Satyendra Kumar & Ors vs Raj Nath Dubey & Ors on 6 May, 2016

Equivalent citations: AIR 2016 SUPREME COURT 2231, 2016 (4) ALJ 63, 2016 (5) ADR 83, 2016 (3) AJR 832, AIR 2016 SC (CIVIL) 1852, (2016) 2 CIVILCOURTC 774, (2016) 4 MAD LJ 650, (2016) 131 REVDEC 750, (2016) 5 SCALE 34, (2017) 2 CALLT 24, (2016) 122 CUT LT 923, 2016 (14) SCC 49, (2016) 4 ANDHLD 52, (2016) 3 ICC 634, (2016) 2 ORISSA LR 890, (2016) 3 PAT LJR 341, (2016) 2 WLC(SC)CVL 31, (2016) 3 JLJR 232, (2016) 2 CLR 1 (SC), (2016) 118 ALL LR 423, (2016) 2 CURCC 185, 2016 (2) KCCR SN 190 (SC)

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Bench: Shiva Kirti Singh, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4083-4084 OF 2016
[Arising out of S.L.P.(C)Nos.12915-12916 of 2014]

Satyendra Kumar & Ors. …..Appellants

Versus

Raj Nath Dubey & Ors. …..Respondents

J U D G M E N T

SHIVA KIRTI SINGH, J.

The appellants were successful before all the Consolidation Authorities, the Consolidation Officer, Settlement Officer Consolidation and Deputy Director of Consolidation whose orders passed in title proceedings, under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act") were challenged by the non-official respondents/writ petitioners by preferring Writ B No. 46506 of 2013 and the same has been allowed by the judgment and order under appeal dated 8.11.2013 passed by a learned Single Judge of the High Court of Judicature at Allahabad.

High Court has, at the outset recorded in the judgment that there is no factual controversy in the writ proceedings and on that account the respondents chose not to file counter affidavit. With the

consent of the parties the arguments were heard at the admission stage leading to final adjudication and remand which is under challenge.

The relevant facts necessary for understanding the subject matter of the dispute between the parties including the main issue, of res judicata are clear from the facts noted by the High Court in paragraph 3 and 4 of the impugned judgment. They are as follows:

> "3. The dispute relates to the land of khatas 1, 3, 4 and 5 of village Sarai Aziz, talluka Harikishun, tahsil Phoolpur, district Allahabad, which were recorded in the names of the respondents, in basic consolidation record. The consolidation was started in the year 2000, in the village. Raj Nath Dubey (petitioner-1) filed an objection (registered as Case No. 18/19) for recording his name over 1/2 share of the disputed land, along with the respondents. It has been stated by the petitioner that the land in dispute was the property of Kishun, who had five sons namely, Bechai, Kanhai, Bindra, Pancham and Sheetal. Bindra, Pancham and Sheetal died issueless and the properties of Kishun was inherited by Bechai and Kanhai alone. The respondents are sons/grandsons of Bechai and the petitioners are sons of Kanhai as such they have 1/2 share in the land in dispute. Assistant Consolidation Officer, by order dated 22.02.2001, referred the dispute to the Consolidation Officer for decision on merits. Later on, Amar Nath Dubey (petitioner-2) filed an application dated 03.03.2001, alleging therein that his father Kanhai had three sons namely Jagannath, Amar Nath and Raj Nath, who jointly inherited Kanhai. He had also filed an objection in respect of the disputed land, before Assistant Consolidation Officer but the same was misplaced as such he may be impleaded as an objector in the objection of Raj Nath Dubey. The impleadment application moved by Amar Nath Dubey was allowed.
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> 4. The respondents contested the objection on the grounds that Kanhai son of Kishun was unmarried and died issueless. His share in the land in dispute was inherited by them, who are sons/grand sons of Bechai, his brother. The petitioners were not the sons of Kanhai. They earlier filed an objection during consolidation, in respect of the land of village Chak Nuruddinpur alias Nagdilpur, pargana Sikandara, district Allahabad, in which it has been held that Jagannath, Amar Nath and Raj Nath were born to Smt. Ram Pyari due to her illegitimate relations with Kanhai and they being illegitimate sons, not entitled to inherit Kanhai. It was also held that the respondents were the heirs of Kanhai. The judgments of consolidation authorities in the previous proceedings operate as res-judicata between the parties and the objection of the petitioners was liable to be dismissed on this ground alone. On the basis of the pleadings of the parties, the Consolidation Officer, framed issues on 30.04.2005. Issue No. 3 was framed as to Whether the objection of the petitioners, claiming share of Kanhai, alleging themselves as his sons, is barred by res-judicata?" The issue no. 3, as noticed above by the High Court, was raised by the respondents before the High Court who are appellants herein. It was on their application that the Consolidation Officer decided it as a preliminary issue. The Consolidation Officer noticed the earlier petition filed in the year 1966 in respect of land of another village, Chak Nuruddinpur

