

(1920) 06 AHC CK 0007
In the Allahabad High Court

Ram Karan

APPELLANT

Vs

Sri Thakur Ram Narainji and Others

RESPONDENT

Date of Decision : 17-06-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1920 All 298 : 60 Ind. Cas. 74

Hon'ble Judges : Ryves, J;Grimwood Mears, J

Bench : Division Bench

Judgement

1. This is an appeal from, the Court of the learned Subordinate Judge of Cawnpore who felt himself unable to go into the merits of the claim of the plaintiff, holding that in the circumstances the claim was barred by the doctrine of "res judicata. We have to see whether that decision was well founded, and for that purpose it is necessary that we must go into the previous history and the previous litigation. It appears that on the 27th of May 1890 certain persons, Munna Lai, Kamta Praaid, Debi Din and Lalta Prasad, sons of Kashi Din, and Ram, Karan and Behari Lal, son of Dat Ram, executed a deed of endowment by which they made over certain property to an idol, Sri Thakur Ram Narainji, in certain villages. Under that deed of endowment the appellant in the present appeal, being the plaintiff in the Court below, was appointed the manager and the other executants and one outsider were appointed Fanches. Mutation was duly effected as regards the properties favour of the idol and there were provisions for the payment of salaries to the Panchess. The plaintiff, after the death of Kamta Prasad, beoame president as well as manager, and in the year 1909 disputes arose and those disputes culminated in an action which was tried in the Court of the District Judge of Cawnpore in which Lalta Prasad and Madhukar Prasad were plaintiffs and the present plaintiff, Ram Karan, was defendant. That suit originated in this way. Lalta Prasad was one of the men entitled to receive an annual salary, the second plaintiff was one of the sons of Munna Lai, and they made an application u/s 18 of Act No. XX of 1862 which was an application that they might be allowed to sue, and the question that comes before a Court for

decision when an application of that kind is made is, whether there are prima facie grounds for the institution of a suit and whether snob suit is likely to enure for benefit of the trust. These two plaintiffs proved themselves to the satisfaction of the Court to be persons interested in the performance of the trust which had been created by the endowment and as such were authorised by the Court to commence the proceedings. The proceedings had for their object the dismissal of Ram Karan from his position as president and manager, and the plaintiffs alleged various acts which they said were improper and which situated misfeasance and her of the trust. The first three on which they relied were, first, that, instead of taking Rs. 150 only by way of salary, he had throughout all the years in fact taken Rs. 300 and claimed it as a claim of right; the second matter was that he had omitted to bring into the accounts of the trust the income of certain property which they contended was covered by the clauses in the deed of endowment. The third matter was that they asserted that certain grain pits were the property of the and that Ram Karan was setting up a propriety any adverse title to them himself. Now, undoubtedly, Ram Karan was sued in his capacity as a trustee and if he had defended that action throughout without departing Tom that fiduciary character, that is, taking no pleas other than those which were proper to a trustee, it is possible that might have made a substantial difference in the consideration of the case. But when he was challenged with having done all those there things he put up a defense which is familiarly known as that of confession and avoidaoae, that is to say, he admitted that he had taken Rs. 300, he admitted that he had excluded the profits of the small portion? of property from the accounts of the deed of endowment and he admitted also that he had not brought into credit or schedule amongst the property of the trust the grain pits. That was the confession. The avoidance was an assertion by him that he was right and he stood up and said: All that I have done in this matter is correct. I have taken Rs. 300. I have taken the profits of the land and of the grain pits because they are my own. That is why I have done so." And, there fore, he was setting up in the clearest possible terms a right personal to himself a right under that deed as regards Rs. 300, a right of private property a reared the small shares in the pattis and again a right of personal property in the grain pits. ID the action of Lalta Prasad and Madhuker Prasad, the learned District Judge went into all these three matters and decided each one of them against Ram Karac, the present plaintiff. It was not a decision which Earn Karan allowed to go uncontested by any means, because it is clear, from an examination of the judgment in the case which will be found from R 5 to R 16, that he fought each item with persistence, Those were the main three matters which decided the Judge in removing him from his office. That action was decided on the 20th of March 1913. On the 16th of February 1915 Ram Karan commenced the suit in the Court of the Subordinate Judge of Downpour in which he claim Their in precise terms exactly the very three things which the Judge in the judgment 1913 had decided were not his property full all. Now the Court which decided the matte in 1913 was a competent Court to decide these three facts. They were decided, we have said, after a contact and there were substantial issues in the

matter. In the present case which is under appeal they are the three matters alone in issue, and the claim of Ram Karan was in the second action precisely the same as his defense to the first action which had proved unsuccessful, that is to say, in the second action Ram Karan hoped to establish his own personal right to Rs. 300 a year and to the landed property and to the grain pits by exactly the same allegation which he put forward in the defence in the previous suit. Therefore, in our opinion, he comes precisely within the prohibition of the first part of Section 11 of the Code of Civil Procedure, which forbids a Court to try any issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit. Now, that is not the whole of Section 11, and there arises the further consideration as to whether there is an identity of parties in the 1913 suit and the 1915 suit because the section says that the issues must be between the same parties or between the parties under whom they or any of them claim, litigating under the same title is a Court competent to try such subsequently suit. There is no question that the court was competent to try the issues which it did, said now we have to consider whether it can fairly be said that the action will become that same parties or between the parties under whom they or any of them claim litigating under the same title. The first action, as we have said, was between Lalta Prasad and Madhuker Prasad, but a perusal of Sections 18 and 14 of Act XX of 1853 shows that those two men were not bringing an action for any personal benefit or personal enrichment but were bringing it for and on behalf of the idol and for and on behalf of the probate of the property of the idol. Ram Karan, as we have said, was sued as trustee and manager, but during the course of that case he assumed a different character from that of trustee and manager and fought on the ground of his own personal rights. As regards the action of 1915, the one now under appeal, Ram Karan is asserting his own personal rights and he is asserting them against Sri Thakur Ram Narainji and the son of the Lalta Prasad and Madhuker Prasad and other persons. Deciding as we do, that in the first action the plaintiffs were merely representatives of the idol and that in that action Ram Karan fought on personal grounds as well as on those of a trustee we have come to the conclusion that the words of the section are satisfied and that all the necessary elements which constitute res judicata obtain in this case, and in that view we affirm the decision of the Subordinate Judge and dismiss the appeal with costs and fees on the higher scale.