Ramesh Chandra vs Shiv Charan Dass And Ors on 21 September, 1990

Equivalent citations: 1991 AIR 264, 1990 SCR SUPL. (2) 97, AIR 1991 SUPREME COURT 264, 1990 ALL. L. J. 885, 1991 (1) LANDLR 439, 1991 (1) CURCC 185, 1991 (17) ALL LR 7, 1991 (2) LJR 464, 1991 (1) RENCJ 102, (1991) IJR 63 (SC), 1990 (2) UJ (SC) 720, 1990 UJ(SC) 2 720, 1991 (2) BLJR 808, 1990 (2) BLJ 41, 1991 BLJR 2 808, 1990 ( ) SCC(SUPP) 633, 1990 (2) RENCR 676

Author: R.M. Sahai

Bench: R.M. Sahai, M.H. Kania

PETITIONER:
RAMESH CHANDRA

Vs.

RESPONDENT:
SHIV CHARAN DASS AND ORS.

DATE OF JUDGMENT21/09/1990

BENCH:
SAHAI, R.M. (J)
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SAHAI, R.M. (J)
KANIA, M.H.

CITATION:
1991 AIR 264 1990 SCR Supl. (2) 97
1990 SCC Supl. 633 1990 SCALE (2)738

ACT:
Code of Civil Procedure, 1908: Section 11-- Res Judicata--Finding recorded in appeal in one suit--Whether operates as Res judicata in latter suit.

HEADNOTE:
The Appellant's father purchased the house of respondent Nos. 1 and 2 with condition of repurchase by the sellers after five years. He permitted the respondents to remain in possession but got a rent note executed by Respondent No.3, the first cousin of Respondent No.1. After the expiry of 5 years when the house was not repurchased by the respondents,

the appellant's father (plaintiff) instituted a suit for arrears of rent and ejectment against Respondent Nos. 1, 2 and 3 (Defendant Nos. 2, 3 and 1) claiming that defendant No. 1 was in arrears of rent and defendant Nos. 2 and 3 were his sub-tenants. The Trial Court decreed the suit for arrears of rent against defendant No. 1 but dismissed the suit for ejectment against defendant Nos. 2 and 3 holding that they were not sub-tenants. Defendant No. 1 filed an appeal against the decree for arrears of rent. The Appellate Court dismissed the appeal with an observation that though the rent note was executed by Defendant No. 1, the possession of Defendant Nos. 2 and 3 was on behalf of Defendant No. 1 since they were closely related. Relying on these observations the plaintiff filed a second suit against the defendants with a change that defendant Nos. 2 and 3 were licensees of defendant No.1. The Trial Court decreed the suit for arrears of rent against defendant No. 1 and for ejectment against defendant Nos. 2 and 3. Both defendant No. 1 separately and defendant Nos. 2 and 3 jointly filed two appeals which were dismissed.

Separate appeals were filed in the High Court which dismissed the appeal of defendant No. 1 and allowed the appeal of defendant Nos. 2 and 3 holding that the findings recorded in appeal arising out of earlier suit that they were licensees did not operate as res judicata. Accordingly the High Court dismissed the suit for ejectment against defendant Nos. 2 and 3. Hence this appeal.

Dismissing the appeal, this Court,

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HELD: One of the tests to ascertain if a finding operates as res judicata is if the party aggrieved could challenge it. Since the dismissal of appeal or the appellate decree was not against defendants Nos. 2 and 3 they could not challenge it by way of appeal. Even assuming that defendant No. 1 could challenge the finding that liability of rent was of defendant Nos. 2 and 3 as they were in possession he did not file any written statement in the Trial Court raising any dispute between him.. self and defendants Nos. 2 and 3. There was thus no occasion for the appellate court to make the observation when there was neither pleading nor evidence. Therefore, from either point of view the finding could not operate against defendants Nos. 2 and 3 as res judicata. [100E-G]

Keshardeo Chamria v. Radha Kissen Chamria, [1953] S.C.R. 154; held in applicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2840 of 1982.

From the Judgment and Order dated 5.12. 1979 of the Allahabad High Court in Second Appeal No. 82 of 1972. R.K. Garg and H.K.Puri for the Appellant.

Satish Chandra, Pramod Swarup and A.K. Srivastava for the Respondents.

The Judgment of the Court was delivered by R.M. SAHAI, J. In this appeal by grant of special leave, directed against judgment of the Allahabad High Court in second appeal arising out of a suit for arrears of rent and ejectment, the question is if the High Court committed any error of law in allowing the second appeal on the ground that the two courts below had erroneously held that finding recorded in an appeal, filed by one of the defendants who was sued as tenant in an earlier suit, could not operate as res judicata between plaintiff and respondents who were defendants nos. 2 and 3 in that suit.

