court having jurisdiction to try civil suits there. :

It is merely because a Court of Small Causes has been established there that the suit became cognizable and triable by it in accordance with the provisions contained in Section 16 of the Provincial Small Cause Courts Act. The suit filed by the plaintiff at Simla was cognizable by a Court of Small Causes there not because of "any matter" falling exclusively within the jurisdiction of a particular Court, but it became triable by the Court of Small Causes as the same existed there and it had to be given preference.

Reference in this connection has been made to certain decisions in which the view has been taken that Small Cause Court has preferential jurisdiction only and its decisions cannot operate as *res judicata* for the purposes of other suits which it was not competent to try. In *Dulare Lal v. Hazari Lal* AIR 1914 All 229, *Sunder Lal J.*, held that a Small Cause suit which was transferred to a Munsif retained its character as such and no appeal lay against the decision of the Munsif in such a suit, nor could his decision operate as *res judicata* for purposes of other suits not cognizable by the Court of Small Causes.

Similarly in *Shakira Bibi Vs. Nandan Rai and Another*, *Stuart J.*, considered that a judgment did not operate as *res judicata* where the Munsif in his capacity of an officer hearing a suit of a small cause court nature was not competent to try the later suit. In *Ghulappa v. Raghavendra* ILR 28 Bom 338, *Jenkins C. J.* and *Betty J.*, considered that a Court of Small Causes was a Court of preferential jurisdiction. In *Mohini Mohan Roy Vs. Ramadas Paramhansa*, *Rankin and Ghosh JJ.*, held that if a later suit was not of a Small Cause nature, a decree for money made in a previous suit instituted in the Small Cause Court did not operate as *res judicata*.

In *Madhorao v. Amrit Hao* AIR 1918 Nag 163, the view that has been expressed is that the decision of a Subordinate Judge in a previous suit is *res judicata* in a subsequent small cause suit between the same parties inasmuch as the inability of the Subordinate Judge to entertain a claim of a Small Cause nature arises not from the incompetence but from the existence of another Court with a preferential jurisdiction.

The Nagpur Court followed the view of Jen-kins C. J. in ILR 28 Rom 338. In Raja Simhadri Appa Row v. Ramachandrudu ILR Mad 63, the question was whether the decision of the Court of Appeal in an original suit on the file of the District Munsif with regard to the rate of rent was *res judicata* in a subsequent suit. Boddan and Bhashyam Ayyangar JJ. made the following observations--

"Under the Small Cause Courts Act a suit cognizable by a Small Cause Court is not to be instituted and tried by an ordinary civil Court if, and so long as, within the local limits of its jurisdiction a Small Cause Court is established competent to take cognizance of such small cause suit."

A Full Bench of the same Court in *Avanasi Goun-den v. Nachammal* ILR Mad 195, overruled this authority, but that was on a different point. In AIR 1943 449 (Oudh) it has been observed that Section 16 of the Provincial Small Cause Courts Act only provides that a suit cognizable by a Court "of Small Causes shall not be tried by any other Court having jurisdiction."

It does not take away the jurisdiction of that Court. It is similar to Section 15, Civil Procedure Code, which provides that every suit shall be instituted in the Court of the lowest grade competent to try it. Similarly, in *U. K. Seal v. Aramugam Chettyar* AIR 1938 Rang 25, Dunkley J., was of the view that the character of the suit was not altered by the mode in which it was tried.

It was further laid down by him that the effect of the provisions of Section 16 was not to deprive the regular Court altogether of jurisdiction in suits cognizable by a Court of Small Causes, but merely to prevent the exercise of that jurisdiction by the regular Court so long as there was a Court of Small Causes having jurisdiction within the same local limits.

In ILR 29 Mad 195, the question was whether the decision upon a matter which was directly and substantially in issue between the same parties in a suit, which, though tried by the District Munsif as an original suit was yet one of a small cause nature and, therefore, in which no second appeal lay, was binding in respect of the same matter in a subsequent suit in which a second appeal lay. After considering a large number of authorities taking divergent views the observations of a Full Bench consisting of five judges at page 199 were as follows:

"Those learned Judges who hold, that in cases like the present, the decision in the earlier suit operates as *res judicata* take the view that the language of the section is satisfied when the Court deciding the first suit was competent to try the subsequent suit, irrespective of the question whether the earlier decision was or was not subject to the same appeal as the decision in the subsequent suit would be, and that a different interpretation would be straining the language of the legislature.

