Mst. Gulab Bai vs Manphool Bai on 5 September, 1961

Equivalent citations: 1962 AIR 214, 1962 SCR (3) 483

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, Bhuvneshwar P. Sinha, Raghubar Dayal

PETITIONER:
MST. GULAB BAI

Vs.

RESPONDENT:
MANPHOOL BAI

DATE OF JUDGMENT:
05/09/1961

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SINHA, BHUVNESHWAR P.(CJ)
DAYAL, RAGHUBAR

CITATION:
1962 AIR 214 1962 SCR (3) 483
CITATOR INFO :
RF 1981 SC2198 (13)

ACT:
Res Judicata-Suit', Meaning of-if can denote part of a suit or an issue in it-Code of Civil Procedure, 1,908 (Act V of 1908), s. 11.

HEADNOTE:
The respondent had sued the appellant 2 on a rent note in the Munsiff's court for recovery of Rs. 700/- as arrears of rent and ejectment. That suit was dismissed on the preliminary objection of defect of party as appellant 1, a co-lessor in the rent note, had not been made a party. The respondent then brought the present suit in the Civil Judge's court for recovery of Rs. 2400 as arrears of rent from and for ejectment of appellant 2, making appellant 1 a proforma defendant in the suit. The appellant 2 pleaded that the suit was barred by res judicata and could not be decreed since appellant 1 had not joined the respondent in

the claim. The High Court, in finally decreeing the suit in second appeal, hold that it was not barred by res judicata since the Munsiff had not the pecuniary jurisdiction to try the suit and that appellant 1 on a true construction of the rent note, was not a a co-lessor with the respondent. It' was urged on behalf 'of the appellants in this Court that the word suit' in s. 11 of the Code of Civil Procedure should be liberally, and not literally, construed so as to include part of the suit or ;An issue
484
raised in the suit and that since the Munsiff who had tried; the previous suit was competent to try that part of the subsequent suit which formed the relevant issue in the earlier suit, !he present suit was barred by res judicata.
Held, that: the High Court was right in holding that the present suit was not barred by res judicata.
The word 'suit' occurring in s. 11 of the Code of Civil Procedure must be literally, and not liberally, construed so as to mean the entire suit and not a part. of it or an issue arising in it'. The legislative history of that section, clearly shows that them is no scope for any liberal construction of that word.
Duchess of Kingston's case, 2 Smith Lead. Cas. 13th Ed. 644, Misir Rughubardial v. Rajah Sheo Baksh Singh, (1882) LR. 9 I.A. 197 and Gokul Mandar v. Pudmanund Singh, (1902) I.L.R. 29 Cal. 707, discussed.
Mussamut Edun v. Mussamut Bechun, 8 W. R. 175, Ram Dayal v.Jankidas, (1900) I.L.R. 24 Bom. 456, Shibo Raul v. Baban Raut, (1908) I.L.R. 35 Cal.. 353, referred to.
Sheikh Maqsood Ali v. H. Hunter, A.I.R. 1943 Oudh. 338, considered.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 201/1956 Appeal from the judgment and decree dated January 2,1962, of the, Rajasthan High Court in D. B. CIVIL Second Appeal No. 459; of 1949.

S.N. Andley, Rameshwar Nath and P.L. Vohra., for the appellants Nos. 2 and 3.

N.C. Chatterjee and Mohan Behari Lal, for respondent. 1961. September 5. The Judgment of the Court was delivered by GAJENDRAGADRAR, J.-This appeal by a certificate given by the Rajasthan High Court arises from the suit filed by the respondent Mst. Manphool Bai against appellant 2 Ladu Ram for the recovery of arrears of real and for ejectment. To this suit the respondent joined appellant 1 her mother-in- law Gulab Bai as a proforma defendant. The property in question is a, shop situated in the Johri Bazar. Jaipur. Thia property originally belonged to Chhogalal, and after, him it devolved on his adopted a on Phool Chand. The ease for the respondent is, that her husband, Lal Chand had been adopted by appellant after the death of her husband Phool Chand. Appellant 2

had executed a rent noted (Ex. 24) in favour of Lal Chand in Samvat Year 1939. On Lal Chand's death the respondent held the property as his widow and as such she served a notice on appellant 2 on May 31, 1938, calling upon him to pay the arrears of rent dire from him and asking him to vacate the shop (Ex. 16). It appears that soon thereafter on August 27,1938, appellant 2 executed a rent note in favour of the respondent (Ex. 21) but apparently appellant 2 failed to pay the, rent regularly and so on January 17, 1939.) the

