

(1954) 03 PAT CK 0007
In the Patna High Court
Case No : A.F.A.D. No. 2039 of 1947

Ramkaran Singh and Others

APPELLANT

Vs

Sm. Parbati Kuer and Others

RESPONDENT

Date of Decision : 30-03-1954

Acts Referred:

Bihar Tenancy Act, 1885 — Section 148A
Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1954 Patna 443 : (1954) 2 BLJR 302

Hon'ble Judges : Sinha, J; Misra, J

Bench : Division Bench

Advocate : Mahabir Prasad and Murtaza Fazl Ali, for the Appellant; Lalnarain Sinha, Ramdeo Pd. Singh, A.N. Chatterji and S.S. Rakshit, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—This appeal arises out of a suit for declaration of title and recovery of possession in respect of 4.53 acres of land in village Mohammadpur Abgila, Touzi No. 2928, out of a total area of 7.20 acres of land in bhata No. 2 described in schedules 1 to 3 of the plaint. The suit land, admittedly, was the bakasht land of the sixteen annas proprietor of this touzi which belonged originally to one Sheogulam Singh. Sheogulam had five sons, Dal-singhar Singh, Ramkhelawan Singh, Prahlad Singh, Parasnath Singh and Narasingh Singh. After the death of Sheogulam, the five sons named above held three annas four dams share each in the bakasht land mentioned above. It appears that the share of Dalsinghar ultimately came to be held by one Jugan Singh, who purchased his interest by a registered sale deed dated 18-4-1912.

Jugan Singh's son, Mahendra Singh, is plaintiff 12 of the plaintiffs 3rd party, claiming 1.57 acres of land. The branch of Parasnath constitutes plaintiffs 1st party claiming 1.47 acres and the branch of Narsingh Singh constitutes plaintiffs 2nd party claiming 1.55 acres. The branch of Ram-khelawan is included in defendants 2, 3 and 4, and the branch of Prahlad is represented by Bankey Bihari

Singh, defendant 5. Defendant 1 is Parsan Singh, who alone has contested the suit. The case of the plaintiffs was that the entire 7.20 acres of bakasht land comprised in khata Ho. 2 still continue to be in khas possession of the five branches of the family who are descendants of Sheogulam Singh, and that the defendants other than defendant 1 are in collusion with him and they admitted interference with the plaintiffs' possession in respect of their share of the bakasht land entered in schedules 1 to 3 of the plaint.

They wanted to harvest the rabbi crops cultivated by the plaintiffs, which led to an apprehension of the breach of the peace. This gave rise to a proceeding u/s 144, Criminal P. C., in the Court of the Sub-Divisional Officer, Dinapore, but the order in that proceeding was made absolute against the plaintiffs. The plaintiffs, however, continued in possession of their aforesaid shares, but felt the necessity of seeking a declaration of title in view of the order u/s 144, Criminal P. C., being passed against them. They accordingly prayed for declaration of title and confirmation of possession and, in the alternative, for recovery of possession if the defendants in course of the pendency of the suit dispossessed the plaintiffs of the suit land.

2. Parsan Singh, defendant 1, who alone contested the suit, however, denied the plaintiffs' title to get khas possession of the land. It was pleaded that defendant 1 obtained settlement of the land from the sixteen annas landlord on a rental of Rs. 47/8/- and payment of a premium of Rs. 500/- sometime in Jeth 1317 F's., since which time defendant 1 has continued in cultivating possession of the land as a raiyat. The plaintiffs' suit is mala fide and barred by res judicata and limitation. It was alleged that after the settlement of 1317 Fs. in his favour by all the maliks, some of the co-sharer landlords instituted rent suits against this defendant. One of these suits was in 1925 which was framed u/s 143A, Bihar Tenancy Act and was decreed, and in which it was held that defendant 1, in fact, had taken settlement of the land.

There was another rent suit (Rent Suit No. 3067 of 1938) filed in the Court of Munsif, 2nd Court, Patna by defendant 5 in which all the co-sharer landlords were impleaded, and in which it was held, 011 appeal, after a hard contest by the other co-sharer landlords, that this defendant, in fact, obtained a raiyati settlement of the entire land, and the plaintiff's suit was decreed by the lower appellate Court. The judgment of the lower appellate Court, which reversed the judgment of the trial Court that had dismissed the suit, was upheld in appeal by the Hon'ble Court. The finding, therefore, as to the status of defendant 1 would operate as res judicata. The plaintiffs were never in possession of the suit land since 1910 and that defendant 1 was in possession and paid rent duly, and as such he could not be ejected and the plaintiffs could not be declared to be in khas possession of the land.

