

(1981) 08 AHC CK 0020
In the Allahabad High Court
Case No : Second Appeal No. 840 of 1974

Ram Awadh Singh and Others

APPELLANT

Vs

Sagar Singh

RESPONDENT

Date of Decision : 14-08-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 32
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4(2)

Citation : (1981) AWC 785 : (1982) RD 2

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary and Yatindra Singh, for the Appellant; R.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—This second appeal is by the Defendants in a suit for permanent injunction for restraining them from interfering with the Plaintiff's joint possession over his 1/3rd share in the house detailed at the foot of the plaint. The trial Court decreed the suit. That decree was up-held by the lower appellate Court.

2. Plaintiff Sagar Singh claimed that he was son of Jhoori Singh, the real brother of Bhagauti Singh and Ram Awadh Singh, who were Defendant nos. 1 and 2 in the suit. His father had 1/3rd share in the property which included the house in suit and a number of agricultural plots. Since the Defendants were disputing his rights and were attempting to dispossess him, necessity arose for the suit. The Defendants took the stand that the Plaintiff was not the son of Jhoori Singh and that he had no share whatsoever in the property. He was not in possession of the property either. As such, he was not entitled to the relief claimed.

3. During the pendency of the suit, the land in dispute came to be included in a notification issued u/s 4(2) of the U.P. Consolidation of Holdings Act.

Consequently, the suit abated in so far as it related to the agricultural plots. The suit, however, proceeded in respect of the bouse.

4. Both the parties led evidence in support of their respective cases. The evidence adduced was both oral and documentary in character. The trial Court appraised this evidence and came to the conclusion that the Plaintiff was the son of Jhoori Singh from his wife Smt. Hubraji. He was, as such, entitled to 1/3rd share in the house. The trial Court, therefore, restrained the Defendants permanently from interfering with the Plaintiff's joint possession to the extent of 1/3rd share in the house.

5. The decree of the trial Court was assailed by the Defendants in an appeal. While the appeal was still pending, the Consolidation authorities decided that Sagar Singh, the Plaintiff, was not the son of Jhoori Singh. He was not entitled to any share in the agricultural plots. This decision was challenged before this Court in a petition under Article 226 of the Constitution by Sagar Singh but that too was dismissed summarily. Copies of the judgments of the Consolidation authorities and the decision of this Court in the writ petition were filed in the case before the lower appellate Court.

6. The lower appellate Court took the view that inspite of the decision of the Consolidation authorities, it could not be held that Sagar Singh was not the son of Jhoori Singh. It appraised the evidence on record and came to the conclusion, like the trial Court, Sagar Singh was the son of Jhoori Singh.

7. The Defendants had argued before the lower appellate Court that the decision of this Court in the writ petition filed by Sagar Singh dismissing it summarily operated as res-judicata on the question as to whether Sagar Singh was the son of Jhoori Singh. It was also argued that, in any case, the decision of the Consolidation authorities against the Plaintiff on the question of his being son of Jhoori Singh would operate as res-judicata. This contention was also negatived. The view that the lower appellate Court took in this regard, in effect, was that the decisions rendered by the authorities like those constituted under the U.P. Consolidation of Holdings Act could not be treated to be res-judicata for purposes of a civil suit for those proceedings were instituted after the institution of the civil suit.

8. In this Court it has been urged that the view of the lower appellate Court that the decision of the Consolidation authorities would not operate as res-judicata on the question of the paternity of the Plaintiff was erroneous. It was urged that even though Section 11 CPC was not applicable, the decision by the Consolidation authorities, who were competent to render it, on that question would operate as res-judicata on the general principles governing the doctrine of res-judicata. In support of this submission, reliance was placed by the learned Counsel for the Defendant-appellants upon the decision of D. D. Seth, J. in *Sukhbir Singh v. Khacheru Singh*, 1971 RD 48.

9. In *Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others*, , it was

observed by the Supreme Court (in paragraphs 19 and 20 of the Report) as under :

The test of res-judicata is the identity of title in the two litigations and not the identity of the actual property involved in the two cases When a plea of res-judicata is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the latter suit. A plea of res-judicata on general principles can be successfully taken in respect of judgments of courts of exclusive jurisdiction, like revenue courts, land acquisition courts, administration courts etc. It is obvious that these courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the Statute

10. In Sukhbir Singh's case (supra), the learned Single Judge noticed the observations made by the Privy Council in AIR 1939 133 (Privy Council) to the effect that ... If in a matter referred to him by the Collector in accordance with the, provisions of the Land Acquisition Act, a Judge to whom it is referred has, in a dispute as to their title to the land between two of the parties claiming compensation, determined that dispute, the matter is res-judicata and binds the parties in any later suit involving the issue." He also noticed the observations of the Supreme Court in Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), to the effect that it is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit has the same subject matter. The nature of the former proceeding is immaterial. There is no good reason to preclude such decision on matters in controversy in writ proceedings under Article 226 or 32 of the Constitution from operating as res-judicata in subsequent regular suits on the same matters in controversy between the same parties and, thus, to give limited effect to the principle of finality of decisions after all contest." He concluded that the decision of the Consolidation courts would operate as res-judicata between the parties.