-repondent had to sue appellant 2 for arrears of rent due, and for ejectment. This suit was filed in the Court of Munsiff, East Jaipur. The amount due by way of arrears which was claimed in that suit was Rs.700/- Appellant 2 resisted the said claim made by the respondent mainly on the ground that the rent note on which the stilt was based had been executed by Appellant 2 in favour of the respondent and her mother-in-law and that the suit was detective for want of a necersary party inasmuch as the mother-in-law had not been joined to it. Appellant 2 claimed that the respondent acting by herself, was not entitled to claim either the arrears or to ask for, ejectment. Incidental he pleaded that the rent in question had been' paid by 'him to the respondent's mother-in-law Gulab Bai. This litigation went up to the Jaipur, Chief Court in second appeal. All this Courts upheld the principal plea raised by appellant 2 that Gulab Bai was a necessary party to the suit and so on the, preliminary ground that for non-joinder of the necessary party the suit was detective. the claim made by the respondent was rejected.. The decision of the Chief Court was pronounced on May 26, 1941. It was under these circumstances that the respondent filed the present suit on November 15, 1943, in the Court of Civil Judge, Sawai Jaipur, claiming to recover Rs. 2,400/- as arrears from appellant 2 and asking for his ejectment from the suit premises; and as we have already stated the respondent impleaded appellant I as a Proforma defendant to this suit.

Several pleas were raised by appellant 2 against the claim made by the respondent. In the present appeal, however, we are concerned only with two of these pleas. It was urged by appellant 2 that the present suit was barred by res judicata and so since appellant I had not joined the respondent in making the claim the suit was incompetent. It was also urged in the alternative that on the merits it should be held that the rent note had been executed by appellant 2 in favour of two lessors, appellant I and the respondent The trial court rejected these pleas and passed a decree in favour of the respondent and against both the appellants for Rs.1,800/-. It also directed appellant 2 to vacate the premises by the end of March, 1948, failing which the respondent was given a right to execute the decree against him. Against this decree both the appellants preferred an appeal in the Court of the District Judge. The learned District Judge held that the respondent's suit was barred by res judicata and so he allowed the appeal and dismissed the respondent's suit. Then the matter reached the Rajasthan High Court at the instance of the respondent in second appeal. The High Court has reversed the conclusion of the District Court on the question of res judicata and has held that the present suit was not barred by res judicata. On the construction of the rent note the High Court has held that the rent note on which the suit is based was passed by appellant 2 in favour of the respondent and that the reference to the name of appellant I in the said rent note does not constitute her into a co-lessor with the respondent. On these findings the decree passed by the District Court has been reversed and that of the trial court has been restored. The appellants then moved the Rajasthan High Court for a certificate and a certificate has been granted to them principally on the ground that the question of res judicata which the,, appellants seek to raise is a question of general

importance. It is with this certificate that the appellants have come to this Court by their present appeal. Pending the appeal appellant I Gulab Bail, died on April 19, 1959. Thereupon an application was made by appellant 2 and Dhan Kumar who claims to have been adopted by Gulab Bai in her lifetime applied for a certificate declaring that Dhan Kumar was the heir and legal representative of appellant 1. The High Court refused. to grant the certificate on the ground that the deceased appellant I was merely a pro forma defendant to the suit and since no relief had been claimed against her the High Court thought that her death did not cause any defect in the record in the appeal preferred to this Court and all that was needed to be done was to remove her name from the cause title. The High Court also held that Dhan Kumar may seek his remedy by a proper suit if lie so desired. Dhan Kumar and appellant 2 then applied to this Court (Civil Miscellaneous Petition. No. 267 of 1961) for substitution of Dhan Kumar in the place of deceased appellant 1. The respondent objects to the introduction of the name of Dhan Kumar on the record in place of the deceased appellant 1. It is urged on her behalf that Gulab Bai had no authority to make an adoption and fact had made no adoption a alleged by Dhan Kumar. In ordinary course we might have called for findings on issues arising between the parties on this application, but since the matter is very old we do not wish to give it a further lease of life by adopting that course. We have, therefore, allowed Dhan Kumar to join the present proceedings without deciding the question as to the factum or validity of his alleged adoption. We may, also add that the question about the factum and validity of the adoption of the respondent's husband Lal Chand was also put in issue in the Courts below and in fact the District Court had made a finding against Lal Chand's adoption. The High Court thought it unnecessary to decide this matter. Thus there is a dispute between Dhan Kumar and the respondent on two grounds: Dhan Kumar seeks to challenge the factum and validity of Lal Chand's adoption, whereas the respondent seeks to challenge the factum and validity of Dhan Kumar's adoption. Both these points have not been considered by us, and so the parties would be at liberty to agitate them in proper proceedings if they are so advised. In the present appeal we, propose to consider only two points, crime of res judicata and the other about the construction of the rent note.

