Ram Gobinda Dawan & Ors vs Smt.Bhaktabala on 8 January, 1971

Equivalent citations: 1971 AIR 664, 1971 SCR (3) 340

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, J.M. Shelat

PETITIONER:
RAM GOBINDA DAWAN & ORS.

Vs.

RESPONDENT:
SMT.BHAKTABALA

DATE OF JUDGMENT08/01/1971

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SHELAT, J.M.

CITATION:
1971 AIR 664 1971 SCR (3) 340
1971 SCC (1) 387

ACT:
Practice-Res judicata- Land acquisition proceedings-Claim of one party to compensation dismissed for default-Acquisition of other plots -Interest of parties same-Claim of title-If earlier decision operates as Yes judicata.

HEADNOTE:
Certain plots in a Municipality were acquired under the Land Acquisition Act, 1894, and the predecessor of the appellants and the predecessor of the respondents, each claimed the compensation. amount on the basis of title. The matter was referred to the Court of the District Judge. The claim of the predecessor of the respondents was dismissed for default and the claim of the predecessor of the appellants was therefore upheld. Certain other plots pertaining to the same title and interest were later .acquired and the question arose as to whether appellants or respondents were entitled to the compensation. Since the test of res

judicata is the identity of title in the two litigations and not the identity of the actual property involved, the appellants pleaded that the earlier decision by the District Judge operated as res judicata.
HELD : The earlier decision did not operate as res judicata against the respondents inasmuch as the matter was not heard and finally decided on merits after contest. If a matter was heard and finally decided on merits, then such a decision operates as res judicata, even though an appeal against the decision was dismissed on a preliminary ground such as limitation default in printing, or default of appearance, because, it amounts to the appeal having been heard and finally decided on the merits whatever might have been the ground of dismissal of the appeal, and has the effect of confirming the decision of the trial court on merits. But if there had been no contest, no hearing and final decision by any court, at any stage, the decision would not operate as res judicata. [350 A-E]
Rai Lakshmi Dasi & Ors. v. Banamali Sen & Ors., [1953] S.C.R. 154, Putavarthi Benkata Subba Rao & Ors v. Valluri Jagannadha Rao & Ors [1964] 2 S.C.R. 310 and Sheodan Singh v. Smt. Daryao Kunwar, [1966] 3 S.C.R. 300, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 436 and 437 of 1967.

Appeals from the judgment and decrees dated March 27, 1962 ,of the Calcutta High Court in First Appeals Nos. 311 and 312 of 1956.

D. N. Mukherjee, for the appellants (in all the appeals). The respondent did not appear.

The Judgment of the Court was delivered by Vaidialingam, J. These two appeals on certificate are directed against the judgment of the Calcutta High Court dated March 27, 1962 in First Appeals from the Original Decree Nos. 311 and 312 of 1956.

Two plots of land bearing No. 936 of Mouza Asansol and plot No. 9202 of Monza Asansol Municipality were acquired under the Land Acquisition Act. The notification under s. 4 of the Land Acquisition Act dated December 13, 1947 was published in the Calcutta Gazette of 25th December, 1947. The declaration under s. 6 dated December 30, 1947 was published in the Calcutta Gazette on 8th January, 1948. For plot No. 936 of Monza Asansol measuring about 31 acres, the Land Acquisition Collector awarded a total compensation of Rs. 1707/- including Rs. 13/ 1/6 on account of the landlord's interest. The entire compensation in respect of this plot was directed to be paid to Bhaktabala, Dasi, the sole respondent in Civil Appeal No. 436 of 1967. In respect of plot No. 9202 of Mouza Asansol Municipality, the Land Acquisition Officer awarded as compensation a sum of Rs. 825/15/6 including Rs. 6/5/6 on account of the landlord's interest. This entire amount of compensation was directed to be paid to Bhaktabala Dasi and her sister Subasini Dasi. It may be

mentioned that Bhaktabala Dasi is the first respondent and on the death of Subasini Dasi, her son Sunil Kumar Roy, who has been impleaded in the proceedings is the second respondent in Civil Appeal No. 437 of 1967. Before the Land Acquisition Collector, in respect of both these plots, one Kashi Nath Dawn claimed title to the land and as such to the entire compensation amount.' The appellants in these two appeals are the legal representatives of Kashi Nath Dawn.

