

L. Ram Kishan Das vs Jagdishwar Nath And Anr. on 12 April, 1955

Equivalent citations: AIR1956ALL13, AIR 1956 ALLAHABAD 13, ILR (1956) 1 ALL 395

JUDGMENT

Agarwala, J.

1. This is a plaintiffs appeal arising out of a suit for recovery of money on the basis of a promissory note dated 11-4-1931. In the plaint, the plaintiff gave a declaration required by Section 4, U. P. Debt Redemption Act, that he will not proceed against the land, agricultural produce, or person of the judgment-debtor if a decree is passed in his favour and on that basis claimed that the amount sued for was due to him against the defendant.

Prior to the institution of the suit which has given rise to this appeal the defendant had instituted a suit for accounts under Section 33, Agriculturists' Relief Act. In that suit, as a defendant, the present plaintiff whom we shall hereafter call the creditor, had given a declaration under Section 4, Debt Redemption Act, But that declaration was held not to be capable of being given in a suit by a judgment-debtor and was therefore disregarded and it was held that nothing was due to the creditor.

In the present suit the Courts below have held that since in the debtor's suit it was found that nothing was due to the creditor, this suit must be dismissed as the finding operates as 'res judicata' in the present suit.

2. The only question in this appeal by the creditor is whether the finding in the debtor's suit that no amount was due operates as 'res judicata' in the present suit. We are of opinion that the finding in the debtor's suit does not operate as 'res judicata'.

3. As already observed the finding in the debtor's suit was given after disregarding the declaration given by the creditor under Section 4, Debt Redemption Act. On that basis it was found that nothing was due to the creditor.

In the present case the creditor wants a decree on different facts. He has given a declaration under Section 4, Debt Redemption Act, and seeks a determination of the question as to what amount is due to him upon that basis. The basis of the two suits are entirely different.

4. Section 11, Civil P. C. runs as follows:

No Court shall try any suit or issue in which the matter directly & 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 substantially raised, and has been heard and finally decided by such Court."

The important words are "the matter directly and substantially in issue has been, directly and substantially in issue in a former suit". It is obvious that the matter directly and substantially in issue in the present case was not directly and substantially in issue in the former suit, because in the present case the amount has to be determined after taking into consideration the declaration made by the plaintiff under Section 4, Debt Redemption Act, whereas in the previous case the amount was to be determined after disregarding the declaration.

It is true that the provisions of Section 11 are to be read with explanation IV of that section. The Explanation runs as follows:

"Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

Learned Counsel for the respondents has urged that the plaintiff ought to have taken up the plea under Section 4, Debt Redemption Act, in the previous suit and not having taken up that plea it will be assumed that it was also decided against him.

This argument is of no avail to the respondent, because the creditor did actually take the plea and give the declaration under Section 4, Debt Redemption Act, but it was held that in that suit that declaration could not be taken into consideration.

5. It was then urged that the creditor should have taken the matter to the highest Court. That was not necessary, because parties are bound by the decision given in a particular suit, and as that decree has become final it must be held that the declaration under Section 4 of the Act could not be given, in the previous suit. For all these reasons, therefore, we hold that the finding as to the amount due to the creditor in the previous suit does not operate as 'res judicata' in the present suit.

6. It may be pointed out that on similar grounds it has been held that any declaration, under Section 33, U. P. Agriculturists' Relief Act that certain amount was due or not due to the creditor under a certain loan is not binding on the Special Judge when he proceeds to determine the amount due to the creditor, the reason being that the two enquiries are based on different facts and circumstances.

7. The result, therefore, is that we allow this.

appeal, set aside the decrees of the Courts below and remand the case to the lower appellate Court for a declaration of the amount due to the plaintiff appellant after taking into consideration the declaration which the plaintiff had made in the plaint under Section 4, Debt Redemption Act. Parties are allowed to adduce fresh evidence if they so desire. Costs here and hitherto shall abide the result.