

Madhua Nand And Ors. vs Suresha Nand And Ors. on 19 February, 1953

Equivalent citations: AIR1953ALL547, AIR 1953 ALLAHABAD 547

JUDGMENT

Agarwala, J.

1. This is a defendants' appeal arising out of a suit for a declaration that a certain decree of the revenue court dated 27-2-1938 obtained by the appellants was void and not binding on the plaintiffs-respondents and the defendants second set who are arrayed as respondents. The facts briefly stated are as follows: (2) The defendants first set are residents of village Gheri, and the plaintiffs and the defendants second set are residents of an adjoining village Thapli. Both these villages are situated in the district of Garhwal. In the revenue settlement which was made sometime in 1936 Gheri people claimed a right to graze their cattle in a plot of land which was included within the boundaries of the village Thapli and prayed that the plot be included within the boundaries of their village Gheri. The Settlement Officer considered the claim and held that the plot of land over which grazing rights were claimed should be attached to village Gheri and made the entries accordingly. In appeal, the Commissioner overruled the decision of the Record Officer. The Gheri people then filed a suit in the revenue court for a declaration of their rights. In this suit they failed to implead some of the residents of village Thapli. Some of the persons who were impleaded as defendants in that suit died and their heirs were not brought on the record.

The suit was referred to arbitration at the instance of some of the parties to the suit but not all. The plaintiffs of the present suit were no parties to the agreement of reference to arbitration. The arbitration award was partly in favour of the plaintiffs of that suit. The revenue court passed a decree in terms of the award. Further appeals and a revision were unsuccessful. Then the suit giving rise to the present appeal was filed in the civil court for a declaration that the decree obtained by the appellants from the revenue court was not binding on the plaintiffs or the defendants second set on the ground, 'inter alia', that the plaintiffs not being parties to the reference to arbitration were not bound by the result of the previous suit.

3. The defence to the suit was that the suit was not cognizable by the civil court and further that in any event the decree of the revenue court was binding on the plaintiffs and the defendants second set.

4. The trial court dismissed the suit holding that the case was not cognizable by the civil court. In appeal the lower appellate court, reversed the decree of the trial court and decreed the plaintiffs' suit.

5. In this second appeal by the defendants first set it was urged that the suit was not of a civil nature and was not cognizable by the civil court. This contention has no force. The suit was for a declaration that a certain revenue decree was not binding on the plaintiffs and that the defendants-decree-holders were not entitled to exercise the rights in respect of the property owned by the plaintiffs and the defendants second set. This suit was clearly one which fell within the purview of Section 42, Specific Relief Act, and was of a civil nature. The contention of the learned counsel for the appellants was that Section 207 of the Land Revenue Act barred the suit in the civil Court. Under Section 203 of the Act, any dispute pending before the officers mentioned in that section may, with the consent of the parties, be referred to arbitration and the officer concerned may pass a decree in terms of the award given by the arbitrator. Section 207 then provides :

"Such decision shall be at once carried out, and shall not be open to appeal unless the decision is in excess of, or not in accordance with the award, or unless the decision is impugned on the ground that there is no valid award in law or in fact:

and 'no person' shall institute any suit in the civil court for the purposes of setting it aside or against the arbitrators on account of their award."

Reliance is placed upon the expression "no person" and it is urged that it includes every person whether he was a party to the proceedings before the revenue court or not. In our opinion, this contention is unfounded. The word "persons" in Section 207 must have reference to the persons before the revenue court and parties to the case before that court. It can have no reference to persons who were not parties to the case. The plaintiffs in the present case were not parties to the agreement of reference in the case in which the decree in dispute was obtained. Section 207 in our opinion did not debar them from claiming the right which they do in the present suit.

6. It was next urged that, though the plaintiffs were not themselves parties to the reference in the revenue court, they were still bound by virtue of the provisions of Explanation 6 to Section 11 Civil P. C. This contention also is, in our opinion, untenable. Explanation 6 to Section 11 refers to a case in which the person sought to be bound by the decision is deemed to be represented in the previous' suit by virtue of proceedings having been taken under Order 1, Rule 8, Civil P. C. or otherwise; vide --'Kumaravelu Chettiar v. T. P. Ramaswami Ayyar', AIR 1933 PC 183 (A) and -- 'Narhari Shastri v. Basudeo Namburi', AIR 1938 All 523 (B). Where the previous suit was not representative and the persons sought to be bound by the decision arrived at in that case cannot be deemed to have been represented in that litigation, Explanation VI to Section 11 can have no application.

7. No other point was raised. There is no force in this appeal, and we dismiss it with costs.

8. There is a cross-objection with regard to the costs not allowed to the respondents by the lower appellate court. The lower appellate court has had full discretion in the matter of awarding costs and no principle of law is involved. We do not see any force in the cross-objection which is also dismissed.