Those learned Judges on the other hand who take the opposite view consider that the Words "of jurisdiction competent" in the section admit of the provisions

of law relating to appealability being considered in giving effect to the principle of estoppel which the section is intended to enforce and that, having regard to the difference in the grades of the Courts administering justice in this Country and the qualifications of Judges which differ greatly, it is better not to tie down, as far as possible. Courts of higher jurisdiction by the decisions of inferior Courts.

Sir Barnes Peacock in the decision in *Mt. Edun v. Mt. Bechun* 8 Suth WR 175, which is referred to by the Judicial Committee in *Misser Raghubar-dial v. Sheo Baksh Singh* ILR 9 Cal. 439, as the leading case, and the Judicial Committee itself in that case lay much stress upon the said difference in the grades of Courts and the qualifications of Judges in connection with the question of estoppel by judgment, and the Committee further observe that although it may be desirable to put an end to litigation the inefficiency of many of the Indian Courts makes it advisable not to be too stringent in preventing a litigant from proving the truth of his case."

Thus, various previous decisions including ILR Mad 63, were overruled and it was held that the decision in the former suit did not operate as *res judicata* and the fact that the former suit was one of a small cause nature prevented the decision therein from operating as *res judicata* in the present suit. The view expressed by the Full Bench, based as it is on very good reasoning, commends itself a great deal to us.

There can be no doubt that while considering the applicability of the principle of *res judicata* the provisions relating to appealability, must also be kept in view.

7. On giving the matter our best consideration we are of the opinion that a Court of Small Causes cannot be regarded to be a Court of exclusive jurisdiction in the sense in which that expression is employed by their Lordships of the Supreme Court in *Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others*, It is noteworthy that in the illustrations given by their Lordships a reference has been made to the Revenue Courts, Land Acquisition Courts, Administration Courts, etc.

These Courts have exclusive jurisdiction over a particular subject-matter. The Court of Small Causes can only be regarded to be a Court of preferential jurisdiction in the sense in which Jenkins C. J. employed those words in ILR 28 Bom 338, In the present case the suit was tried by the Court of Small Causes because it existed there and because of its establishment it came to have the sole jurisdiction to entertain that suit.

It was not that the suit was entertainable only by such Court because "the matter" covered by the previous suit was triable by it alone in the same way as a probate or acquisition matter would be entertainable only by a Probate Court or Acquisition Court. Here the matter was such that it was triable by any Court of competent jurisdiction and it was tried by the Court of Small Causes as it was competent to try and entertain it by virtue of the provisions contained in the statute.

If any other view is taken, it would also lead to strange and absurd results. It would be open then for a plaintiff to get suits of very large amounts which are triable by a Subordinate Judge on the regular side and against which an appeal lies to superior Court as of right decided by a Court of Small Causes by first instituting a suit which would lie to and can be entertained by that Court and against which only a revision would be competent and no appeal would lie.

For instance in the present case there are several points of importance which have to be adjudicated upon. By adopting the device of filing a suit for Rs. 500/- in the Court of Small Causes the plaintiff cannot be allowed to have those points adjudicated once and for all by a Court which from its very nature and the scheme of the provincial Small Cause Courts Act is not expected to decide such matters.

The object of the aforesaid statute is to have a speedy decision in suits which do not exceed Rs. 1,000/- in valuation. In order to give finality to that decision no appeal has been provided against the decrees made by the Court of Small Causes except in matters covered by Section 24 and only a revision is competent to this Court for the purposes of satisfying itself that the decree or order made by the aforesaid Court was according to law.

Schedule II read with Section 15 excepts a large number of suits from the cognizance of a Court of Small Causes. Surely the intention of the legislature was not to confer powers on such Courts for decision of important matters. There can thus be no escape from the conclusion that in the present case the Court below was in error in considering that the previous decision of the Court of Small Causes operated as *res judicata* on account of the reasons given by Bhide J., in AIR 1937 Lah 846.

The entire basis of that decision is that such a Court is one of exclusive jurisdiction. Once that basis disappears, this case will have to be considered with reference to the provisions of Section 11 of the Code only. It is not disputed that u/s 11 the previous decision of the Simla Court cannot operate as *res judicata* so far as the present suit is concerned.

8. The learned counsel for the appellant also challenged the finding of the Court below on issue No. 1 and contended that that issue has also been decided in favour of the plaintiff because of the previous judgment which was considered to have the force of *res judicata*. As we are reversing the judgment of the trial Court on that point the finding on issue No. 1 is also hereby set aside.

9. For the reasons given above, this appeal is allowed and the decree of the Court below is set aside. The suit is remanded for a decision in accordance with law.

10. The parties have been directed to appear Before the trial Court on 4-5-59. The costs will abide the final event.

Gosain, J.

11. I agree.