> alias Nagdilpur between the same parties that had been decided against the writ petitioners by holding that Jagannath, Amar Nath and Raj Nath were illegitimate sons of Kanhai and not entitled to inherit his share because Kanhai was a Brahmin Hindu. It was found that the earlier judgment had become final at the revisional stage and hence it would operate as res judicata against the writ petitioners whose claim of being heirs of Kanhai had been decided against them in the previous proceeding. Thus, issue no. 3 was decided against the writ petitioners leading to rejection of their objection on 1.12.2012. The appeal as well as revision petition preferred by the writ petitioners did not find favour in the light of the findings in the judgments rendered in the earlier proceedings that Kanhai was unmarried; Jagannath, Amar Nath and Raj Nath were his illegitimate sons from Smt. Ram Pyari and hence were not his heirs. The appellate order dated 6.3.2013 and revisional order dated 23.5.2013 along with the order of the Consolidation Officer dated 1.12.2012 which were under challenge before the Writ Court were scrutinized by the Writ Court with care in the light of submissions advanced by the rival parties.

The stand of the writ petitioners in course of arguments was that the judgments rendered in the previous proceedings would operate as res judicata in respect of issues of facts alone but not in respect of a pure issue of law as to whether as illegitimate sons of a Brahmin a person was entitled to inherit the property of his father or not. In other words, the writ petitioners accepted the findings of fact in respect of Jagannath, Amar Nath and Raj Nath being the illegitimate sons of Kanhai but disputed the other finding that in law such illegitimate sons cannot inherit the property of their father. The previous judgment on this legal issue was disputed by the writ petitioners. According to them decision on such pure issues of law could not operate as res judicata in respect of other properties which were not subject matter of the earlier proceedings before the Consolidation Authorities. The writ petitioners placed heavy reliance upon a judgment of this Court in case of Mathura Prasad Sarjoo Jaiswal v. Dossibai N.B. Jeejeebhoy[1]. This judgment was relied upon for the proposition that the rule of res judicata is a rule of procedure and cannot supersede the law of the land. According to writ petitioners, the law of land warrants a view that since Kanhai was unmarried hence his illegitimate children born to Smt. Ram Pyari were entitled to inherit the estate of Kanhai under the Hindu law and they would have priority in the matter of inheritance of Kanhai as against his brother's sons. The writ petitioners placed reliance upon Section 171 of the U.P. Act no. 1 of 1951 to support their submission that illegitimate son was not excluded and the exclusion cannot be inferred automatically in the absence of statutory exception. In support of the legal principle that exclusion clause must be specific under the statute, reliance was placed on a full bench judgment of Allahabad High Court in Raj Narain Saxena v. Bhim[2] and upon judgment of this Court in Rajendra Prasad Gupta v. Prakash Chandra Mishra[3]. On the other hand the respondents before the Writ Court i.e, the appellants herein advanced a submission that principle of res judicata is applicable in respect of issues relating to facts and law both. In support, reliance was placed upon this Court's judgment in Kalinga Mining Corporation v. Union of India[4]. The appellants also relied upon some case laws according to which the illegitimate children were entitled under Section 16 of Hindu Marriage Act, 1955 to inherit only the self acquired property of their father whereas the lands in dispute are claimed to be with the family from the time of Kishun father of Bechai and Kanhai.