3. Both the Courts below concurrently accepted the defence case and dismissed the plaintiffs' suit. The learned Advocate-General has contended in support of the appeal that the judgments of the Courts below are erroneous inasmuch as

their finding that defendant 1 is a raiyat in respect of the entire 7.20 acres of land is based mainly upon their minds independently to the facts of the case and if, therefore, it can be established in this Court that the present suit is not hit by the principle, of *res judicata*, the decrees of the Courts below would have to be set aside. The point of *res judicata* arises in the following circumstances.

I have stated that there was a suit, being Rent Suit No. 3067 of 1938, filed by Bankey Bihari Singh against the defendant for his share of the rent impleading his co-sharers as pro forma defendants. That was a suit for rent against Parsan Singh, and in view of the nature of the claims set up by the plaintiff, Bankey Bihari Singh, the trial Court ordered that the suit for rent against Parsan Singh might proceed as a money suit and that the pro forma defendants might be expunged from the record. This gave rise to a civil revision filed by Bankey Bihari Singh, who was dissatisfied with the order of the Court expunging the names of the pro forma defendants from the records of the suit, and Hon'ble Dhavic, J. directed that if the plaintiff Bankey Bihari Singh wanted a rent decree the pro forma defendants, who were the co-sharer landlords, must be kept on the record, and that the order of the trial Court expunging them, must be set aside.

It was, however, directed by this Hon'ble Court that Bankey Bihari Singh must frame his suit as being one u/s 148A, Bihar Tenancy Act as a suit by co-sharer landlord for rent in the circumstances referred to in that section when the other co-sharer landlords would not join him or would not disclose to him what rent was due to them. Bankey Bihari Singh accordingly amended his plaint in terms of Section 148A, Bihar Tenancy Act, and the suit as against Farsau Singh, the alleged tenant-defendant 1 of this suit, and other co-sharer landlords proceeded on. The trial court, however, dismissed the suit holding that the settlement in favour of Parsan Singh was not proved. It appears that the main contest in that suit was between Bankey Bihari Singh and his co-sharer landlords as to whether settlement in favour of Parsan Singh was a genuine settlement.

Bankey Bihari Singh being dissatisfied with the judgment of the trial Court went up in appeal and the learned Subordinate Judge of Patna was pleased to allow the appeal holding that the settlement in favour of Parsan in respect of the entire 7.20 acres of land under Khata No. 2 was made out and the plaintiff was accordingly given a rent decree for his share of the rent. This gave rise to Second Appeal No. 1032 of 1941 of this Court, and this Court was also pleased to uphold the judgment of the learned Subordinate Judge. It was urged on behalf of defendant 1 Parsan Singh, that the appellate judgment of that rent suit would operate as *res judicata* inasmuch as the identical question with regard to his status was gone into as a necessary issue in Rent Suit No. 3067 of 1938 in presence of all the co-sharer landlords and the defendant 1 and that it cannot be reopened now in the present litigation. It may be stated that the main controversy between the parties has centred round this question.

4. It may be noted at this stage that there is no dispute between the parties that the land which forms the subject-matter of the present suit was also the subject-

matter of the Rent Suit No. 3067 of 1938. It was also conceded in the Court below on behalf of the appellants, and accordingly has to be conceded in this Court as well, that the parties in the present litigation were all represented in the previous rent suit. The only point, therefore, in determining the question of res judicata is as to whether the issue of the status of defendant No. 1 was a necessary issue in the rent suit of 1933, and, secondly, whether the Court of the Second Munsif, Patna, was competent to decide the present suit from the point of view of pecuniary jurisdiction in which event alone the finding in Bent Suit No. 3067 of 1933 might operate as res judicata in the present litigation. It is urged on behalf of the appellants that neither of the two conditions is fulfilled.

5. Referring to the first argument, the learned Advocate-General has contended the question of title is only incidentally gone into in a rent suit inasmuch as what the plaintiff prays for in a rent suit is a decree for money in which the real determination of the status of the defendant is only, a collateral matter and does not directly arise. It seems to me, however, that the contention is plainly untenable. The learned Advocate-General's contention comes to this, that this court should hold that in, every rent suit where a decree is to be passed in favour of the plaintiff, irrespective of all other consideration, it must be held that the relationship of landlord and tenant is only an incidental issue. This is against the weight of numerous authorities & it is settled beyond controversy that this matter may be gone into in a rent suit.

