

**(1955) 03 PAT CK 0002**  
**In the Patna High Court**  
**Case No : A.F.A.D. No. 2024 of 1948**

Raghubans Mani Prasad Narain Singh and Others APPELLANT  
Vs  
Hardeo Singh and Others RESPONDENT

**Date of Decision :** 18-03-1955

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100, 11

**Citation :** AIR 1955 Patna 393 : (1955) 3 BLJR 318

**Hon'ble Judges :** Das, C.J.; Banerji, J

**Bench :** Division Bench

**Advocate :** Lal Narain Sinha and Lakshman Saran Sinha, for the Appellant;  
Shambhu Nath, for the Respondent

**Final Decision :** Dismissed

## Judgement

Das, C. J.

1. This second appeal by the plaintiffs was referred to a Division Bench by a Single Judge, and raises a somewhat perplexing question of res judicata. The facts are the following. The present appellants filed a suit for recovery of possession of 4.90 acres of land comprised in holding No. 453, situate in village Aima Nasirullah Chak, tauzi No. 444C Lakhraj. They also claimed mesne profits from the 14th of Baisakh, 1348 Fasli, or, in the alternative, a decree for rent for the years 1349 to Jeth, 1352 Fasli, and mesne profits thereafter up to the date of recovery of possession. The appellants claimed that they were the 16 annas proprietors of the land in question which, according to the appellants, was their "khud-kasht" (proprietor's private land). The appellants alleged that one Hiranman Singh, father of defendant 1, was a lessee of the land from the appellants' predecessor-in-interest on an annual rental of Rs. 74/-, and in the survey record-of-rights the land was recorded as "bakasht thikadar".

On the termination of the lease, Hiranman gave up possession, but again took settlement of the land under a registered kabuliati dated 19-6-1928, for the

period 1336 to 1342 Fasli on the enhanced rental of Rs. 115/- per year; but as the kabuliati was inoperative to create a lease in law, Hiranman remained in possession as a yearly tenant during the period of the lease and even thereafter, until on the 13th of Baisakh, 1348 Fasli, defendant 1 surrendered the land in pursuance of an agreement arrived at between him and the father of the appellants. The case of the appellants was that their father came in possession of the land after the agreement on the 13th of Baisakh, 1348 Fasli, but certain criminal proceedings were started between the parties in respect of the land in question and by an order dated 8-1-1943, the criminal Court found defendant 1 to be in possession in a proceeding u/s 144, Criminal P. C., and on the strength of that order defendant 1 dispossessed the appellants from the land. Thereafter the appellants gave a notice to defendant 1 on 21-11-1944, asking the latter to give up possession by the 30th of Jeth, 1352 Fasli. As defendant 1 did not give up possession, the appellants brought the present suit for recovery of possession with mesne profits.

2. The suit was contested by defendant 1, who is the principal respondent before us. His case was that the land was not the proprietor's private land, but was his ancestral raiyati land. It was alleged that the land had been in possession of the family of the respondent from before the survey, and the survey entry to the effect that the land was "bakasht thikadar" was incorrect. The respondent denied the allegation of the appellants that there was an agreement and surrender on the 13th of Baisakh, 1348 Fasli, and the case of the respondent was that he had been in possession of the land all along and had acquired a right of occupancy therein.

3. The learned Munsif who dealt with the suit at the first instance came to the following findings: (1) he held that the question as to whether the respondent was a thikadar or a raiyat had been decided in a previous litigation between the parties, and, therefore, u/s 11, C. P. C., the question could not be tried again; (2) applying the aforesaid principle of res judicata, the learned Munsif held that the respondent was a thikadar; he further held that even on merits the respondent was a thikadar and had acquired no right of occupancy in the land in question; (3) he disbelieved the case of the appellants that there was any surrender or agreement on the 13th of Baisakh, 1348 Fasli, and held that the respondent had all along been in possession of the disputed land from before the entry in the survey record-of-rights; and (4) the learned Munsif held that as the Kabuliati executed by Hiranman on 19-6-1928, was inoperative in law to create a lease, the position of the respondent was that of a lessee from year to year and was governed by the provisions of Section 116 of the Transfer of Property Act, and such a lease could be determined by six months notice u/s 106 of the Transfer of Property Act, and the learned Munsif accepted the plea of the appellants that they had validly terminated the lease by the notice dated 21-11-1944.

