

(1924) 12 AHC CK 0032
In the Allahabad High Court

Peyare Lal and Others

APPELLANT

Vs

Banke Lal and Others

RESPONDENT

Date of Decision : 09-12-1924

Acts Referred:

Citation : (1924) 12 AHC CK 0032

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—The facts which have given rise to this appeal, which involves only a point of law, are as follows:

There was a plot of land measuring 20 bighas "and odd within the zamindari of the plaintiffs. One Ratan Lal who was a lambardar of the mahal and under whom the plaintiffs of the suit out of which this appeal has arisen claim, instituted a suit against the predecessor in title of the present defendants for ejectment. It was alleged that the defendant was Ratan Lal's tenant, that he had put the land to a use which was inconsistent with the letting of it for agricultural purposes and that therefore, he had laid himself open to ejectment. The suit was instituted u/s 57(b) of the Tenancy Act. The suit was dismissed by the Court of first instance, but it succeeded on appeal. The judgment of the District Judge was upheld on a second appeal filed by the defendant. In the execution department it was found that although the holding had related to 20 bighas and odd the claim had been confined to only 10 bighas and odd and accordingly the plaintiff was put in possession of 10 bighas and odd area. After delivery of possession Ratan Lal died and was succeeded by the present defendants. The plaintiffs tried to obtain an order in their own favour in the mutation department, but were unsuccessful owing to an opposition on the part of the defendants. The revenue Court found that the defendants were in possession. Thereupon the suit, out of which this appeal has arisen was instituted. The plaintiffs stated that there was an arrangement by which the 10 bighas 11 biswas decreed in the former suit was

marked off on the western side of the plot and this area was held by them.

2. The Court of first instance dismissed the suit. On appeal the suit has been decreed.

3. The question that has been raised here and that was discussed in the Courts below was this. The rent for the holding from which the ejectment of the predecessor-in-title of the defendants was only Rs. 18. For the purposes of Jurisdiction the valuation of the suit would be one year's rent, viz., Rs. 18 [see Court Fees Act, Section 7. XI (cc) and Suits Valuation Act, Section 8.] Thus under the law, the valuation for the purposes of Court-fee and the valuation for the purposes of jurisdiction was only a sum of Rs. 18, An appeal to the District Judge from a judgment of an Assistant Collector of the first class is allowed only where the subject matter of the suit is valued at over Rs. 100. The subject-matter of the suit was worth Rs. 18 (and this has been found by the Court of first instance) and no appeal lay to the District Judge. The plaintiff however appealed having valued his appeal at the sum of Rs. 125. The defendant overlooked this over-valuation and accepting the plaintiff's valuation as correct filed a second appeal to this Court which, as already stated, was dismissed. The present appellants' argument is this. The District Judge had no jurisdiction to hear the appeal, nor had this High Court any jurisdiction to hear a second appeal. The result is that the judgment of the Assistant Collector stands as the only final judgment in the case. That judgment dismissed the suit in toto and it follows that the plaintiffs are not entitled to any relief. The suit is really barred as *res judicata*.

4. This argument found favour with the Court of first instance. The learned District Judge did not discuss the question of jurisdiction in *extenso*, but was of opinion that the judgment of the District Judge and of the High Court operated as *res judicata* in favour of the plaintiffs.

5. Good many cases have been cited for the parties. On behalf of the respondents an unpublished case has been cited, viz. Second Appeal No. 1505 of 1922. This was decided by Hon'ble Mr. Justice Daniels on the 13th of February 1924 and his decision was upheld by a short judgment by two other learned Judges of this Court. In this case it appears the plaintiff filed a suit for ejectment of a tenant u/s 57(b) of the Tenancy Act. The plaintiff succeeded in the revenue Court. The real valuation of the suit was less than Rs. 100, being only one year's rent. The defendant exaggerated the valuation and filed an appeal before the District Judge. No exception was taken to the jurisdiction of the District Judge and the District Judge decreed the appeal. Thereupon the plaintiff filed a second appeal valuing it at the same amount at which the first appeal had been valued by the defendant. A plea was taken in the memorandum of appeal to the effect that no appeal lay to the District Judge. But apparently this plea was taken after the memorandum of appeal had been drawn up and on the date on which the appeal was heard for the purposes of admission. Daniels, J., was of opinion that the valuation at Rs. 125 had been accepted by both the parties and that, therefore it was not open to the plaintiff to object to the exercise of jurisdiction

by the District Judge, A Letters Patent appeal failed. The judgment in the appeal was as follows:

We agree with the view taken by the learned Judge. Dr. Agarwala is quite right. Jurisdiction which does not exist cannot be created by consent, This objection is taken too late. It cannot be entertained. Appeal dismissed.

6. Evidently the learned Judges hearing the appeal were of opinion that the objection as to jurisdiction should have been taken in the Court of the District Judge.