If authority were needed, the learned Subordinate Judge, in my opinion, rightly referred to the case of -- Pirthi Singh Vs. Ramsaran Mahto and Others, wherein it has been held that the relationship of landlord and tenant is the very foundation of a decree in a rent suit and as such is a matter necessary to be determined. It may well be said that when a suit for rent is filed, unless the defendant confesses a judgment, the Court must determine the question as to whether the relationship of landlord and tenant has been established between the parties, before a decree can be passed. But the matter does not rest here. It is also equally well established that where the matter is pointedly raised in a suit as to whether the plaintiff is landlord and is entitled to a decree as against the defendant, the matter is directly put in issue and is actually decided, and, therefore, it cannot be held that it is only an incidental question.

Apart, therefore, from a general consideration, on the authority of -- Pirthi Singh Vs. Ramsaran Mahto and Others, , it has to be seen whether in the present case this question was actually raised or not. In the judgment of the High, Court (Ext. 2) in the civil revision filed by Bankey Bihari Singh, it is specifically directed that since Bankey Bihari wanted a rent decree he must frame his suit as required u/s 148A, Bihar Tenancy Act and that all the co-sharer landlords must accordingly be on the record to enable Bankey Bihari to obtain a rent decree against the defendant, Parsan Singh. Bankey Bihari amended his plaint in accordance with the direction of this Court, and it appears that Parsan Singh did not contest the suit. The real contest was, therefore, confined to plaintiff Bankey Behari and his

other co-sharers, who are plaintiffs in the present suit, and the only issue was with regard to the status of Parsan Singh.

This matter after a hard contest ended in favour of Parsan Singh and it was held that settlement in his favour was by sixteen annas landlord and was genuine. It is, therefore, not correct now to contend that in the rent suit of 1938 the status of Parsan Singh was not directly in issue. It is also clear that this issue was necessary to be decided in the context of that case before the decree u/s 148A, Bihar Tenancy Act, in respect of the entire holding making it liable might be passed in favour of Bankey Bihari Singh by the Court. The terms of Section 148A which are as follows also lend support to the view that for a rent decree holding under the Bihar Tenancy Act, the status of the tenant is a necessary factor to be determined as was held in the above Patna case :

"148-A. Where a co-sharer landlord who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them, such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent; and a decree obtained by him in a suit so framed shall as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers."

6. It is next urged that the Court of the second Munsif, Patna, was not competent to decide the present suit, and as such another necessary ingredient of res judicata is not satisfied in the present case so that the judgment of the rent suit cannot operate as a bar to the present trial.

7. It is urged that the first suit was a rent suit and the present one is a title suit, and as such, the scope of the two suits cannot be said to be identical. This argument, again, has no substance inasmuch as if the question of title is raised in a rent suit and is gone into, it is wholly immaterial what the nature of the previous suit was. All that law requires is that the matter directly and substantially in issue in the suit in which res judicata is sought to be applied should have been directly and substantially in issue in a former suit between the same parties. If this condition is satisfied, it is wholly immaterial that the nature of the two suits does not tally, and, accordingly it is also settled by authorities that the question of title gone into in a rent suit may operate as res judicata in a subsequent suit based on the same title. This argument, therefore, must fail.

8. It is next urged that the Court that decided the rent suit had jurisdiction only up to the limit of Rs. 2,000/-. The present suit is valued at Rs. 3,100/- and therefore, the pecuniary jurisdiction of that Court that tried the rent suit fell

short and as such that Court could not have jurisdiction over the present subject-matter. The Courts below, where also this argument was raised, came to the conclusion that on the evidence led by the parties that the value per bigha of the land in 1938 would be about Rs. 200/- the total value of the suit land would be somewhere in the neighbourhood of Rs. 1500/- only in 1938 when the rent suit was tried, and the jurisdiction, of the Court being up to Rs. 2,000/- the present suit as a title suit could have been tried by the learned Munsif who was in seisin of the rent suit, and as such that Court had jurisdiction.

