Smt. Isabella Johnson vs M.A. Susai on 9 October, 1990

Equivalent citations: 1991 AIR 993, 1990 SCR SUPL. (2) 213, AIR 1991 SUPREME COURT 993, 1991 (1) SCC 494, 1991 (1) ALL CJ 320, (1990) 4 JT 406 (SC), 1991 ALL CJ 1 320, 1991 SCD 180, (1991) 1 APLJ 45, (1991) CIVILCOURTC 235, (1990) 2 KER LT 968, (1991) 2 LANDLR 174, (1990) REVDEC 484, (1991) 1 ALL RENTCAS 125, (1990) 3 CURCC 676, (1991) 1 CURLJ(CCR) 396

Author: M.H. Kania

Bench: M.H. Kania, N.D. Ojha

PETITIONER:
SMT. ISABELLA JOHNSON

Vs.

RESPONDENT:
M.A. SUSAI

DATE OF JUDGMENT09/10/1990

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
OJHA, N.D. (J)

CITATION:
1991 AIR 993 1990 SCR Supl. (2) 213
1991 SCC (1) 494 JT 1990 (4) 406
1990 SCALE (2)928

ACT:
Rent Control and Eviction: Andhra Pradesh Rent Control Act, 1960: Section 3--Eviction suit--Jurisdiction of Courts--Res judicata and Estoppel-- Whether applicable.
Civil Procedure Code, 1908: Section 11--Jurisdiction of Courts --Pure question of law--Res judicata--Applicability of.
Evidence, Act, 1872: Section 115-- Estoppel--Applicability of in regard to jurisdiction of Courts.

HEADNOTE:

The Respondent-landlord filed a suit under the Andhra Pradesh Rent Control Act for recovery of possession and for mesne profits. The apPellant-defendant raised a preliminary objection that the City Civil Court had no jurisdiction to entertain the suit. In the two eviction petitions filed earlier by the appellant, the Respondent took the plea that since the alleged tenancy was hit by Section 3 of the A.P. Rent Control Act, eviction suit was not entertainable by the Rent Controller.

Decreeing the suit in favour of the appellant, the trial Court held that it was not oPen to the Respondent to take such inconsistent plea regarding jurisdiction; that he cannot be allowed to approbate and reprobate and he was estopped from doing so. On apPeal by respondent, the decision was upheld by the First Appellate Court. On a second apPeal preferred by the respondent, the High Court reversed the trial court's order.

Aggrieved by the decision of the High Court, the appellant preferred this apPeal, by special leave, contending that the principles of Res Judicata and estopPel were applicable.

Dismissing the apPeal, this Court,

HELD: 1. A court which has no jurisdiction in law cannot be conferred with the jurisdiction by applying principles of res judicata. It is well settled that there can be no estoppel on a pure question of law. [217F]

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Mahtura Prasad Bajoo Jaiswal and Ors. v. Dossibai N.B. Jeejeebhoy, [1970] 3 SCR 830; Sushil Kumar Mehta v. Gobind Ram Bohra (dead) thro' his Lrs., [1990] 1 SCC 193; relied on.

Avtar Singh and Ors. v. Jagjit Singh and Anr., [1979] 4 SCC 83; referred to.

2. In the instant case, the question of jurisdiction is a pure question of law. The High Court was right in its conclusions that in matters of jurisdiction to entertain the suit, doctrine of estoppel could not be invoked; and that the City Civil Court had no jurisdiction to entertain the suit, as it lay exclusively within the jurisdiction of the Rent Controller. [216A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 277 1 of 1981.

From the Judgment and Order dated 5.2.1980 of the Andhra Pradesh High Court in S .A. No. 526 of 1977.

Jagdish K. Agarwal (N.P.) for the Appellant. A Subba Rao for the Respondents.

The Judgment of the Court was delivered by .

KANIA, J. This is an appeal by special leave from the decision of a learned Single Judge of the Andhra Pradesh High Court in Second Appeal No. 526 of 1977.

As we are, with respect, in agreement with the conclu- sions arrived at by the learned Single Judge of the High Court, we propose to set out only the bare facts essential for the purposes of our judgment.