On these findings the learned Munsif gave a decree to the appellants for recovery

of possession together with rent for two years and mesne profits thereafter. The present respondent then preferred an appeal which was heard by the learned Second Additional Subordinate Judge of Patna. The learned Subordinate Judge reversed the finding of the learned Munsif on the question of res judicata and held that the issue as to the status of the respondent was not barred by res judicata. He then considered the question of the status of the respondent on merits and came to the following findings: (1) that the appellants had failed to prove that the land in question was proprietor's private land within the meaning of Section 116, read with Section 120 of the Bihar Tenancy Act; (2) that the entry in the record-of-rights to the effect that the land was "bakasht Thikadar" did not show that the land was proprietor's private land; and (3) that the land was settled with the father of the respondent for cultivation of the land by the latter and the status of the respondent's father was that of a raiyat and not that of a tenure holder; therefore, under the provisions of Section 21 of the Bihar Tenancy Act the respondent's father acquired a right of occupancy, inasmuch as he was a settled raiyat of the village; and furthermore, as the respondent had been in possession for more than twelve years since the settlement in 1928, he had acquired a right of occupancy in the land. On these findings the learned Subordinate Judge dismissed the claim for eviction, and held that the present appellants were entitled to recover rent only from the respondent at the rate of Rs. 74/-per year.

4. The principal question which has been firmied before us on behalf of the appellants is the question of res judicata and the argument of learned Counsel for the appellants has been that the learned Subordinate Judge was wrong in his view that the issue as to the status of the respondent could be tried again in the present case. In order to decide this question of res judicata, it is necessary to state in detail the history of previous litigation between the parties.

In 1935 the predecessors-in-interest of the present appellants brought a suit against Hiranman Singh (father of the principal respondent) claiming rent at the rate of Rs. 115/- per year for the years 1339 to 1341 Fasli on the basis of the Kabuliat executed by Hiranman Singh on 19-6-1928. The judgment of the learned Munsif in that suit is Ex. 6, and the judgment shows that one of the issues raised in the suit was whether the rent claimed was correct, In that suit Hiranman pleaded that the Kabuliat has been executed by him under undue influence and coercion, and he further claimed that the holding was his occupancy holding and the plaintiff of that suit was not entitled to claim rent at Rs. 115/- per year. The learned Munsif found that the Kabuliat was not executed under undue influence or coercion, and he further held that Hiranman had no occupancy right in the holding and there was no reason why the claim of the plaintiff of that suit for rental at the rate of Rs. 115/- per year should not be allowed. He accordingly decreed the suit. There was an appeal and the learned Subordinate Judge affirmed the decision of the learned Munsif. The judgment of the appellate Court is Ex. 6(a). Then there was a second appeal, and the judgment of this Court in second appeal is Ex. 6(c). This judgment shows that on the principle laid down in

-- Ramkrishna Jha Vs. Jainandan Jha it was held by this court that the registered Kabuliati executed by Hiranman on 18-6-1928, did not constitute a lease u/s 107 of the Transfer of Property Act, 1882, and the suit could not be decreed on the basis of that document. This Court, therefore said:

"In this view of the matter the lessor was not entitled to recover rent on the basis of the Kabuliati. In the record-of-rights rent is stated to be Rs. 74/- and it is at that rate of rent alone that the plaintiff is entitled to recover in the absence of the evidence rebutting the correctness of this entry."

With regard to the question whether Hiranman was a thikadar or a raiyat, this Court said:

"There was evidence on the record on which the court below could base their conclusion that his status was that of a thikadar, and their finding on that part must, therefore, be accepted." This was the end of the litigation which began in 1935: Then in 1941, the father of the present appellants again brought a suit for recovery of rent for 1344 to 1348 Fasli at the annual rental of Rs. 115/- per year against the present respondent and others. Again the question was raised what was the rent payable for the holding. On the basis of the final decision of this Court in the litigation which commenced in 1935, it was held that the rent payable by the present respondent was Rs. 74/- per year. There was also a question if the respondent was a raiyat or a thikadar, and on this, question the learned Munsif expressed himself as follows:

"In the previous suit" it was further held by the High Court that the status of the defendant is that of a thikadar" and not that of a raiyat. I accordingly hold that the defendant is the thikadar of the disputed land the previous judgment operating as res judicata in this suit" There was. an appeal against the decision of the Munsif which was dismissed, the judgment of the appellate Court being marked Ex, D.

