

Hira Lal vs Pearey Lal And Ors. on 2 May, 1950

Equivalent citations: AIR1952ALL272, AIR 1952 ALLAHABAD 272

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for possession of a house situate in the town of Ganj Dandwara.
2. One Girdhari owned a house. On his death his widow Sm. Bitoli succeeded to his property, In year 1939 Sm. Bitoli made a gift of the southern portion of this house to one Tota Ram. Tota Ram could not get possession over this portion and so he filed a suit for possession against Hira Lal, a grand-son of Harkishan, brother of Girdhari. He impleaded Sm. Bitoli also as one of the defendants.
3. The defence in that suit was that 2/3rd part to the east of both the northern and the southern portions of the house belonged not to Girdhari but to his brothers, Narain and Jhunui and that, therefore, Tota Ram was entitled to obtain possession over 1/3rd share to the west. While this suit was pending Sm. Bitoli sold the northern portion of the house to the present plaintiff respondent, Pearey Lal by sale deed dated 4-6-1940. Tota Ram's suit was decreed by the first Court in full but in appeal the decree was modified and the suit was dismissed with regard to 2/3rd portion to the east on the finding that 2/8rd portion did not belong to Girdhari and consequently did not belong to Sm. Bitoli. This decision was given in year 1943.
4. The present suit was brought by Piarey Lal for recovery of possession over the northern portion of the house as against Hira Lal, and Sm. Bitoli.
5. Various defences were raised in the suit but they were all rejected and the suit was decreed. There was an appeal to the lower appellate Court and for the first time in appeal, a point of law was urged that the suit was barred by res judicata on account of the decision in the previous suit. It was urged that the decision in the previous suit was binding as between Hira Lal and Sm. Bitoli as a decision between the two was necessary for the decision of the plaintiff's case in that suit and that the plaintiff-respondent in the present suit having derived title from Sm. Bitoli during the pendency of that suit, is bound by the decision in that suit as regards the ownership of Girdhari qua the 2/3rd portion of the house to the east. The learned Judge of the Court below rejected this plea and dismissed the appeal.
6. In this Second Appeal by the defendant the only question urged is whether the decision in the previous suit bars the present suit by the doctrine of res judicata.

7. It may be observed that the previous suit was in respect of the southern portion of the house whereas the present suit is in respect of the northern portion. Piarey Lal, no doubt, derives title from Sm. Bitoli and if he were a transferee of the same property as was the subject-matter of the suit in the previous litigation the decision would be binding on him even though the decision was given subsequent to his purchase because the suit in which the decision was given had been instituted previous to the purchase. But since the property in the previous suit was not the same which has been purchased by the plaintiff respondent, a decision in that suit cannot be said to be binding on him because, in my opinion, the phrase "between the parties under whom they or any of them claimed" in Section 11, Civil P. o. must of necessity refer to parties who have obtained the same property in respect of which the previous decision was given. As the property in the two suits was different a transferee of one property is not bound by the decision as between the parties interested in another property.

8. This view is supported by the decision of this Court reported in NIAZULLAH v. NAZIR BEGAM', 15 All 108, the facts of which were similar to the facts of the present case. If the law were otherwise, it might work great injustice to 'bona fide' transferees of property even though that property is not the subject-matter of a pending litigation. In effect, it would amount to an unwarranted extension of the doctrine of 'lis pendens' embodied in Section 52, T. P. Act.

9. Learned counsel for the appellant has referred me to a decision of Mahmood, J., reported in SITA RAM v. AMIR BEGAM', 8 All 324. In that case the learned Judge held that the phrase 'under whom they or any of them claim' should be read as if after the words "under whom they or any of them claim" the words "by a title arising subsequently to the commencement of the (SIC) had been inserted. I have no doubt (SIC) view is correct but, it should be taken as (SIC) reference to the facts of that case. In that case the transfer was in respect of the property which was in dispute in the previous suit.

10. There is therefore, no force in this appeal and I dismiss it with costs.