The decision of the question of res judicata lies within a very narrow compass. The relevant facts necessary to decide that point are not in dispute. It is clear that in the earlier litigation it was held by the Jaipur Chief Court

-that, the rent note in question had been executed in favour of both appellant I and the respondent and that necessarily meant that appellant 2 was a tenant of the two co-lessors. It was also held that the respondent acting by by alone was not entitled to claim arrears of rent or to ask for ejectment, so that if the decision of the said issue can operate as res judicata the present suit would be clearly barred. On the other hand, it is conceded by the appellants that the Munsiff who tried the earlier suit was riot competent to try the present suit having regard to the limits of his pecuniary jurisdiction, and, so one of the conditions prescribed by s.11 of the Code of Civil Procedure is absent. Section 11 requires, inter alia, that the prior decision of the material issue should have been given by a court competent to try the subsequent suit, and that is the basis on which the respondent has successfully urged before the High Court that the plea of resjudicata cannot be sustained. It has been urged before us by, Mr. Rameshwar Nath that in construing the material clause in s.11. the High Court was in error in putting a literal construction on the words "subsequent suit". The High Court should have construed the said words liberally and should have held that the words "suit" includes even a part of

a suit. If this contention is right then the relevant issue decided in the earlier litigation would be a part of the subsequent suit, and since the Munsiff who tried the earlier suit, was competent to try this part of the subsequent suit the requisite condition is satisfied and the suit is thus barred by res judicata. Thus the narrow question' which calls for our decision is whether the word ",suit" in the context can be liberally construed to mean even a part of the suit. Let us first read s.11. which runs thus:

> "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them, claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in-which such issue has been subsequently raised, and has been heard and finally decided by such Court."

The appellant's argument is that in construing the clause "in a Court competent to try such subsequent suit or the suit in which issue has been subsequently raised" it would be relevant to remember that this clause is really intended to emphasise the consideration that the Court which tried the earlier suit and the Court in which the subsequent suit is filed should be Courts of concurrent jurisdiction, and the concurrence of jurisdiction should be tested by reference to the matter in issue which has been tried in the earlier suit and which also falls to be decided in the subsequent suit. In support of this argument reliance has been placed on the classical statement of the general principle , of res judicata enunciated in the Duchess of Kingston's case(1). In that case it was observed that from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true : "'First, that ;the judgment of a Court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question, in another Court, secondly, that the judgment of a Court of exclusive jurisdiction, directly upon the point, is in like manner conclusive 'upon the same !matter, between the same parties, coming incidentally in question in another Court for a different purpose". The basis of the rule of res judicata is that an individual should not be vexed twice for the same cause, and the liberal construction of the word ,suit" would be consistent with this basis, otherwise if the competence of the earlier Court is going to be judged by reference to its competence to try the entire suit as subsequently instituted, in many cases where the matter directly and substantially in issue has been tried between the parties by the earlier Court it may have to be tried again in a subsequent suit because the earlier Court had no jurisdiction to try the :subsequent suit having regard to its pecuniary jurisdiction. That, it is urged, would be anomalous and inconsistent with the principle underlying the doctrine of res judicata.