7. As against this decision Mr. Mukhtar Ahmad has cited a printed case in 17 A.L.J., which again was decided by two learned Judges of this Court. The case is Sheo Shankar Lal Vs. Radhe Shyam, The original suit was of a nature cognizable by a Small Cause Court. The valuation being less than Rs. 500 no second appeal lay to the High Court. No objection having been taken before a learned Single Judge of this Court, he entertained the appeal and reversed the judgment of the lower Court. A preliminary objection was taken before the hearing of the Letters Patent appeal. The objection was to the effect that it was not open to the appellant to raise a plea which had not been raised before the Single Judge. The objection was overruled and the appeal was decreed.

8. It is clear, therefore that there is a conflict of opinion on this point.

9. I have been asked by Dr. Agarwala that having regard to the importance of the question involved I should refer the matter to the Hon'ble the Chief Justice with a view to the constitution of a Full Bench to hear the appeal. I however find that the attention of the learned Judges of this Court who decided the Letters Patent Appeal in Second Appeal No. 1505 of 1922 was not drawn to the earlier cases of this Court or to the several Privy Council cases that bear on the point. I therefore propose to follow the earlier cases and the Privy Council cases in preference to the recently decided one, viz., Second Appeal No. 1505 of 1922.

10. Section 99 of the Civil P.C., lays down:

No decree shall be reversed or substantially varied... on account of... any irregularity... not affecting the merits of the case or the jurisdiction of the Court.

11. It is clear, therefore that if a question of jurisdiction is raised in appeal, the mere fact that there has not been a miscarriage of justice will not prevent the appellate Court from interfering. The Privy Council laid down this rule in the case of AIR 1924 95 (Privy Council) . See also *Setrucherla v. Maharaja of Jeypore* AIR 1919 PC 150. It was held in AIR 1924 95 (Privy Council) that the objection as to jurisdiction must be entertained though raised for the first time in the appeal, if it be from the facts involved which are admitted or proved. This case is also reported in ILR 51 Cal. 361. It is clear therefore that if the attention of the learned Judges of this Court who decided Second Appeal No. 1505 of 1922 had been drawn to the Privy Council case they would probably have decided it in another way.

12. In the case before me, however the question has been raised not in the suit itself, but in another litigation. Section 4.4 of the Indian Evidence Act; deals with this question. A judgment inter partes previously obtained would ordinarily bind them as *res judicata* provided the judgment was not obtained by fraud or collusion and the judgment was given by a Court competent to deliver it. It follows that where a judgment has been delivered by a Court of incompetent jurisdiction, that is to say, by a Court which had no jurisdiction to hear the case, the judgment cannot be pleaded as *res judicata*. It requires no authority to establish that consent does not give jurisdiction. This has been said by Hon''ble Walsh and Ryves, JJ., in their short judgment delivered in the second appeal mentioned. There may, however be cases in which jurisdiction depends on certain allegations of facts. Where those facts have been established and have been accepted by a Court and on foot of those facts a judgment has been delivered it has been held that a party was not at liberty to question the jurisdiction of the Court. This was held in *Annammal v. Sambasiva Aiyar* AIR 1919 mad 242. In such cases the facts which give the. Court jurisdiction were facts to be established by evidence and it was open to a Court to come to a conclusion on the evidence. The conclusion could be in such cases contested only by way of appeal and not by a separate suit. This principle has been accepted and adopted in Section 21 of the Civil P.C.

13. In the case before me however the facts are all admitted. The holding had a yearly rental of Rs. 18. The valuation of the suit for the purposes of jurisdiction is fixed by law and it is not open to any party to make any other allegation as to the valuation. Whatever might be the market value of the holding, the valuation for the purposes of Court fee and jurisdiction was one and the same, viz., Rs. 18. This case therefore must be differentiated from a case like the case of *Annammal v. Sambasiva Aiyar* AIR 1919 Mad 242. In the case of *Ledgard v. Bull* (1887) 9 All 191,. their Lordships of the Privy Council delivered themselves as follows:

When the Judge has no inherent jurisdiction over the subject-matter of a suit the parties cannot, by their mutual consent, convert it into a proper judicial process although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him.

14. Their Lordships, however go on to make further remarks and on these remarks Dr. Agarwala relies. Their Lordships say:

But there are numerous authorities which establish that when, in a cause which the Judge is competent to try, the parties without objection join issue and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the grounds that there were irregularities in the initial procedure which, if objected to at the time, would have led to the dismissal of the suit.

15. It will be noticed that in this dictum their Lordships talk of a Judge who is competent to try. Where a Judge is not competent to try a suit or hear an appeal it is not open to the parties to give the Judge a jurisdiction by apparently

submitting to it. In the case before me the valuation is fixed by law and it was not open to either party to say that he would value the appeal at something other than what the law says. The Judge therefore (District Judge) was not competent to hear the appeal at all. No second appeal lay to this Court. The result is that the judgments of this Court and the Court of the District Judge must be regarded as passed without jurisdiction.

16. It follows that the only judgment which is binding on the parties in law is the judgment of the Assistant Collector given on 31st August 1914 dismissing the suit of Ratan Lal against the predecessor, in-title of the defendants. In this view the respondents' suit should have been dismissed by the learned District Judge as it was dismissed by the learned Munsif. I allow the appeal, But aside the decree appealed from and restore the decree of the Court of first instance. The appellants will have their costs in this Court and in the Court of first appeal.