Oudh Narain Lal And Ors. vs Mt. Sukh Dulari And Ors. on 12 January, 1950

Equivalent citations: AIR1950ALL402, AIR 1950 ALLAHABAD 402

JUDGMENT

Mootham, J.

1. The question which has been referred to this bench foe decision arises in the following circumstances.

2. The petitioners are the universal legatees under the alleged will of one Lala Bans Gopal who died at Lachhanpur in district Jaunpur on 9th October 1939 ; and they have applied in this Court for grant of letters of administration with a copy of the will annexed. The petition is opposed by the respondents who contend that the alleged will is a forgery.

3. In the year 1943 the present petitioners filed a suit in the Court of the Munsif of Jaunpur for a declaration that they were entitled to possession of certain property which they said had been bequeathed to them by the said Lala Bans Gopal under the will which is the subject of the present petition, and in that suit the present respondents were the defendants. The defence was that the will was a forgery, and the Munsif held it to be so and dismissed the suit. An appeal to the Civil Judge of Jaunpur and a second appeal to this Court were both dismissed. The question which arises on the present petition is whether the decision of the Munsif that the will is a forgery is conclusive in this Court as a Court of Probate.

4. It is clear that the learned Munsif had no jurisdiction to make a grant of probate or letters of administration with or without the will annexed, and the present case does hot, therefore, come within the scope of Section 11, Civil P. C., which specifically provides that the Court the decision of which has been set up as a bar, in a later suit must be a Court "competent to try such subsequent suit."

5. Mr. Shambhu Prasad foe the respondents arues that Section 11 is not exhaustive, and that upon the general principles of public policy which underlie the doctrine of res judicata, the present petition is barred. It is true of course that Section 11 is not exhaustive; but in my opinion the provision in that section that the first Court must be a Court competent to try the later suit is fundamental to the general principle of res judicata. In Mt. Edun v. Mt. Bechun, 8 W. R. 175, Sir Barnes Peacock C. J. said :

> "It appears to me, therefore, that the rule which is laid down, viz., that to render a judgment of one Court between the same parties upon the same point conclusive in

> another Court, the two Courts must be Courts of concurrent jurisdiction. The concurrency of jurisdiction is a necessary part of the rule which creates an estoppel in such a case,"

and a little later he says :

> "It is quite clear that in order to 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 subsequent suit in which the first decision is given in evidence as conclusive."

This doctrine was subsequently affirmed by the Judicial Committee in Misser Raghubardial v. Sheo Baksh Singh, 9 I. A. 197: (9 Cal. 439 (P.C.)) and in Run Bahadur Singh v. Lucho Koer, 11 Cal. 301 : (12 I. A. 23 (P. C.)).

6. Mr. L. M. Pant for the petitioner also draws our attention to the case of Chinna Sami v. Hariharabhadra, 16 Mad. 380 : (3 M. L. J. 121), in which the Madras High Court held that the decision of a District Court, made in the course of proceedings under the Guardians and Wards Act, that a certain will was a forgery did not operate as res judicata in subsequent proceedings in the High Court for probate of that will. The Court was of the view that the judgment of a probate Court granting or refusing probate is a judgment in rem, and that, therefore, the judgment of any other Court in proceedings inter partes cannot be pleaded in bar of investigation in a probate Court as to the factum of the will propounded in that Court; and it rested its decision upon the general principle that the only judgment that can be put forward in a Court of probate in support of the plea of res judicata is a judgment of a competent Court of probate.

7. In my opinion the decision of the learned Munsif in this case that the will is a forgery is not conclusive in subsequent proceedings in a Court of probate for letters of administration with a copy of the will annexed, and that it is open to the respondents to re-agitate the question of the genuineness of the will.

8. The costs of this reference will be costs in the suit.

Sapru J.

9. I agree.