

(1920) 05 PAT CK 0010

In the Patna High Court

Rama Singh and Others

APPELLANT

Vs

Janak Singh and Others and Baij Nath Singh

RESPONDENT

Date of Decision : 11-05-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : 56 Ind. Cas. 697

Hon'ble Judges : Sultan Ahmed, J; Coutts, J

Bench : Division Bench

Judgement

Sultan Ahmed, J.—This appeal arises out of two suits which were instituted by the plaintiffs-appellants for declaration of their title and confirmation or in the alternative recovery of possession of certain plots of land. It appears that similar suits had been instituted in 1914 by the same plaintiffs against the same defendants, for a similar declaration and consequential relief with respect to the same subject-matter. These suits were dismissed by the Munsif after contest but on appeal the Subordinate Judge gave permission to the plaintiffs to withdraw the suits with liberty to bring fresh suits on the same cause of action. Accordingly, the plaintiffs instituted the suits out of which this appeal arises. The Munsif held that the order of the Subordinate Judge in the previous suits was passed without jurisdiction and, therefore, the decision of the Munsif in the previous suits was res judicata. An appeal having been preferred against the decision of the Munsif the learned District Judge also held that the decision of the Munsif in the previous suits was res judicata. The learned District Judge came to this conclusion, relying on the case of Kali Prasanna Sil v. Panchanan Nandi 33 Ind. Cas. 670 : 20 C.W.N. 1000 : 23 C.L.J. 489 : 44 C. 367. This second appeal has been filed against the judgment and decree of the learned District Judge.

2. The first question that arises for decision is what is the effect of the order of the Subordinate Judge granting permission in the previous suits to bring fresh suits on the same cause of action? It is contended by the learned Vakil appearing on behalf of the appellants that though the order of the Subordinate Judge giving

permission to the plaintiffs to withdraw the suite with liberty to bring fresh suits was not strictly in compliance with the provisions of Order XXIII, rules 1, Civil Procedure Code, yet it was not an order without jurisdiction. The learned Subordinate Judge, it is urged, had jurisdiction to hear the appeal and while hearing the appeal, passed an erroneous order under Order XXIII, rule I. On the other hand it is contended on behalf of the respondent that the order of the learned Subordinate Judge was void and a mere nullity. We have, therefore, to decide whether that order was without jurisdiction or whether simply an error of law had been committed by the Subordinate Judge in the exercise of jurisdiction, In my opinion this is clearly a case where the Subordinate Judge had no jurisdiction to make the order. In the case of *Nusserwanjee Pestonjee v. Moer Mynooddeen Khan* 6 M.I.A. 134 : 19 E.R. 50 the Judicial Committee of the Privy Council laid down as follows: "The present question turns upon this principle, that wherever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise." In the case of *Hira Lal Mitra v. Uday Chandra Dey* 14 Ind. Cas. 33 : 16 C.W.N. 1027 : 16 C.L.J. 103 it was laid down following the case of *Robert Watson & Co. v. Collector of Zillah Rajshahye* 13 M.I.A. 160 : 12 W.R.P.C. 43 : 3 B.L.R.P.C 48 : 2 Suth P.C.J. 260 : 2 Sar. P.C.J. 500 : 20 E.R. 511 13 M.I.A. 160 : 12 W.R.P.C. 43 : 3 B.L.R.P.C 48 : 2 Suth P.C.J. 260 : 2 Sar. P.C.J. 500 : 20 E.R. 511 that "Courts in India have no general power of dismissing a suit with liberty to the plaintiff to bring a fresh suit on the same matter. The only power they have in this respect is that given by Order XXIII, rule), sub rule (2), Civil Procedure Code." Applying these principles to the facts of the present case, the jurisdiction of the Subordinate Judge to grant the order could only arise if the conditions laid down in Order XXIII, rule 1, were fulfilled. It is conceded that the terms of Order XXIII, rule 1, were not complied with in this case. The result is that the decision of the Subordinate Judge was absolutely without jurisdiction and was, therefore, void and a nullity. The decision in the case of *Kali Prasanna Sil v. Panchanm Nandi* 33 Ind. Cas. 670 : 20 C.W.N. 1000 : 23 C.L.J. 489 : 44 C. 367 which is on all fours with the present case is based upon the view that I have laid down above, and, as I have shown, correctly lays down the law. In the case of *Satyabadi Gountia v. Bediahar Bar Panda* 46 Ind. Cas. 392 : 3 P.L.J. 401 which is also on all fours with the present case, it was laid down that: "The order of the Appellate Court granting leave to withdraw amounted to a decision that the evidence on the record was not sufficient to support the plaintiff's case, and, therefore, a subsequent suit between the same parties, in which the same matters were substantially in issue, was barred by the rule of res judicata." So, whatever view may be taken, whether the decision of the Subordinate Judge was without jurisdiction or amounted to a decision that the evidence on the record was not sufficient to support the plaintiff's case, it must be held that the present suits would be barred by the doctrine of res judicata. The difficulty suggested,

that the Munsif could not treat a decision in the same case between the same parties of another Court of co ordinate or superior jurisdiction as a decision without jurisdiction and then proceed to ignore it, is not in ray opinion real or substantial. If, as I have held, the order of the Subordinate Judge was without jurisdiction, and not erroneous in the exercise of his jurisdiction, and so was void and a nullity, it is quite competent for any Court, whether exercising higher or lower or co-ordinate jurisdiction to treat that order as void and a mere nullity. There is no warrant for suggesting that a Court when determining the plea of res judicata is not entitled to consider the question of the competency of the Court which passed the previous decree, as "in order that a judgment may be conclusive between the parties, the essential pre requisite is that it should be the judgment of a Court of competent jurisdiction within the meaning of Section 11 of the Code of Civil Procedure", see Krishna Kishore De v. Amar Nath Khettry 56 Ind. Cas. 532 : 31 C.L.J. 272 : 24 C.W.N The result is that in my view this case is concluded not only by the decision in the case of Kali Prasanna Sil v. Panchunan Nandi 33 Ind. Cas. 670 : 20 C.W.N. 1000 : 23 C.L.J. 489 : 44 C. 367 but is also fully coveted by the decision of this Court in the case of Satyabadi Gountia v. Bediadhhar Bar Panda 46 Ind. Cas. 392 : 3 P.L.J. 404. This appeal is, therefore, dismissed with costs.

Coutts, J.

3. I agree. I accept the view of the law as laid down in Kali Prasanna Sil v. Panchanan Nandi 33 Ind. Cas. 670 : 20 C.W.N. 1000 : 23 C.L.J. 489 : 44 C. 367.