The word ,,suit" has not been defined in the Code, but there can be little doubt that in the context the plain and grammatical meaning of the word would include the whole of the suit and not a part of the suit, so that giving the word "suit" its ordinary meaning it would be difficult to accept the argument that a part of the suit or an issue in a suit is intended to be covered by the said word in the material clause. The argument that there should be finality of decisions and that a person (1) 2 Smith Lead. Cas., 13th ,Ed., pp. 644, 645.

should not be vexed twice over with the same cause can have no material bearing on the construction of the word ,'suit". Besides if considerations of anomaly are relevant it may be urged in support of the literal construction of the word ,,,suit" that the finding recorded on a material issue by the Court of the lowest jurisdiction is intended not to bar the trial of the same issue in a subsequent suit filed before a Court of unlimited jurisdiction. To hold otherwise would itself introduce another kind of anomaly. Therefore, it seems to us that as a matter of construction the suggestion that the word "suit" should be liberally construed cannot be accepted. This position would be abundantly clear if we consider the legislative history and background of s. 11.

In that connection it would be relevant to cite the material provisions in regard to res judicata contained in the earlier Codes. Section 2 which dealt with res judicata in the Code of 1859 (Act VIII of 1859) read thus :

> "The Civil Courts shall not take cognisance of any suit brought on a cause of action which shall have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim."

In the Code of 1877 (Act X of 1877) s. 13 provided;that "no Court shall try any suit or issue in which the matter directly and substantially in issue has been heard and finally decided by a Court of competent jurisdiction, in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title".

Then followed the Code of 1882 (Act XIV of'1882) in. which s. 13 dealt with the principle of res judicata. Section 13 is substantially in the same terms as s. 1 1 of the present Code of 1908 (Act V of 1908).

The question about the construction of the word "competent jurisdiction" occurring in s.2. of the Code of 1869 as well as s. 13. of the Code of 1877 fell to be considered in Misir Raghobardial, V. Rajah Sheo Baksh Singh (1). In that case the Privy Council took the view that the expression "competent jurisdiction" must be taken to mean competent jurisdiction as regards the pecuniary limit as well as the subject-matter, and they pointed out that if the pecuniary limit of jurisdiction was ignored it would lead to the anomalous consequence that ",the decision of a Munsiff upon (for instance) the validity of a will, or of an adoption, in a suit for a small portion of the property affected by it, should be conclusive in a suit before a District Judge or in the High Court, for property of a large amount, the title to which might depend upon the will or the adoption". The judgment further pointed out that "in India there are a large number of Courts, and the one main feature in the Act constituting them is that they are of various grades with different pecuniary limits of jurisdiction; and that by the Code of Procedure a suit must be instituted in the Court of the lowest grade competent to try it". That being so, unless the concept of competent jurisdiction included considerations of pecuniary jurisdiction of the Court it would inevitably mean that a finding recorded by a Court of the lowest pecuniary jurisdiction on an issue arising in a suit before it would bind the parties in a subsequent suit where the claim involved may be very much higher. It would thus be seen that in dealing with s. 2 of the Code of 1859 the Privy Council. introduced the notion of concurrent jurisdiction though the words used in the section were a Court of competent jurisdiction,

and it was held that the jurisdiction must be concurrent as regards the pecuniary limit as well as the subject-matter. This decision proceeded on the assumption that "in order to (1) (1882) L. R. 9 I. A. 197.

make the decision of one Court, final and conclusive in another Court, it must be a decision of a Court which would have had jurisdiction over the matter in the subsequent suit in which the first decision is. given in evidence as conclusive" (vide : Mussamut Edun v. Mussamut Bechun(1)], Heaving thus interpreted the expression "competent jurisdiction" the Privy Council proceeded to consider whether any change in the; low was intended to be effected by a. 13 of the Code of 1877 ;,and they observed that the intention of the said section ,,,,seems to have been to embody in the Code of Procedure by es. 1,2 and 13 the law then in force in India instead of the imperfect provision in s. 2 of, the Code of 1859" and they added that "as the words in the section do not clearly show an intention to. alter the law their Lordships do not think it right to put a construction upon them which would cause an alteration." It would thus be seen that this decision in an authority for the proposition that the rule of res judicata as interpreted even under the Code of 1877 was held to be the same as it obtained under the Code of 1859 as interpreted by the Privy Counsel I in the light of the general considerations as to res judicata enunciated in the case of Duchess of Kingston (2). , This position has been clearly stated in another decision of the Privy Council in Gokul Mandar v. Pudmanund Singh (3). On this occasion the Privy Council had to consider the effect of is. 13 of the Code of 1882. The argument which was urged before the Privy Council on' s. 13 was that "a decree in a previous suit cannot be pleaded a res judicata in a subsequent suit unless the judge by whom it was made had jurisdiction to try and decide not only the particular matter in issue but also the subsequent suit itself in which the issue is subsequently raised", and in upholding this argument their Lordships observed that ,in this respect (1) 8 W.R. 175.