5. Now, the question if the decision in the 1935 litigation or the decision in the year 1941 litigation operates as res judicata on the issue as to the status of the respondent. The learned Subordinate Judge has answered the question in the negative on two lines of reasoning. I shall presently refer to those two lines of reasoning; but before I do so, I must say that the question has caused me some difficulty, and at one time I was inclined to think that the issue cannot be tried again by reason of the provision of Section 11, C. P. C. On a more careful examination of the question, however, I am inclined to agree with the learned Subordinate Judge.

The two lines of reasoning on which the learned. Subordinate Judge came to his conclusion on the question of res judicata were these: firstly, he held that the question of the status of the respondent was not directly and substantially in issue either in the litigation of 1935 or in the litigation of 1941; and secondly, he has pointed out that the Additional Munsif who tried the suit of 1935 had pecuniary jurisdiction to try suits of the value upto Rs. 1,000/- only whereas the

value of the suit out of which the present appeal has arisen is Rs. 2,131/-. The learned Additional Munsif who tried the suit of 1935 was not, therefore, competent to try the suit out of which this appeal has arisen and, therefore, the decision in the 1935 litigation cannot operate as *res judicata* in the present suit. With regard to the decision in the suit of 1941, the learned Subordinate Judge points out as follows;

"It is true that the Munsif of the permanent court at Barh who tried the suit of 1941 had special jurisdiction but his decision in the suit of 1941 as to the issue being barred by *res judicata* in view of the prior decision is only to the effect that the previous decision operated as *res judicata* in the particular suit before him which it may be noted, was of a value less than Rs. 1,000/- as would appear from the fact that the claim was for five years' rent at Rs. 115/- per year. The question as to whether the previous decision could or did operate as *res judicata* in a suit of a valuation exceeding Rs. 1,000/- did not arise in the suit of 1941, nor was any decision given on any such point, that question being quite outside the scope of the suit of 1941. I therefore, hold that the decision in the suit of 1941, as to the issue being barred by *res judicata* in view of the prior decision cannot operate as *res judicata* in the present suit."

6. Learned Counsel for the appellants has very seriously contested the correctness of both the lines of reasoning given by the learned Subordinate Judge. I propose now to examine those two lines of reasoning with care. It is worthy of note that both the suits of 1935 and 1941 were suits for arrears of rent, and the principal question for decision was the rate of rent which the respondent was liable to pay. In the 1935 litigation, as soon as it was held that the *Kabuliat* of 1928 did not operate as a valid lease, it followed as a matter of course that the plaintiff of the suit of 1935 was not entitled to get rent at the rate of Rs. 115/- per year; because that rate of rent was based on the *Kabuliat* of 1928. In the 1935 litigation this court held that as the record-of-rights showed the rent of Rs. 74/- only, the plaintiff of the suit of 1935 was entitled to get rent at that rate only. It was unnecessary thereafter to consider the question of the status of Hiran Singh. Whether Hiran Singh was a *thikadar* or a *raiyyat*, he was liable to pay rent at the rate of Rs. 74/-. Therefore, it seems to me that the learned Subordinate Judge was right in holding that the question of the status of Hiran Singh was not directly and substantially in issue in the litigation of 1935 though Hiran did raise the question that he was an occupancy *raiyyat* and his rent could not be enhanced. In the litigation of 1941 also the question of the status of the present respondent, was not directly and substantially in issue. The question which was directly and substantially in issue was the question as to the rent payable by the present respondent to the plaintiff of that suit. The appellate Court's judgment (Ex. D) shows that the present respondent pleaded that the rent of the land was Rs. 74/- per year and not Rs. 115/-. That being the position, it was unnecessary to decide the status of the respondent,

7. With regard to the second line of reasoning adopted by the learned

Subordinate Judge, it seems clear to me that the Additional Munsif who tried the suit of 1935 was not competent to try the present suit; therefore, under the express terms of Section 11, C. P. C., the decision in the former suit cannot operate as *res judicata* in the subsequent suit. As Section 11, C. P. C. is explicit on this point, the general principles of *res judicata* cannot be invoked in this respect. It is true that the provisions of Section 11 are not exhaustive of the doctrine of *res judicata*; but, as pointed out in several cases, the section is exhaustive in regard to cases that fall within its terms.

