
(1978) 03 GUJ CK 0005
In the Gujarat High Court

Vijaysinhji Vithalrao Khasgiwala (Since deed by his heir and
L.R. Upendrasinhji Vijaysinhji Khasgiwala)

APPELLANT

Vs

Minor Kaushikchandra Natwarlal Bumia and Another

RESPONDENT

Date of Decision : 21-03-1978

Acts Referred:

Evidence Act, 1872 — Section 33, 33

Citation : (1978) 19 GLR 980

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is an appeal by the original plaintiff of the regular Civil Suit No. 249 of 1966, which was decreed in his favour by the 6th Joint Civil Judge (J.D.) Baroda. At the instance of the respondents-original defendants, the learned appellate Judge dismissed the said suit as per his judgment in Civil Appeal No. 303 of 1970. Being aggrieved by the said appellate judgment, the original plaintiff is before this Court.

2. The only ground on which the appeal of the defendants was allowed and the trial court's decree was set aside by the learned appellate Judge was that the evidence recorded in the earlier Civil Suit No. 718 of 1962 had been offered by the parties as evidence in this case. The said earlier Suit No. 718 of 1962 also was tiled by the very plaintiff against the very defendants in respect ut another property, but the points were Identical. The plaintiff succeeded in that earlier suit and these defendants' earlier appeal No. 183 of 1963 had come to be dismissed by the appellate court and even before this High Court in second appeal No. 384 of 1968, these defendants had lost that earlier litigation. After having found that they had lost in the earlier litigation on very evidence, they look up a legal contention that the evidence recorded in earlier proceedings between the very parties, but in respect another similar property, could not be treated us evidence, even with the parties consent, and consequently the decree passed by the trial court was vitiated. This ground want directly home to the appellate Judge, who

allowed these defendants appeal No. 303 to 1970.

3. The only question of law that arises in this appeal is whether such evidence can be treated as evidence by consent of the parties. When parties go to a court of law, they present certain materials before the court and invite the court's adjudication. They can go to a court with certain admitted facts and call upon the court to decide the matter on the basis of those admitted facts, in such a case, no evidence would be required to be recorded, but the Court would obviously on the admitted facts proceed to decide the matter. In principle, therefore, there is nothing wrong if the parties present certain materials before the court and request the court to pronounce its Judgment on that material. When both the parties to this litigation agreed to treat the evidence in earlier proceedings between themselves as evidence, what in effect they tried to do was to place certain materials before the court and request the court to pronounce the judgment on the basis of that material. I fail to understand how such a material introduced by the parties with consent cannot form the basis of adjudication.

4. If any judgment in support of the abovementioned proposition is required, we can advert to the case of *Ramaya bin Subava and Anr. v. Demppa Gannaya* ILR 30 Bom 109. This is the judgment of the Division Bench of the erstwhile Bombay High Court. The Division Bench, reversing the decree of the Judge and restoring the appeal to the file, has held that the parties, if so minded, may ordinarily agree that evidence shall be taken in a particular way in that judgment, it was further observed that it was a common experience that parties did agree that evidence in one suit, should be treated as evidence in another. It is not a matter which can be said to affect the jurisdiction of the court. All that justice requires is that parties should place certain materials before the court as basic material which apart from their consent cannot be so treated, as evidence.

4.1 judgment of the Bombay High Court was followed with approval by the Full Bench of the Madras High Court in the case of *Jainab bibi Saheba v. Hyderally Saheb and Ors.* AIR 1920 Mad 547. The three Judges of that court, to whom the question was referred, ultimately held that evidence given by a witness in a judicial proceedings is admissible in a later proceeding between the same parties where they agree upon the course of, irrespective of the conditions prescribed by Section 33 of the Indian Evidence Act.

5. In above view of the matter, the learned appellate Judge was obviously in error in setting aside the decree. The result is that the second appeal is allowed and the judgment of the learned appellate Judge in the Civil Appeal No. 303 of 1970 is set aside. That said appeal shall now go back to the court of the District Judge, Baroda where it shall be expeditiously disposed of on merits in accordance with law. The appeal is directed to be finished within the period of three months from the day the writ of this Court is received by that court, as by this order of remand, the appeal of 1970 is being remanded to that court. In view of the facts of this case, there will be no order as to costs of this appeal.