Pandit Ishwardas vs State Of Madhya Pradesh And Ors. on 9 January, 1979

Equivalent citations: (1979)4SCC163, 1979(11)UJ231(SC), AIR 1979 SUPREME COURT 551, 1979 UJ (SC) 231, 1979 (4) SCC 163, (1979) 1 SCJ 522

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Bench: O. Chinnappa Reddy, R.S. Sarkaria

JUDGMENT

O. Chinnappa Reddy, J.

1. Melaram, brother of the appellant was the highest bidder at an auction of a forest coupe. The coupe was knocked down in favour of Melaram for a sum of Rs. 93,000/-. Melaram executed an agreement undertaking to pay the sum of Rs. 93,000/- in certain instalments. The agreement was also signed by the Divisional Forest Officer, Nimawar. The appellant, the brother of Melaram, executed a surely bond guaranteeing the payment of the instalments required to be paid by Melaram under the agreement. Melaram committed default in payment of the instalments. A sum of Rs. 38,500/ was due from Melaram to the Government. As the Government was attempting to recover the amount from the surety, namely the appellant, he filed the suit out of which the appeal arises for a declaration that the agreement between Melaram and the Government and the surety bond executed by the appellant were illegal and unenforceable The contention was that the provisions of Article 299 of the Constitution had not been complied with. It was also pleaded that the plaintiff was discharged from suretyship under Sections 135 and 139 of the Indian Contract Act. The Trial Court rejected the plea of discharge from suretyship but upheld the plea based on non compliance with the provision of Article 299 of the Constitution. The suit was accordingly decreed. An appeal was preferred to the High Court of Madhya Pradesh. During the pendence of the appeal the defendant was permitted to raise an additional plea that the suit was barred by res judicata by reason of the decision of the Madhya Pradesh High Court in first appeal No. 16 of 1959 affirming the judgment and decree of the Additional District Judge. Dewas in Civil Suit No. 1 of 1956. The High Court upheld the plea of res judicata and allowed the appeal. A memorandum of cross objections filed by the plaintiff in regard to the plea of discharge was dismissed as no argument was advanced in support of the cross objection. The plaintiff has preferred this appeal.

2. We may, at this juncture refer to the for facts which gave rise to the plea of "res" judicate Consequention the default committed by Melaram the agreement was terminated and for the remaining period of the contract i.e. 16th March 1953 to 30th June 1953, there was a reauction and the appellant himself became the contractor for the period. At the expiry of the period for which he

was the contractor, the appellant was entitled to remove the timber which he had already cut but which was still lying unremoved in the coupe. Before the appellant could remove the timber the Forest authorities attached and seized the timber on the ground that he was liable, as a surety to pay the amount which was due by Melaram. The appellant filed Civil Suit No. 1 of 1956 in The Court of the Additional District judge, Dewas, to recover damages sustained by him consequent on alleged wrongful attachment and seizure by the forest authoritiess. One of the questions raised by the appellant in that suit was that the agreement between Melaram and the Government was in contravention of Article 299 of the Constitution of India as the agreement Was not made by the Divisional Forest Officer, in the name of the Raj Pramukh of the State of Madhya Bharat. The contention was negatived by the Additional District Judge, Dewas and by the High Court on appeal. The High Court hold that the agreement had been ratified by the Raj Pramukh and had also been acced upon by the parties. The Government was, therefore, entitled to enforce the same. The decision of the Additional District Judge, Dewas, was rendered on 6th December, 1958 and the High Court affirmed the decision on 3rd May, 1963.

3. The learned Counsel for the appellant submitted that the bar of res judicate did not apply since the parties to the two litigations were net the same, the subject matter was different and the plea of ratification by the Raj Pramukh was not raised in the present suit. It was also contended that the judgment of the Dewas Court and the High Court in that suit were non eat as the Courts had no jurisdictions "to uphold a contract which was by the provisions" of Article 299 of the Constitution. It was also argued that the High Court should not have permitted the respondent "to raise the plea of resjudicata at the appellant" stage since that piea could not be decided without receiving additional evidence, namely, the judgment in the oilier litigation.

4. We are unable to see any substance in any of the submissions. The learned Counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the Court. There is no legal basis for this assumption. There is no impediment or bar against an appellate Court permitting amendment of pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well known principles subject to which amendments of pleadings are usually granted. Naturally one of the circumstances which will be taken into consideration before an amendment is granted is the delay in miking the application seeking such amendment and, if made at the Appellate stage, the reason why it was not sought in the Trial Court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court.

5. In the present case the written statement of the Government was filed in the Trial Court long before the Dewas Court decided the other case. The judgment of the Trial Court was however rendered after the decision by the Dewas "Court in the other case put it has been explained by the" Government that no amendment of the written statement was sought in the Trial Court because an appeal was pending in the High Court of Madhya Pradesh against the decision in the Dewas suit. Amendment of the written statement was sought very soon after the High Court affirmed the

decision of the Dewas Court. The explanation of the Government for not seeking the amendment earlier was accepted by the High Court and we are unable to see any ground for interfering with the discretion exercised by the Appellate Court.

6. The plaintiff in both the suits was the same. The contesting defendant was also the same, namely the State of Madhya Pradesh. In the present suit Melaram and the Chief Conservator of Forests were also impleaded as parties whereas in the other suit some other person was a party. We do not see that it makes any difference. In order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common. All that is necessary is that (he issue should be between the same parties or between parties under whom they or any of them claim. The issue in the present suit and the issue in the Dewas suit were between the same parties namely the appellant and the State of Madhya Pradesh. The submission that the subject matters of the two suits were different because the present suit was for a declaration and the other suit was for damages is equally without substance since the issue between the parties was identical in both the suits. The question at issue in both the suits was whether the agreement between Melaram and the Government and the surety bond executed by the plaintiff were not enforceable because of the failure to comply with Article 299 of the Constitution. The ground on which the agreement and the surety bond were sustained in the Bewas suit was that the Raj Pramukh had ratified the same. The fact that the ratification by the Raj Pramuka was not expressly mentioned in the present suit does not make any difference to the plea of res judicata. Once the questions at issue in the two suits are found to be the same, the fact that the material which led to the decision in the earlier suit was not again placed before the Court in the second suit cannot make the slightest difference. The plea of res-judicata may be sustained, without anything more if the questions at issue and the parties are the same, subject of course to the other conditions prescribed by Section 11 Civil Procedure Code. The submission of the learned Counsel that the decision of the Dewas Court and the High Court in the other suit were non est because they upheld an illegal contract has only to be noticed to be rejected.

7. The learned Counsel for the appellant sought to raise the plea that the surety bond had been discharged under the provisions of Sections 135 and 139 of the Indian Contract Act. As already noticed by us this plea was not pursued before the High Court and we see no justification for permitting the appellant to raise the question once again. In the result the appeal is dismissed. No costs.