

(1970) 07 AHC CK 0028
In the Allahabad High Court
Case No : S.A. No. 3766 of 1963

Sekhbir Singh and Another

APPELLANT

Vs

Hacheru Singh and Others

RESPONDENT

Date of Decision : 29-07-1970

Acts Referred:

Agra Tenancy Act, 1926 — Section 271
Agra Tenancy Act, 1926 — Section 271
Agra Tenancy Act, 1926 — Section 271

Citation : (1970) 40 AWR 822

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Advocate : Shambhu Pd. and K.M. Sinhas, for the Appellant; K.C. Agarwal for Respondents, for the Respondent

Final Decision : Allowed

Judgement

D.D. Seth, J.—This is a Plaintiff's appeal arising out of a suit for partition of the two houses in dispute. The Plaintiffs claimed 2/7th share in the two houses. The Plaintiffs' case was that the houses in dispute were ancestral belonging to the common ancestor of the parties, namely, Mawasi Singh. According to the Plaintiffs, some quarrels developed between the parties and hence the suit was filed by the Plaintiffs claiming 2/7th share in the houses in dispute on the basis of the pedigree given in the plaint.

2. Defendants Nos. 3 to 9 did not admit the pedigree given in the plaint, but Dal Chand, one of the contesting Defendants, admitted the correctness of the pedigree. It was, however, pleaded by the Defendants that the parties have always been members of the joint family and there had never been any partition in the family. They also urged that the joint family was possessed of sufficient property comprising of agricultural land, houses etc. and further that certain properties belonging to the joint family had not been included in the suit and hence the suit was bad for partition and was, therefore, liable to be dismissed.

3. Before the trial court, two questions were pressed on behalf of the parties. The first question was regarding the extent of the Plaintiffs' share in the houses in dispute and the other question was whether the suit was bad for partial partition.

4. The trial court held that the Plaintiffs had 2/7th share in the houses in dispute and on the second question, the trial court held that the family of the parties continued to remain joint and undivided and that it was possessed of some other properties and since those properties had not been included in the suit by the Plaintiff while seeking partition, the suit was defective on account of partial partition. On these findings, the trial court dismissed the Plaintiffs' suit.

5. In appeal, the only point which was urged before the appellate court, was that the trial court was wrong in taking the view that the suit was defective on account of partial partition and was not maintainable. The appellate court held that the parties had been living as members of the joint family and the contention of the Plaintiffs, to the contrary, was not correct. The appellate court further held that since Ahata No. 4 and houses Nos. 40 and 41 were joint family properties and since they had not been included in the suit, the suit was obviously bad for partial partition. On these findings, the appellate court dismissed the Plaintiffs' appeal.

6. Aggrieved by the judgment and decree of the courts below, the Plaintiffs have come up in second appeal to this Court. I have heard Sri Shambhu Prasad, learned Counsel for the Plaintiff-Appellants, and the learned Counsel appearing for the Respondents.

7. On 17th July, 1969, Sri Sambhu Prasad filed an application under Order 41 Rule 27, CPC praying that certified copies of the judgments of the Consolidation Officer, Settlement Officer (Consolidation) and the Deputy Director of Consolidation, which were filed along with the application, be admitted and read in evidence in the appeal. A copy of the application was served by Mr. Shambhu Prasad on Sri K.C. Agrawal, learned Counsel representing the Defendant-Respondents and on 17th July, 1969, I allowed three weeks' time to Sri K.C. Agarwal to file a counter-affidavit. The application Under Order 41 Rule 27 CPC came up for hearing before me on 13th April, 1970 and by my order of that date, after hearing Sri Shambhu Prasad and Sri K.C. Agarwal, learned Counsel for the parties, I allowed the application filed by Sri Shambhu Prasad Under Order 41, Rule 27, CPC and ordered the judgments of the Consolidation Courts to be admitted and read in evidence. At the request of Sri K.C. Agrawal I allowed him three weeks' time to file documentary evidence on behalf of his clients in rebuttal, but no documents in rebuttal were filed by Sri K.C. Agrawal.

