
(1981) 07 AHC CK 0053
In the Allahabad High Court
Case No : Second Appeal No. 2718 of 1969

Sukhdeo	Vs	APPELLANT
Phool Chand and Others		RESPONDENT

Date of Decision : 06-07-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11, 115
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49

Citation : (1981) AWC 508

Hon'ble Judges : Chandra Prakash, J

Bench : Single Bench

Advocate : C.P. Srivastava, for the Appellant; G.P. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan, J.—The question which arises in this second appeal by the Plaintiff is whether the decision of a Settlement Officer (Consolidation) in a matter, which was well within his jurisdiction to decide, could be said to be a nullity in case it were established that the decision was contrary to an earlier decision of the civil Court, and the earlier decision operated as res judicata ?

2. It is undisputed that the Settlement Officer (Consolidation) had the jurisdiction to decide the question of title raised before him in the case. What is urged is that in deciding that question he wrongly disturbed the shares allotted to the parties ignoring an earlier compromise decree which operated as res-judicata.

3. The lower appellate Court has on the first point before it, held that since the question of res judicata was not raised before the consolidation authorities, it was not open to the Plaintiff to raise that question now and urge that the decision of the consolidation authorities was a nullity on that account. On the second point raised before it, the lower appellate Court held that Smt. Sonpati was a widow who had only a life interest in the title under which she was litigating and, therefore, she could not enter into a compromise so as to bind her

reversioners and that the earlier decision could not, therefore, be said to operate as *res judicata*. On the third point before it, the lower appellate Court held that the suit was barred by Section 49 of the U.P. Consolidation of Holdings Act.

4. The real question in the appeal is the third question, namely, whether the suit was barred by Section 49 of the U.P. Consolidation of Holdings Act. It is undisputed that the consolidation authorities had the jurisdiction to decide the title of the parties to the land and to adjudicate upon and determine their shares. The argument is that that decision was a nullity inasmuch as the matter was *res judicata* and when the matter is *res judicata*, a Court is prohibited from hearing and deciding it as the language of Section 11 of the Code of Criminal Procedure would itself show. It was suggested that the matter could not be said to be *res judicata* on account of Section 11 of the Code of Criminal Procedure, It could be said to have been *res judicata* only on general principles. That may be so, but it is undisputed that the rule of *res judicata* does in a sense affect the power of a Court to try and decide the same matter over again. *Res-Judicata* is, however, not a matter touching the initial jurisdiction of a Court to adjudicate upon a dispute. It touches only the power of a Court to decide a matter in a certain way. As observed by the Supreme Court in *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, it may raise controversies as to the power of the Court in contradiction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115 of the Code of Criminal Procedure, It cannot be said to raise a question of the inherent Jurisdiction of the Court in the sense in which the term is understood when it is said that the decision of a Court or tribunal which is without jurisdiction is a nullity, or such as may be challenged in collateral proceedings. The Supreme Court in *Smt. Ujjam Bat v. State of Uttar Pradesh* AIR 1962 SC 1621 observed as follows :

Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion, whether it is wrong in law or in fact. The question whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature and it is determinable at the commencement, not at the conclusion of the inquiry." (*Rex v. Bolton*, (1841) 1 QB 66 A tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the inquiry. But it does not exceed its Jurisdiction by basing its decision upon an incorrect determination of any question that it is empowered or required (i. e. has jurisdiction) to determine. The strength of this theory of jurisdiction lies in its logical consistency. But there are other cases where Parliament when it empowers an inferior tribunal to enquire into certain facts intends to demarcate two areas of enquiry, the tribunal's findings within one are being conclusive and within the other area impeachable." The jurisdiction of an

inferior tribunal may depend upon the fulfilment of some condition precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the tribunal has to try and the determination whether it exists or not is logically prior to the determination of the actual question which the tribunal has to try. The tribunal must itself decide as to the collateral fact when, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not. There may be tribunals which by virtue of legislation constituting them have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends, but subject to that an inferior tribunal cannot, by a wrong decision, with regard to a collateral fact, give itself a jurisdiction which it would not otherwise possess.

It may be that the earlier decision of the civil Court was not pleaded before the consolidation authorities. That omission could not oust the jurisdiction of the civil Court in case it came to the conclusion that the decision of the consolidation authorities was wholly without jurisdiction and was a nullity, But, as observed above, even if the question of res judicata had been raised before the consolidation authorities and even if they had decided it wrongly, it cannot be said that the decision of the consolidation authorities was a nullity, for they had the initial or the inherent jurisdiction to decide the matter.

5. In view of what has been observed above, I do not consider it necessary to go into the second point raised before the lower appellate Court.

6. The appeal fails and is dismissed with costs.