
(2005) 03 MP CK 0086

In the Madhya Pradesh High Court

Case No : Second Appeal No. 398 of 1990

Sardarbai and Another

APPELLANT

Vs

Mathribai and Others

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Citation : (2005) 2 MPHT 379 : (2005) 2 MPLJ 313

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : A.S. Kutumble and Sushri Bharati Lakkad, for the Appellant; Vineeta Phaye, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

This second appeal has been filed by plaintiffs against the judgment and decree passed by the Courts below dismissing their suit on the ground of res judicata.

The present suit was filed by Ganpat, who died during the pendency of the suit and present appellants are his legal representatives. Ganpat filed the suit for declaration and permanent injunction in respect to suit property which is mentioned in the plaint. According to plaintiffs, Onkarji was not having any son and he was keeping love and affection with plaintiff Ganpat as such he took plaintiff Ganpat in adoption 45 years earlier to the date of filing of the suit. According to plaintiff Ganpat, after the death of his adopted father Onkarji, he performed all spiritual rites. After the death of Onkarji, the revenue authorities entered the name of Pyaribai, who is wife of Onkarji. After the death of Pyaribai the suit land has been recorded in the name of her daughter Mathribai. The plaintiff came forward with a case that since he is an adopted son of Onkarji and the suit property belonged to Onkarji, after the death of Onkarji he became Bhumiswami of the suit property. An alternative plea of adverse possession has also been taken by him.

The defendants filed written statement and took the plea of res judicata. It has been pleaded in the written statement that similar type of suit (Civil Suit No. 32-A/68) was filed in the Court of C.J. Class-I, Rajgarh by present plaintiff Ganpat against Mathribai, who is defendant No. 1 in this suit. That suit was dismissed on 11-2-1970. The appeal which was filed before the Additional District Judge was also dismissed and now again the plaintiff has filed the suit which be dismissed by imposing an exemplary cost.

The defendants in order to substantiate the plea of res judicata, filed certified copies of plaint, written statement and the judgment of Civil Suit No. 32-A/68 in which issues were framed. The Trial Court after framing issues framed preliminary issue in regard to res judicata. The Trial Court decided the preliminary issue and held that present suit is barred by res judicata. The first appeal which was preferred by the plaintiff was also dismissed. Hence this second appeal.

On 6-3-1991 this Court admitted this appeal on the following substantial question of law :--

"Whether in the facts and circumstances of the case the claim in suit was rightly held to be barred by res judicata ?"

The only submission which has been made by Shri A.S. Kutumble, learned Senior Counsel appearing for the appellants is that in the earlier suit the finding of the Court was that the plaintiff did not perfect his title by adverse possession as he was not found in possession for 12 years and, therefore, after the dismissal of earlier suit, on account of lapse of time, since plaintiff Ganpat is still possessing the suit land, he had perfected title by adverse possession and, therefore, it can not be said that present suit is barred by principle of res judicata.

On the other hand it has been contended by Smt. Vineeta Phaye, learned Counsel appearing for the respondents that the two Courts below by keeping the issues framed in both the suits in juxtaposition came to hold that the issues framed in the present suit were directly and substantially in issue in previously instituted suit between the same parties. Thus the present suit is barred by res judicata and the two Courts below did not commit any error in arriving at such a finding. In the previously instituted suit (C.S. No. 32-A/68) Issue No. 8 was in respect to the plea of adverse possession. The Court decided the said issue alongwith Issue No. 6 in Para 15 and it was decided that the plaintiff has not perfected his title by adverse possession. The issue of acquiring title by adverse possession was very much there in the previously instituted suit and that was decided against the present plaintiff.

The principle of res judicata is founded on public policy that the parties can not be permitted to have controversy directly or substantially in issue between the same parties or those claiming under the parties in the subsequent suit can not be raised once over. In this regard I may profitably rely latest pronouncement of the Apex Court in the case of Bhanu Kumar Jain v. Archana Kumar 2005 AIR SC

270.

The application of rule of res judicata is not influenced by any rule of technicalities, but, by the rule of substance and the Court has to find out whether the point raised between the parties is decided by previous judgment. The Court has not to look into the form or words used by the Judge in deciding a particular issue, but the substance of the decision rendered on the issue by the Court, as the doctrine of res judicata is based partly on the maxim of Roman Jurisprudence "interest rei publicae ut sit finis litium". It concerns State that there be an end to law suits and particularly that no man should be required twice to be vexed for the same cause. In this context, it would be condign to rely Single Bench decision of this Court rendered by Shri P.P. Naolekar, J., as His Lordship then was in the case of Kesar Bai (Smt.) v. Ramkhilawan 1993 RN 194. If the ratio decidendi of the case of Kesar Bai (supra) is tested on the anvil of the present factual scenario it would reveal that in the previous suit also the issue pertaining to adverse possession was raised and decided and in the present case also the issue regarding perfection of title by adverse possession has been struck. Thus, the Court has not to look into form or words used by the Judge in deciding a particular issue of the previous suit. To me, the question of perfection of title by adverse possession was directly and substantially in issue between the parties in the previous suit and, therefore, judgment of the previous suit deciding the issue would operate as res judicata in the present case.

Resultantly, this appeal is found to be devoid of any substance and the same is hereby dismissed with costs. Counsel's fee Rs. 3,000/-, if pre-certified.