
(1979) 02 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 200 of 1978

Sharam Singh and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 08-02-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1979) 02 P&H CK 0003

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : B.S. Jawanda, for the Appellant; G.R. Majithia with Mr. K.P. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—This revision petition is directed against the order dated 28th September, 1978, of the Sub-Judge 2nd Class, Patiala. Whereby he over ruled the objection of the petitioners judgment debtors (hereinafter to be referred to as the judgment-debtors) to the effect that the decree which was sought to be executed by the Court without jurisdiction was a nullity and hence the same should not be executed.

2. The Executing Court while disallowing the objection aforesaid was of the view that an objection to the jurisdiction of the trial Court having already been raised by the judgment debtors before the "trial Court and an issue to that effect having been decided by the trial Court" against the judgment-debtors (defendants in that case) and in favour of the decree-holder, that Very objection which was disallowed by the trial Court cannot be permitted to be reagltated before it. For the aforesaid conclusion the Executing Court drew assistance from the Single Bench decision of this Court reported in Dial Dass v. Joint Hindu Family Firm Niadar Mal Piara Lal and others (1968) 70 P.L.R. 731.

3. Mr. Jawanda, learned counsel for the judgment-debtors has urged that the

decree dated 15th May, 1968 which is sought to be executed is without jurisdiction for the reason that the very matter had been agitated by the decree-holder earlier in the civil Court in a suits wherein he had sought a declaration identical to the one sought and secured vide decree sought to be executed. An issue regarding the jurisdiction of the civil Court was also struck in the earlier suit. The civil court held that it had no jurisdiction The appeal against that decision as also the revision petition to the High Court were dismissed, with the result that the said decision of the Civil Court between the parties holding that civil Court had no jurisdiction in the matter held the field and that latter on the very matter between the same parties on that account would be without jurisdiction. For showing that such should be the case, he drew attention to the following observations of Mahajan J. who delivered the opinion for the Full Bench in *Pritam Kaur w/o Mukand Singh v. State of Pepsu and others* (1962) 64 P.L.R. 782:

(10) Before the merits of the petition are considered in order to decide the principal question canvassed before us it will be proper to dispose of a preliminary objection that has been raised by the learned counsel for the State. The objection is that the decision of Chopra, J., in Civil Writ No. 794 of 1958 inter parties operates as *res judicata* and therefore concludes the appeal. The argument is that Chopra J., dealt with and decided the question of the vires of the Pepsu Act and, therefore, that decision which is inter-parties operates as *res judicata* and the question that is now sought to be raised cannot be raised

Reliance is placed on a decision of Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, It is admitted that section 11 of the CPC does not in terms, apply but the general principles of *res-judicata* being applicable, this Court cannot now in appeal decide the same question which was decided by Chopra J, (10a). In order to settle the preliminary objection it will be proper to set out the facts how the two petitions have proceeded. The present petition was filed on the 3rd of October, 1956. It was dismissed by Bishan Narain, J. on the 27th of September, 1957. The present Letters Patent Appeal was filed on the 12th of December, 1957. The petition which Chopra, J., decided was filed on the 29th of July, 1958, and it was decided on the 27th of May, 1959 Bishan Narain, J., had decided that the provisions of the Pepsu Act were not *ultra vires*.

(11) Returning to the preliminary objection it is obvious that in view of the decision of Bishan Narain, J., Chopra J. could not entertain and decide the same question. Therefore, Chopra J. had no jurisdiction to pronounce on the vires of the Pepsu Act. It seems that the decision of Bishan Narain, J. was not brought to the notice of Chopra J. nor was it contended that the petition before Chopra J. at least regarding matters settled by Bishan Narain J. on the 27th of September, 1957, was incompetent. Therefore, the decision of Chopra J. on the matters settled by Bishan Narain J. would be with out jurisdiction. See in this connection the observations of their Lordships of the Privy Council in AIR 1949 239 (Privy Council) Therefore the decision of Chopra J., which in the circumstances must be

held to be without jurisdiction, cannot operate as res-judicate. It is not disputed that before a decision can operate as res judicata must be a decision of a Court having jurisdiction. Therefore, there is no merit in the preliminary objection.

4. In my opinion the matter stands concluded by Supreme Court decision reported in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, wherein their Lordships have indicated as to in which case the Court can go behind the decree on the ground of the same being nullity for want of jurisdiction in the Court which passed it. It has been held that, where the decree on the face of it showed want of jurisdiction in the Court which passed it the decree would be nullity and the Executing Court would be competent to go behind it and if it finds that the Court which passed the decree had no jurisdiction, it could refuse to execute the same. But where such was not the case and the court had to go into the questions of fact to determine as to whether the Court which passed the decree had, not the jurisdiction then the Exacting Court would have no competency to go behind the decree in question.

5. The question that falls for consideration therefore, is as to whether the decree herein on the face of it gave the clue of want of jurisdiction in the Court which passed it or not. In the present case the decree on the face of it did not suffer from want of jurisdiction in the Court which passed it if at all, the infirmity in the jurisdiction of the Court which passed arises in the light of the ratio of the Full Bench decision of this Court in Pritam Kaur's case (supra) relied upon by Mr. Jewanda, learned counsel for the petitioner judgment-debtors, that in my opinion would sot be a want of jurisdiction that could be said to be apparent on the face of the decree itself. Because the determining of that Kind of want of jurisdiction would have required the Court to go into the questions of fact and give its findings on those questions one way or the other. That precisely is the exercise which their Lordships of the Supreme Court in Vasudev Dhanjibhai Modi's case (supra) would not permit the Executing Court to go through.

6. The argument that the facts asserted by the judgment-debtors in their objection petition regarding the aforesaid aspect of the matter would not be countered by the other side would not be of any help and would not bring the decree within the category of decree which would show on the face of it the want of jurisdiction which passed it and thus authorise the Court to declare the decree a nullity.

7. As regards the lack of jurisdiction in the Court to pass the decree in question on the ground that the jurisdiction of the civil Court was barred by Section 46 of the Administration of Evacuee. Property Act, 1950 and sections 15 and 27 of the Displaced Persons (Compensation and Rehabilitation) Act 1954, and sections 9 and 29 of the Evacuee, Interest (Separation) Act, an issue to the jurisdiction of the civil Court was struck and the civil Court held that it had the jurisdiction. Once the objection to the jurisdiction of the civil Court on the ground of certain statute debarring the civil Court to entertain the suit was conceited into an issue and the issue was found in favour of the plaintiff and if that judgment became

final then it would not be open to the Executing Court to go into that very question again as has been held by Sarkaria, J. as he then was, in Dial Dass case (supra).

8. For the aforementioned reasons, I find no merit in this revision petition and dismiss the same.