It is urged, however, on behalf of the appellants that the value for the purpose of jurisdiction of the previous suit must be the value of the property at the time of the institution of the subsequent suit and that the Court would not be justified in looking to the value of the property involved in a subsequent suit in terms of its value at the time of the institution of the prior suit. Attention is drawn for this purpose to the terms of Section 11, Civil P. C.

9. The point is, however, settled by a series of authorities that in order to determine the competence of the Court to try the subsequent suit one has to refer to the jurisdiction of the Court at the time when the former suit was brought and not to its jurisdiction at the time of the subsequent suit. The point was considered in a decision of this Court in the case of -- Gokaran Prasad Singh Vs. Chhotey Narayan Singh and Others, as also in the case of -- "T. B. Ramchandra Rao v. A. N. S. Ramchandra Rao" AIR 1922 PC 80 (C), which is a decision of the Privy Council, The identical point was also considered in the case of -- Debendra Kumar Dutta Vs. Pramada Kanta Lahiry and Others, .

As a matter of fact, there are various other decisions of the various High Courts on this point and the view taken is what I have referred to above, namely, that to determine the pecuniary jurisdiction of the Courts in a previous suit as well as in subsequent suit, the value of the subsequent suit would have to be considered in this light that if this very suit had been instituted at the time that the previous suit was tried the Court trying the previous suit would have jurisdiction to try the subsequent suit.

In that view of the matter in my opinion, the Courts below were right in referring to the fact that the value of 4.53 acres of land in respect of which the present suit has been brought would have been worth about Rs. 1500/- in 1938 according to the price then prevailing and the learned Munsif was competent to try such an action. The authorities referred to by the learned Advocate General, on behalf of the appellants, do not assist him. He refers to the case of -- "Kapileshwar Mishra v. Santi Nayak" 21 Pat LT 894 (E) where however, such a question of res judicata was not decided except in a general manner.

He refers again to the case of -- "Gokul Mandar v. Pudnanund Singh" 29 Cal 707 (PC) (F) where also the question did not arise in the present form and which was considered in the above case of -- Gokaran Prasad Singh Vs. Chhotey Narayan Singh and Others, . Other decisions referred to by him do not have any bearing

upon the question. As a matter of fact, the learned Advocate General failed to bring to my notice any direct authority on the point wherein it has been held that in order to determine the value of the suit in the previous litigation, the standard of valuation must be that prevailing at the time of the institution of the subsequent suit. Learned Advocate-General has frankly conceded that he has no authority to support this contention. He has, therefore, only endeavoured to distinguish some of the cases cited above.

10. The next contention is that assuming that it is open to the Court trying the subsequent suit to take into account the value of the suit as it would be when the previous suit had been instituted, in determining the question of competence arising u/s 11, Civil P. C., it must be confined to the materials already on record. Learned Advocate-General has contended that in no reported decision has the question of valuation, been gone into by taking extraneous evidence. If, therefore, it could be urged in the trial of subsequent suit with reference to the plaint, written statement and the judgment in a prima facie manner, that the previous Court could take cognizance of the subsequent suit, the matter of res judicata might be determined from that point of view. Where, however, it is not possible to ascertain the Value of the previous suit in such clear terms, the matter of res judicata cannot be raised and value of the subsequent suit cannot be determined with the help of extraneous evidence to find out whether the Court trying the previous suit could have jurisdiction to try the subsequent suit.

The argument, no doubt, is an ingenious one, but it cannot be accepted inasmuch as it is clear that if extraneous evidence were not permitted to be received in subsequent trial with regard to the value of the suit, the question of res judicata in many cases could not be taken up. As a matter of fact, therefore, unless the two suits would be identical in scope and in nature, res judicata in, terms of Section 11, Civil P. C. could not be successfully raised. It would render that section in a good many cases wholly nugatory. There is no warrant for this contention in terms of Section 11 itself inasmuch as it does not confine the consideration of the competence of the two Courts in any manner. All that the section lays down is:

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised....."