(2) 2 Smith Lead. Cas. 13th Ed., pp. 644, 645. (3) (1902) I. L. R. 29 Cal, 707.

the enactment goes beyond s. 13 of the previous Act X of 1877,and, also, as appears to their Lordships, beyond the law laid, down by the judges in the Duchess of Kingston's case (1)". In other words, this decision would show that even though in the earlier Codes there may have been some doubt about the test of competent jurisdiction which has to be applied to the Court which tried the earlier suit, the position under the Code of 1882 is absolutely clear. The question to be asked under s. 13 of the said Code is : could the Court which tried the earlier suit have tried the subsequent suit if it had been then filed ? In other words, it is the whole of the suit which should be within the competence of the Court at the earlier time and not a part of it. Having regard to this legislative background of s. 11 we feel no hesitation in holding that the word "suit" in the context must be construed literally and it denotes the whole of the suit and not a part of it or a material issue arising in it.

Several decisions have been cited before us where this question has been considered. We do not think any useful purpose would be served by referring, to them. It may be enough to state that in a large majority of decisions the word "suit" has been literally construed [vide : Ram Dayal v. Jankidas (2) and Shibo Raut v. Baban Raut (3)] though in some cases and under special circumstances a liberal construction has been accepted [vide : Sheikh Maqsood Ali V. H. Hunter (4)]. We must

accordingly hold that the High Court was right in coming to the conclusion that the present suit is not barred by res judicata.

That takes us to the question of the construction of the rent note. The High Court has, held (1) 2 Smith Lead. Cas. 13th Ed., pp. 644, 645. (2) (1900) 1. L. R. 24 Bom 456.

(3) (1903) I.L.R. 35 Cal. 353.

(4) A.I.R. 1943 Oudh. 338.

that on a fair and reasonable construction of document it must be. held that the rent not has been passed by appellant 2 in favour of the respondent alone though incidentally out of respect ,the name of appellant I has been introduced in it. In our opinion this conclusion is right. it is true that the rent note has been executed in favour of both appellant and the respondent but, it is significant that the rent note stipulates that when the rent is paid by appellant 2 he has to obtain, a receipt from the owner. The word "'owner" is' used in singular and not plural and that indicates that the rent note proceeded on the assumption that the property which was the subject- matter of the rent note belonged to one owner and not two. There is another clause in the rent note which is clearer still. This clause reads ',therefore, I have executed in my proper senses this rent note on a stamped paper valued Rs. 51- in the names of each of the two, mother-in-law and the daughterin-law, Sethanji Gulab Bai widow of Phoolchandji in the capacity of being elder in the family and Sethanji Manphool Bai ajias Bhanwar Bai widow of Lalchandji the heir in the family and the owner of the property which will stand and may be used in times of need." This clause makes it perfectly clear that the inclusion of the name of appellant', was merely formal and it was intended to ,-how respect to the elderly lady in the family. It also shows that the respondent was treated as the owner of the property as the heir of her deceased husband Lal Chand. Reading this clause together with the earlier clause as to the receipt for the payment of rent which we hive already considered it is absolutely clear that the name of appellant I was not included in the rent note because she had any right to the property let out but solely as a matter of respect which the respondent showed to appellant I Therefore, in our opinion, the contention that the rent note has been passed by appellant 2 favour of the respondent and ,appellant 1 cannot be sustained. If that be the true position there can be no doubt whatever that appellant 2 is precluded from, disputing the title of the'respondent "in the present. proceedings. As the High Court has pointed out the sequence of events leading to the execution of the suit rent note unambiguously shows that appellant 2 has recognised the respondent as the lessor and as such the principles of s. 116 of the Evidence Act clearly apply.

The result is the appeal fails and is. dismissed with costs.

Appeal dismissed.