The Writ Court accepted the submission advanced on behalf of appellants that as per settled law, the principles of res judicata, constructive res judicata and estoppel are applicable to the proceedings under the Act. The Writ Court, however made a distinction between binding nature of even an erroneous judgment between the same parties in respect of same property and the binding nature of such judgment in another proceeding as res judicata when the subsequent proceeding or suit is for a different property. For this purpose it noticed paragraph 10 of the judgment in case of Mathura Prasad Sarjoo Jaiswal (supra). Paragraph 10 is as follows:

> "10. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness 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 litigation 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 proceeding 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 Section 11 of the Code of Civil Procedure means the right litigated between the parties 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 procedure cannot supersede the law of the land." Following the aforesaid view of this Court, the High Court held that same view has been followed in the case of Isabella Johnson v. M.A. Susai[5], Union of India v. Pramod Gupta[6] and Bishwanath Prasad Singh v. Rajendra Prasad[7]. The judgments cited on behalf of appellants including one in Kalinga Mining Corporation (supra) were distinguished by holding that they were not an authority for the proposition that a past judgment between the parties in respect of another subject matter/property, even if erroneous in law will operate as res judicata in a subsequent suit based upon different cause of action for a different property. The High Court finally held that findings in the previous judgments that Jagannath, Amar Nath and Raj Nath were born to Smt. Ram Pyari widow of Ram Nath out of her illegitimate relations with Kanhai are findings relating to facts and would thus operate as res judicata. However the finding that illegitimate children of Ram Pyari and Kanhai are not entitled to inherit Kanhai being findings on issues of law, as held by High Court, would not operate as res judicata in the subsequent proceedings in respect of other properties. The High Court accordingly modified the orders passed by the Consolidation Authorities and directed the Consolidation Officer to conclude the trial of other issues and pass final order after allowing the parties to lead their evidence. Learned Senior Counsel appearing for the appellants has submitted that concurrent findings of Consolidation Authorities should not have been interfered with by the High Court and that the High

Court has erred in holding that the previous judgments though in respect of another property would not operate as res judicata in respect of pure question of law in a subsequent proceeding between the same parties. Appellants have also filed written notes in support of their submissions and have relied upon following judgments:

(1) Mohanlal Goenka v. Benoy Kishna Mukherjee[8] and particularly on the following passage in paragraph 23:

"23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata." (2) State of West Bengal v. Hemant Kumar Bhattacharjee[9] and particularly on the following extract from paragraph 14:

"14. .....A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides." (3) Saroja v. Chinnusamy (Dead) by Lrs. and Anr.[10] So far as case of Mohanlal Goenka (supra) is concerned, the second round of litigation was admittedly in respect of same property and between the same parties, after the earlier litigation had attained finality even up to the stage of execution. Since the judgment debtor, neither in the application filed for setting aside sales nor at initial stage raised any objection on the ground that the execution Court had no jurisdiction to pass the decree, it was held that later on the judgment debtor was precluded from raising the plea of jurisdiction in view of principles of constructive res judicata. In the case of State of West Bengal (supra) the main issue related to jurisdiction of the Special Court to try a criminal offence. One of the submissions advanced before this Court was to ignore an earlier order of High Court which had attained finality between the parties, because of law being settled otherwise in a subsequent decision of the Apex Court. In that context it was clarified that the argument suffered from a fundamental misconception inasmuch as an incorrect decision cannot be equated with a decision rendered without jurisdiction. The law was succinctly stated by holding that a wrong decision by a Court having jurisdiction is as much binding between the parties as a right one. Even a wrong decision can be superseded only through appeals to higher tribunals or Courts or through review, if provided by law.

In the case of Saroja (supra) this Court found that all the conditions necessary to constitute res judicata under Section 11 of the CPC stood satisfied in the facts of that case. The main dispute related to two issues – (1) whether an ex parte decree could attract res judicata and (2) whether the appellant could be held bound by the judgment in the earlier suit when he was not a party to the same although she had acquired title from the person who as a party had suffered the ex parte decree. Both the issues were decided against the appellant of that case by holding that an ex parte decree was as good as a decree passed after contest and such ex parte decree, unless set aside on the ground of fraud or collusion will not only bind the original parties to the former suit but also other