Learned Counsel for the appellants has relied on -- *Gokaran Prasad Singh Vs. Chhotey Narayan Singh and Others*, . That was, however, a case in which the subsequent suit was valued for purposes of jurisdiction at a figure beyond the pecuniary jurisdiction of the Court which tried the previous suit, by reason of rise of prices etc. That, however, is not the position here. Learned Counsel for the appellants also relied on the Privy Council decision in -- AIR 1932 50 (Privy Council) .. That, however, was not a case in which the decision in a former suit was sought to operate as *res judicata* in a subsequent suit, and the observations made by their Lordships to the effect that when both parties have without protest chosen to join issue upon certain points, their Lordships see no reason why these matters in dispute should not be *res judicata* between them, must be understood in the context in which the observations were made.

Learned Counsel for the appellants has also relied on -- *Dwijendra Narain Roy Vs. Joges Chandra De and Others*, . That was a case in which it was held that although the scope of the enquiry in a suit u/s 77 of the Registration Act might be of a restricted character, it did not follow that the doctrine of *res judicata* was excluded from full operation. It was pointed out that the principle which prevents the same case from being twice litigated is of general application and is not limited by the specific words of the CPC in this respect. We are, however, dealing with a case which comes strictly within the terms of Section 11, C. P. C. and, therefore, the question is whether in a case which is dealt with expressly by Section 11, C. P. C., the general principles of *res judicata* can be invoked to nullify the express words of. Section 11, C. P. C.

In my opinion, this question must be answered in the negative. The conditions regarding the competency of the former Court to try the subsequent suit applies to suits only; when *res judicata* is founded on general principles of law, all that is necessary is that the former was decided by a Court of competent jurisdiction. It is not necessary to further prove that it had jurisdiction to try the latter suit. So a plea of *res judicata* can be successfully taken in respect of decisions of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, etc., though they exercise special jurisdiction and are not entitled to try a regular suit. But where the plea is that the decision in a former suit operates as *res judicata* in a subsequent suit by reason, of the provisions of Section 11, C. P. C., we must see if Section 11, C. P. C. applies and if at the time when the former suit was brought the Court trying the former suit had jurisdiction to try the subsequent suit. In my

opinion, the learned Subordinate Judge was right: in his view that by reason of the express terms of Section 11, C. P. C. the decision in the litigation of 1935 cannot operate as res judicata in the present litigation.

8. It is true that the Munsif who decided the suit of 1941 was competent to try the suit out of which the present appeal has arisen. In the 1941 suit no decision with regard to the status of the present respondent was given on merits. All that was found was that the decision in the 1935 litigation operated as res judicata in the litigation of 1941, I agree with the learned Subordinate Judge that the decision merely amounted to this, namely, that the previous decision in the 1935 litigation operated as res judicata in the particular suit before the learned Munsif in 1941. The question as to whether the decision would operate as res judicata in a subsequent suit exceeding Rs. 1,000/- in value was not before the learned Munsif who dealt with the suit in 1941 and, therefore, his decision on point No. 2 of that suit cannot operate as res judicata in the present litigation.

9. Thus, on a careful examination of the two lines of reasoning adopted by the learned Subordinate Judge, I hold that he rightly found that the issue as to the status of the present respondent was not barred by res judicata and it was open to the learned Subordinate Judge to try that issue.

10. On the questions whether the land in suit was proprietor's private land and whether it had been settled with the respondent for purposes of cultivation, the findings of the learned Subordinate Judge are findings of fact which cannot be challenged in second appeal. Learned Counsel for the appellants has relied on the decision in -- Rabindra Chandra Ghosh and Others Vs. Mahtha Gauri Singh and Others, where it is held that if a man enters upon a void lease, he is not a tenant but a tenant at will under the terms of the lease in all other respects except the duration of time; and when he pays or agrees to pay any of the rent therein expressed to be reserved, he becomes a tenant from year to year upon the terms of the void lease so far as they are applicable to and not inconsistent, with a yearly tenancy. That decision, however, has no bearing in the present case, because the learned Subordinate Judge held that the land in suit was not proprietor's private land, that the settlement made in favour of Hiranman was made for purposes of cultivation of the land and that Hiranman was a settled-raiyat of the village and acquired occupancy right in the land as soon as the land was settled with him. In view of these findings, the question of the application of Section 116 of the Transfer of Property Act, or the principle underlying that section, does not really arise.

11. For the reasons given above, I hold that there is no substantial ground for interfering with the judgment and decree passed by the learned Subordinate Judge on appeal. This appeal, therefore, fails and is dismissed with costs,

Banerji, J.

12. I agree.