11. learned Counsel for the appellants has, as noticed earlier, argued that the dismissal by this Court of the writ petition filed by Plaintiff Sugar Singh against the decision of the authorities under the U.P. Consolidation of Holdings Act would operate as res-judicata even though it was a non-speaking order. This submission cannot be accepted. By now it is almost settled that a non-speaking order, except in certain given circumstances, cannot operate as res-judicata. In Sohan Pal Singh v. State of U.P.S.A. No. 3187 of 1972 D/-September 9, 1980, I have held, after a review of a number of decisions, including recent decision; of the Supreme Court, that dismissal of a petition under Article 226 of the Constitution by a High Court in limine, without a speaking order, does not normally constitute res-judicata for a subsequent suit on same facts.

12. The submission that the decision rendered by the Consolidation courts on the question of the Plaintiff's claim of being the son of Jhoori Singh would operate as

res-judicata on the general principles of finality of decisions after all contest as held by the learned Single Judge in Sukhbir Singh's case has to be accepted. The view of the lower appellate Court in that regard is not correct. Once the decision of the Consolidation courts were to be treated as having finality on this question, it is obvious that no further enquiry could be made by the Court below about it.

13. It was contended on behalf of the Plaintiff-Respondent that the decision given by the Additional Civil Judge, Azamgarh in civil appeal No. 317 of 1963, which arose out of original suit No. 59 of 1962, that the Plaintiff was the son of Jhoori Singh would operate as res-judicata and the subsequent decision of the Consolidation courts had to be ignored. That was a suit which had been filed by the Plaintiff's mother Smt. Hubraji for maintenance against one of the Defendants, namely, Bhagwati Singh on the allegation that after the death of her husband Jhoori Singh, she was married to Bhagwati Singh who had failed to maintain her. She had alleged in that suit that out of her wedlock with Jhoori Singh earlier, was born the present Plaintiff. The defence that was taken by Bhagwati Singh in that suit was that Smt. Hubraji Kunwar was too tender in age to bear a child at the time of Jhoori Singh's death and that she had become of loose morals and Sagar Singh, the Plaintiff, may have been born to her on account of some such escapade. Bhagwati Singh denied that he was ever married to Hubraji. The learned Civil Judge, who decided Civil Appeal No. 317 of 1963, posed the main question for consideration to be "whether Smt. Hubraji was the legally wedded wife of Defendant Bhagwati Singh or not." On consideration of the evidence led by the parties in that suit, he held that she was a legally wedded wife of Defendant Bhagwati Singh. He held her entitled to maintenance from him. It was in connection with the decision of the aforesaid question that the learned Judge observed in his judgment dated April 30, 1965, inter alia, as follows :

However, the burden lay heavily on the Defendant to prove that the Plaintiff is of bad character and Ram Sagar is her illegitimate child. I find that there is sole testimony of the Defendant and not corroborated by any D. Ws. or oral evidence. I find that the Defendant is very unreliable and his sole evidence does not inspire confidence Hence, I find that the Plaintiff is not of bad character and Ram Sagar is her legitimate son from previous husband Jhoori Singh.

14. It is obvious that the question of the paternity of Plaintiff Sagar Singh was not directly or substantially in issue in that suit. The lower appellate Court rightly did not treat that judgment, which is Exhibit 5 on the record, as amounting to a binding judgment between the parties. He only treated it as a piece of evidence in the case.

15. Since the decision of the Consolidation courts was earlier to that of the lower appellate Court, though the proceedings under the U.P. Consolidation of Holdings Act commenced subsequent to the institution of the suit, it had to be held as binding on the principle of finality of decisions after full contest between the parties. The lower appellate Court could not have gone into the question afresh

and recorded findings of its own. In doing so, it committed an error in law.

16. The result of the discussion aforesaid is that the decree of the courts below in regard to the Plaintiff's claim in the suit cannot be up-held. It has to be set aside. The appeal deserves to be and is allowed. The Plaintiff's suit is dismissed. In view, however, of the peculiar circumstances of the case, the parties are directed to bear their own costs throughout.