The appellant was the plaintiff and the respondent was the defendant in Suit. O.S. No. 789 of 1973 filed in the Court of the Third Assistant Judge, City Civil Court, Hyd- erabad. The appellant prayed for a decree for recovery of possession of the suit premises from the respondent and for mesne profits till the delivery of possession of the prem- ises. The case of the appellant was that she was the owner of the suit premises and the respondent was in the occupa- tion of the said premises on payment of Rs.30 per month. The respondent had been irregular in the payment of the said rent and had been a source of perpetual nuisance. It was on this ground that the eviction of the premises was sought by the appellant. In his written statement the respondent took a preliminary objec- tion that the City Civil Court had no jurisdiction to enter- tain the suit as the suit fell within the jurisdiction of the Rent Controller at Hyderabad. Two petitions had earlier been filed by the appellant before the Rent Controller for eviction of the respondent and the Rent Controller had rejected the same on the ground that the purported tenancy of the respondent was hit by section 3 of the A.P. Rent Control Act and hence, the eviction suit was not entertain- able by the Court of Rent Controller. This conclusion was arrived at on a plea to the said effect taken by the re- spondent. In the Court of learned Third Assistant Judge of the City Civil Court at Hyderabad the respondent took up the plea that the suit fell exclusively within the jurisdiction of the Rent Controller and hence the City Civil Court had no jurisdiction to entertain the suit. Certain pleas were made regarding amendments in the law with which we are not con- cerned in this appeal. What is material to note for our purposes is that the learned Assistant Judge took the view that as the respondent had, before the Rent Controller, taken up the plea that it was not the Rent Controller but the City Civil Court which had the jurisdiction to entertain the eviction petition against him, and the said plea was upheld, it was not open to the respondent to take up the inconsistent plea before the City Civil Court that it was the Rent Controller and not the City Civil Court which had jurisdiction to entertain the proceedings. It was held that the respondent could not be allowed to approbate and repro- bate and that he was estopped by way of pleading to take up an inconsistent plea regarding jurisdiction. On the basis of this conclusion, and other conclusions with which we are not concerned, the suit was decreed by the learned Assistant Judge in favour of the appellant. The decision of the learned Assistant Judge was upheld in an appeal filed by the respondent in the Court of the learned Additional Chief Judge of the City Civil Court at Hyderabad. On a second appeal preferred by the respondent, the learned Single Judge of the High Court took the view that in matters of jurisdiction the question of estoppel does not arise. If the City Civil Court has no jurisdiction to entertain the suit, the doctrine of estoppel could not be invoked so as to confer jurisdiction on the Court of City Civil Court. On the question of jurisdiction the learned Judge took the view that the City Civil Court had no jurisdiction to entertain the suit as it lay exclusively within the jurisdiction of the Rent Controller.

Learned counsel for the appellant submitted that the learned Judge of the High Court was in error,as the earlier decisions of the Rent Controller to the effect that it was the City Civil Court and not the Rent Controller who had the jurisdiction to entertain the suit for eviction filed by the appellant against the respondent, constituted res judicata between the parties on the question of jurisdiction. It was submitted by him that, even if that decision was wrong, the issue of jurisdiction was finally decided between the par- ties and that decision was that it was the Civil Court and not the Rent Controller that had the jurisdiction to enter- tain and dispose of the suit for eviction. He further sub- mitted that the respondent could not be permitted to take inconsistent pleas as he was barred by the principles of estoppel from taking up the plea before the Civil Court that it was the Rent Controller who had the exclusive jurisdic- tion to entertain the suit. He placed reliance on a decision rendered by a Division Bench comprising two learned Judges of this Court in Avtar Singh and Others v. Jagjit Singh and Another, [1979] 4 SCC 83 which took the view that the Civil Court's decision regarding lack of jurisdiction will operate as res judicata in a subsequent suit. In that case the Civil Court declined jurisdiction. The Civil Court took the view that it had no jurisdiction to try the suit in question and directed the return of the plaint for representation to the appropriate Revenue Court. When the claim was filed in the Revenue Court, the Court took the view that it had no juris- diction to try the claim. Thereupon, a suit was again insti- tuted in the Civil Court for the lame relief. This suit failed throughout on the ground of res judicata. I?he High Court affirmed the dismissal and the Division Bench of this Court took the view that the High Court was right in taking the view hat the principles of res judicata were applicable to the issue of jurisdiction. In our opinion, the contention of learned counsel for the appellant cannot be upheld. We find that in Mathura Prasad Bajoo Jaiswal and Others v. Dossibai N.B. Jeejeebhoy, [1970] 3 SCR 830 at p. 836 a Bench comprising three learned Judges of this Court has taken the view that a decision on the question of jurisdiction of the court or a sure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit. The Court observed:

> "It is true that in determining the application of the rule of res judicata the Court is not concerned with the correct- ness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litiga- tion between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceed- ing between the same parties. But, where the decision is on a question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S. 11 of the Code of Civil Procedure means the right litigated between the par- ties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of proce- dure cannot supersede the law of the land."

The same view has been reiterated by a Bench comprising three learned Judges of this Court in Sushil Kumar Mehta v. Gobind Ram Bohra (dead) through his Lrs., [1990] 1 SCC 193. We find that the decision of three learned Judges of this Court in Mathurn Prasad Bajoo Jaiswal and Others v. Dossibai N.S. Jeejeebhoy, has not been noticed at all by the Division Bench comprising two learned Judges of this Court which delivered the judgment in Avtar Singh and Others v. Jagjit Singh and Another, and hence, to the extent, that the judg- ment in Avtar Singh's case takes the view that the principle of res judicata is applicable to an erroneous decision on jurisdiction, it cannot be regarded as good law. In our opinion a court which has no jurisdiction in law cannot be conferred with the jurisdiction by applying principles of res judicata. It is well settled that there can be no estop- pel on a pure question of law and in this case the question of jurisdiction is a pure question of law.

In our view, therefore, the High Court was, with re- spect, right in its conclusions arrived at and the appeal must be dismissed.

The appeal is dismissed. Looking to the facts and cir- cumstances of the case there will be no order as to costs.

G.N. Appeal dis-
missed.