Unfortunately for appellant-equity may or may not be in his favour as his father too acted shrewdly while purchasing house of daughter-in-law's father but law is certainly not in his favour. How dispute arose between parties, who are closely related, is quite interesting. Shiv Charan Das and Har Charan Das (respondents nos. 1 and 3 in this appeal) are first cousins. Ravindra Kumar (respondent no. 2) is son of Shiv Charan. His sister was married to son of Ganga Prasad who purchased the only house of Shiv Charan and Ravindra Kumar with condition of repur- chase by sellers after five years. He permitted them to remain in possession, but got a rent note executed by Har Charan. Purpose of this became apparent later as immediately after expiry of five years when the house was not repur- chased Ganga Prasad (referred hereinafter as plaintiff) filed suit for ejectment and arrears of rent against Har Charan, Shiv Charan and Ravindra (hereinafter referred as defendants nos. 1, 2 and 3) claiming that defendant no. 1 was in arrears of rent and defendant no. 2 and 3 were his sub-tenants. The suit was contested by defendants nos. 2 and 3 only. The Trial Court decreed the suit for arrears of rent against defendant no. 1. It was held that defendant no. 2 and 3 were not sub-tenants. Therefore suit for ejectment was dismissed. The plaintiff submitted to this finding. Ag- grieved by the decree for arrears of rent defendant no. 1 filed appeal which was dismissed. But the appellate court while observing that any evidence led by defendant nos. 2 and 3 could not be read against defendant no. 1 observed that it appeared that they being closely related to defend- ant no. 1 were in possession on his behalf. This furnished occasion for plaintiff to file second suit against three defendants with this change that defendants nos. 2 and 3 were claimed to be licensees of defendant no. 1. The Trial Court relying on earlier judgment decreed suit for arrears of rent against defendant no. 1 and for ejectment against defendants nos.2 and 3 as they were licensees. Both defend- ant no. 1 separately and defendants nos. 2 and 3 jointly filed two appeals but without any success. Both the sets approached the High Court also by way of separate appeals. The appeal of defendant no. 1 came up for hearing earlier but it was dismissed.

The appeal of defendant nos. 2 and 3 came up for hearing before another Hon'ble Judge who allowed it and held that the finding recorded in appeal arising out of earlier suit that they were licensees did not operate as res judicata and the suit for ejectment was dismissed. It is the correctness of this finding that has been assailed in this Court. Although long arguments were advanced but in our opinion the only question that arises for consideration is if the finding recorded in the appeal filed by defendant no. 1 in which it was held that defendants nos. 2 and 3 were in

possession on his behalf was binding on them in the subse- quent suit filed by the plaintiff. In that suit issue no. 2 was if defendant no. 2 and defendant no. 3 were sub-tenants. And issue no. 5 was if they were liable to be ejected. The Trial Court while discussing these two issues held that there was no question of sub-tenancy of these persons as despite sale there was never a break in their possession. It was further held that they were not sub-tenants nor they claimed to be in possession through defendant no. 1. Therefore they were not liable to ejectment. Against this finding plaintiff did not file any appeal. The finding therefore between the plaintiff and defendants nos. 2 and 3 became final and binding. The appeal was filed by defendant no. 1 as he was aggrieved by the decree of arrears of rent. In that appeal it was observed that the evidence led by defendant nos. 2 and 3 could not be read against him. But the Court while dismissing his appeal and upholding the decree of Trial Court observed that since they were close relations it appears that even though rent note was executed by defendant no. 1 the possession of defendants nos. 2 and 3 was on his behalf. This finding could not be taken advantage of by the plaintiff for more than one reason. This observation was unnecessary as the appeal was dismissed. One could under- stand if the appeal would have been allowed and the liabili- ty for payment of rent would have been fastened on defendant no. 2 and 3 as they were in possession. But since appeal was dismissed the order of Trial Court that liability to pay rent was of defendant no. 1 stood affirmed. Therefore it was an observation which was not only off the mark but unneces- sary. It could not accordingly operate as res judicata between defendant no. 1 and defendants nos. 2 and 3 as much less between plaintiff and defendant nos. 2 and 3. One of the tests to ascertain if a finding operates as res judicata is if the party aggrieved could challenge it. Since the dismissal of appeal or the, appellate decree was not against defendants nos. 2 and 3 they could not challenge it by way of appeal. Even assuming that defendant no. 1 could chal- lenge the finding that liability of rent was of defendants nos. 2 and 3 as they were in possession he did not file any written statement in the Trial Court raising any dispute between himself and defendants nos. 2 and 3. There was thus no occasion for the appellate court to make the observation when there was neither pleading nor evidence. Therefore, from either point of view the finding could not operate against defendants Nos. 2 and 3 as res judicata. Reliance by the appellant on Keshardeo Chamria v. Radha Kissen Chamria, [1953] SCR 154, is of no assistance as it only lays down the binding effect of a decision in a subsequent suit. For the reasons stated above this appeal fails and is dismissed. There shall be no order as to costs.

T.N.A. Appeal dis-
missed.