8. Only one point was urged before me by Sri Shambhu Prasad and it was that one of the main points involved in the second appeal is whether a partition had taken place between the sons of Mawasi Singh long ago, as pleaded by the Plaintiffs, or they formed a joint Hindu family at the time of the institution of the

suit. Sri Shambhu Prasad urged that this question had been finally decided by the Consolidation Authorities and the judgments of the Consolidation Authorities operated as *res judicata* between the parties. It was urged by Sri Shambhu Prasad that the Consolidation Authorities had held that the status of the family was not that of joint family and that finding operated as *res judicata* between the parties. On the other hand, the learned Counsel for the Respondents urged that the Consolidation Authorities were concerned with agricultural properties and they have not decided anything about the status of the family. It was decided by the Settlement Officer (Consolidation) that the family of the parties had not been joint since long. This finding of the Settlement Officer (Consolidation) has not been set aside by the Deputy Director of Consolidation and hence it must be held that the Consolidation Authorities have decided that the status of the family was not that of a joint family.

9. Now, the only question which remains to be decided is whether the decision of the Consolidation Authorities operates as *res judicata* between the parties. Learned Counsel for the Respondents relied upon the decision of a learned Single Judge of this Court in *Mahant Rama Kant Dass v. The Deputy Director of Consolidation* 1970 AWR 483, in which the learned Single Judge held that the Consolidation Authorities have the jurisdiction only to decide questions with respect to the rights of the tenure holders and that a dispute who is the Mahant or Sarbarakar is a dispute of a civil nature cognizable by a civil court.

10. The decision of the learned Single Judge, mentioned above, is not applicable to the facts of the instant case and is distinguishable because there is no dispute in the instant case regarding the question of a Mahant or Sarbarakar.

11. Learned Counsel for the Respondents placed reliance on a decision of the Supreme Court in *Bhagwan Dayal Vs. Mst. Reoti Devi*, in which it was held that the decision of the revenue court referring the issue to civil court u/s 271 of the Agra Tenancy Act did not operate as *res judicata* in the subsequent suit filed in the civil court for declaration of title and for injunction restraining the Defendants from executing the revenue court's decree.

12. The decision of the Supreme Court on which reliance has been placed by the learned Counsel for the Respondents is also distinguishable inasmuch as there is no question of a decision of the revenue court operating as *res judicata* in the present case before me. It was, on the other hand, held by the Privy Council in AIR 1939 133 (Privy Council) as follows:

In order successfully to establish a plea of *res judicata* or estoppel by record, it is necessary to show that in a previous case a Court having jurisdiction to try the question came to a decision necessary and substantially involving the determination of a Court to which a matter has been referred by the Collector u/s 18, Land Acquisition Act, is such a decision. 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 latter suit involving the issue.

13. The decision of the Privy Council in Mst. Bhagwati's case (supra) was approved by the Supreme Court in Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, , in which it was held that 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. It was further held by the Supreme Court in Smt. Raj Lakshmi Dasi's case that 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 ras 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. The Consolidation Courts being Courts of exclusive jurisdiction, the principles of res judicata can be applied to their decisions. It was held by the Supreme Court in Gulab Chand Chhotalal Parikh v. State of Gujrat AIR 1985 SC 1153 as follows:

The provisions of Section 11, CPC are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and on the general principles of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide, it will operate as res judicata in a subsequent regular suit. 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 have the same subject matter. The nature of the former proceeding is immaterial. There is no good reason to preclude such decisions on matters in controversy in writ proceedings Under Articles 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 full contest.

14. To the same effect is the judgment of a learned Single Judge of this Court in Lala Jageshwar Prasad v. Shyam Behari Lal 1956 AWR 782.

15. In Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai, , it was held that:

Where the final decision in any matter at issue between the parties is based by a Court on its decision on more than one point, each of which by itself would be sufficient for the ultimate decision, the decision on each of these points operates as res judicata between the parties.

16. On the basis of the above decisions, it must, therefore, be held that the decision of the consolidation Courts that the family of the parties was not joint at the time of the institution of the suit operates as res judicata between the parties

and therefore, the Plaintiff's suit was not bad for partial partition and there is, therefore, force in the contention raised by Sri Shambhu Prasad.

17. The result, therefore, is that the appeal is allowed with costs and the judgment and decree of the courts below are set aside and the Plaintiffs' suit for partition of their 2/7th share in the house in dispute is decreed. The record of the case shall be sent back to the trial court for effecting partition. Appeal allowed.