The relevant words upon which emphasis is laid are the competence of the Court. It may be that in the context of the facts of a particular suit, competence is obvious either because the previous suit and the subsequent suit are identical in scope or because valuation for the purpose of jurisdiction in the previous suit has been specifically mentioned and there has been no accidental increase or decrease in the valuation or for some such factors the matter of determining competence is comparatively easy. If, however, as has happened in the present

case on account of sudden rise in the prices between 1938, and 1943 due to the second World War of 1939, or for some such extraordinary circumstances, the question of competence of a Court may necessitate the consideration of some extraneous evidence, the question of res judicata cannot be raised at all for adjudication. That, however, is not excluded by the terms of the section. As a matter of fact, this consideration was pointedly emphasised in the case of -- "Gopi Nath v. Bhugwat Pershad" 10 Cal 69 (G). The decision in the case of -- "Run Bahadur Singh v. Lucho Koer" 11 Cal 301 (PC) (H) on which the learned Advocate-General relies in support of his contention, rests on its facts and the reference in that case to the observation of Sir Barnes Peacock goes against the appellants. In view of the consideration stated above, it must be held that this argument on behalf of the appellants also can not prevail.

11. It has also been urged that the present suit cannot be held as barred by res judicata inasmuch as the plaintiffs were at best mere pro forma defendants in the suit of 1938 in which Parsan Singh (defendant 1) was the principal defendant. Parsan Singh did not contest the suit and hence no issue was raised as between Parsan Singh (defendant 1 of this action) and the pro forma defendants against whom no relief was sought by the plaintiffs. Reference is made to the case of -- AIR 1931 114 (Privy Council) . It appears, however, that in the suit of 1938 the pro forma defendants ceased to be pro forma and in fact contested the suit so that the real consideration in the present case is whether the decision in the rent suit of 1938 would operate as res judicata as between plaintiffs and defendants and not as between co-defendants.

But even if it were, the appellants would fare no better as even in the previous action Farsan Singh admitted that he was the raiyat in respect of the suit land, as the plaintiffs of that suit alleged, and the other defendants who were co-sharer land-lords traversed the allegation. The issue was accordingly tried and ended in favour of plaintiffs and Farsan Singh so far as the point of the status of Parsan Singh was concerned. Thus there was in fact an issue between the co-defendants on this question which was necessary to be determined, and was in fact determined so as to fulfil the test of res judicata between co-defendants as laid down by Sir George Lowndes in the case of-- AIR 1931 114 (Privy Council) . This argument must also be accordingly rejected.

12. Learned Advocate-General did not urge any other point in support of the appeal. It is, however, supplemented by Mr. Murtaza Pazl Ali, on behalf of the appellants, in reply that the finding of fact with regard to the settlement in favour of defendant No. 1 is unsustainable. It appears that in view of the decision arrived at by me that the opinion of the Courts below that no present trial is barred by res judicata is correct, no other question really arises and the learned Advocate-General rightly did. not press any other point. Mr. Lalnarain Sinha, on behalf of the respondents, however, contends that apart from the question of res judicata this appeal is concluded by finding of fact inasmuch as the Courts below have come to a definite conclusion that the settlement in favour of defendant 1

by the sixteen annas landlord was a genuine settlement. Mr. Murtaza Fazl Ali, however, contends that the finding is not that the sixteen annas landlord settled the land but that, admittedly some of the co-sharer landlords such as Sita and Awadh of the branch of Narsingh did not settle, but only Binda did, and as such settlement by only some of the co-sharer landlords would not affect the interest of the other co-sharers.

This point, however, is not open to the learned Advocate for the appellants inasmuch as this would involve the question of representation by Binda Singh which had to be specifically raised in the trial Court on behalf of the plaintiffs. That, however, was not done and this point was not raised in the Court of appeal below and, accordingly, it is further argued by Mr. Murtaza Fazl Ali that even if the Courts below were of the opinion that the suit was barred by res judicata, there should still have been a finding as to whether the plaintiffs were in possession within 12 years of the suit. The learned Subordinate Judge found in clear terms that plaintiffs were not in possession and this point was not re-opened before the learned Additional District Judge on appeal as two questions as to res judicata and bakasht character of the land were alone agitated before him. Appellants can accordingly have no grievances on this score.

Even as it is there is an implied finding against the appellants in the judgment of the lower appellate Court on this point as well. This argument is fallacious also from another angle inasmuch as this could well have been raised by the defendants if the decision went against them on the first two questions, and by the plaintiff only if they had raised an alternative case that they had continued in possession for more than 12 years in spite of the settlement in 1910 in favour of defendant 1 which would have given rise to different considerations, and which has not been done. This contention is also without substance and must be rejected.

13. It must be held that the appeal has no merit and is accordingly dismissed with costs.

Sinha, J.

14. I agree.