parties who claim under any of them and seek to litigate under the same title. The aforesaid decisions relied upon by the appellants, in our view do not distract from the reasoning and correctness of the findings given by the High Court that previous proceedings would operate as res judicata only in respect of issues of facts and not on issues of pure questions of law when the subsequent suit or proceeding is based upon a different cause of action and in respect of different property though between the same parties. We are in agreement with the views of the High Court and hence do not deem it necessary to go into further details of the legal concept of res judicata and estoppel. It is sufficient to indicate that once a judgment in a former suit or proceeding acquires finality, it binds the parties totally and completely on all issues relating to the subject matter of the suit or proceeding. This flows from Section 11 of the CPC which in turn is based upon ancient doctrines embodied in every civilized system of jurisprudence with almost universal application that an earlier adjudication between the same parties is conclusive in respect of the same subject matter. The Latin maxims relevant for explaining the concept of res judicata clearly specify that: (1) no man should be vexed twice for the same cause, (2) it is in the interest of State that there should be an end to a litigation and (3) a judicial decision once it has attained finality must be accepted as correct between the parties.

The distinction drawn by the High Court in the impugned judgment that an erroneous determination of a pure question of law in a previous judgment will not operate as res judicata in the subsequent proceeding for different property, though between the same parties, is clearly in accord with Section 11 of the CPC. Strictly speaking, when the cause of action as well as the subject matter i.e, the property in issue in the subsequent suit are entirely different, res judicata is not attracted and the competent Court is therefore not debarred from trying the subsequent suit which may arise between the same parties in respect of other properties and upon a different cause of action. In such a situation, since the Court is not debarred, all issues including those of facts remain open for adjudication by the competent Court and the principle which is attracted against the party which has lost on an important issue of fact in the earlier suit is the principle of estoppel, more particularly "issue estoppel" which flows from principles of evidence such as from Sections 115, 116 and 117 of the Indian Evidence Act, 1872 and from principles of equity. As a principle of evidence, estoppel is treated to be an admission or in the eyes of law something equivalent to an admission of such quality and nature that the maker is not allowed to contradict it. In other words it works as an impediment or bar to a right of action due to affected person's conduct or action. "Estoppel by judgment" finds reference in the case of Ahsan Hussain Abdul Ali Bohari, Proprietor Abidi Shop v. Maina W/o Nathu Telanga[11]. It is taken as a bar which precludes the parties after final judgment to reagitate and relitigate the same cause of action or ground of defence or any fact determined by the judgment. If the determination was by a Court of competent jurisdiction, the bar will remain operative even if the judgment is perceived to be erroneous. If the parties fail to get rid of an erroneous judgment, they as well as persons claiming through them must remain bound by it.

However, as explained and held by this Court in the case of Mathura Prasad Sarjoo Jaiswal (supra), where the decision is on a pure question of law then a Court cannot be precluded from deciding such question of law differently. Such bar cannot be invoked either on principle of equity or estoppel. No equitable principle or estoppel can impede powers of the Court to determine an issue of law correctly in a subsequent suit which relates to another property founded upon a different cause of

action though parties may be same. As explained earlier, in such a situation the principle of res judicata is, strictly speaking, not applicable at all. So far as principle of estoppel is concerned, it operates against the party and not the Court and hence nothing comes in the way of a competent court in such a situation to decide a pure question of law differently if it is so warranted. The issues of facts once finally determined will however, stare at the parties and bind them on account of earlier judgments or for any other good reason where equitable principles of estoppel are attracted. In view of the discussion made above we find no merit in the appeals which are therefore dismissed. In the peculiar facts of the case there shall be no orders as to costs.

.....J. [DIPAK MISRA] .....J. [SHIVA KIRTI SINGH]
New Delhi.

May 06, 2016.

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[1] AIR 1971 SC 2355
[2] AIR 1966 All 84 (FB)
[3] (2011) 2 SCC 705
[4] (2013) 5 SCC 252
[5] AIR 1991 SC 993
[6] (2005) 12 SCC 1
[7] AIR 2006 SC 2965
[8] AIR 1953 SC 65
[9] AIR 1966 SC 1061
[10] (2007) 8 SCC 329
[11] AIR 1938 Nag 129