The case of Kashi Nath Dawn was that both the plots of land belonged to Panchanan Roy, husband of Subasini Dasi, against whom a money decree had been obtained by one Jatin Kumar Roy. In execution of the money decree (Execution Case No. 120 of 1929, Subordinate Judge's Court, Asansol), the decree-holder brought these two items and certain other properties to sale. Kashi Nath Dawn claimed to have purchased these items in the Court sale and obtained the sale certificate Ex. 2. The sale was confirmed on November 27, 1930 and delivery of possession was also taken on December 10, 1930. It was on the strength of this purchase in Court auction that Kashi Nath Dawn claimed title to the two plots.

The case of Bhaktabala Dasi, who alone contested the claim of Kashi Nath Dawn was briefly as follows : Panchanan Roy had no title to the properties and that on the other hand they belonged to Ramanugraha Roy, who died leaving his widow. Manmohini and three daughters, Santabala, Subasini and Bhaktabala. On the death of Ramanugrah a Roy, his widow Manmohini succeeded to the property as life estate holder. As Santabala died shortly after her father's death, the properties devolved on the other two sisters namely, Subasini and Bhaktabala, on the death of Marnmohini Panchanan Roy had married Santabala and on her death he married her sister Subasini. Panchanan Roy during the life time of his mother-in-law Manmohini was allowed to manage the properties. In the settlement proceedings of 1918-21 he surreptitiously got his name recorded as owner of one half share in the ,estate of his father-in-law in Monza Asansol and of the entire interest in Monza Asansol Municipality. Panchanan Roy was never in possession and enjoyment of the properties whereas Manmohini Dasi during her life time and on her death her 'daughter Subasini and Bhaktabala were in possession and enjoyment. There was a partition between the two sisters of Monza Asansol property and in consequence plot No. 936 of Monza Asansol was obtained as her share by Bhaktabala Dasi. It was on this basis that Bhaktabala Dasi claimed exclusive title to plot No. 936 and the right to receive the entire compensation amount for that land. She claimed that in respect of plot No. 9202 of Mouza Asansol Municipality, she and her sister Subasini Dasi, had a title to half share each and asserted the right to receive com- pensation on that basis.

In view of the dispute regarding right to receive the compensation amount, the Land Acquisition Collector referred the matter to the Additional District Judge, Burdwan for determination of the said dispute. The stand taken before the Land Acquisition Collector was reiterated before the learned Additional District Judge. With. reference to plot No. 936 of Monza Asansol, the learned Additional District Judge held that Panchanan Roy had wrongfully and fraudulently got recorded his name as owner of the half share when he was managing the property on behalf of his mother-in-law Manmohini widow of Ramanugraha Roy. The Court further held that Panchanan Roy was never in possession and enjoyment of both the plots in question. Regarding plot No 9202 of Monza Asansol Municipality, it was held that long before the sale in Execution Case No. 120 of 1929, the Katiyans and the maps had been published and they conclusively show that Monza Asansol Municipality was

a Monza different from Monza Asansol with different J.L. number. The sale certificate Ex. 2 under which Kasbi Nath Dawn claimed title was scrutinized by the Court which held that the description of the various items clearly showed that no land of Monza Asansol Municipality was included therein. The Court did not also I accept the claim of Kashi Nath Dawn that for the purpose of C. S. operation only the lands within Mouza Asansol Municipality were separately recorded and that they were also included within Monza Asansol. In this view the learned Additional District Judge held that Kashi Nath Dawn did not purchase in the court sale any plot of land within Monza Asansol Municipality and as such he had no title to plot No. 9202. The court accepted the plea of Bhaktabala Dasi that she and her sister Subasini Dasi were entitled to the compensation amount in equal shares. Finally the Additional District Judge held that Kashi Nath Dawn was not entitled to claim any portion of the compensation amount in respect of the two plots. Kashi Nath Dawn filed two appeals before the Calcutta High ,Court, being First Appeals Nos. 311 and 312 of 1956. As the Land Acquisition Collector had made separate references in respect of each of the plots and as the two references were disposed of separately, though by a common judgment, two appeals were filed in the High Court. The First Appeal No. 311 of 1956 related to plot No. 936 and First Appeal No. 312 of 1956 related to plot No. 9202. At this stage it may be mentioned that Civil Appeals No. 436 and 437 of 1967 against the decision of the High Court in First Appeals Nos. 311 and 312 of 1956 respectively. The High Court did not

-agree with the learned Additional District Judge that Panchanan Roy had fraudulently got his name entered in the settlement register as owner of half share in plot No. 936. It is the view of the High Court that the plea set up by Bhaktabala Dasi that she was absolutely entitled to the said item has not been substantiated. The High Court held that the settlement register established that Panchanan Roy's name has been recorded as owner of half share and Manmohini as the owner of another half share in the properties owned by Ramanugraha Roy in Monza Asansol and that there was no fraud on the part of Panchanan Roy in having his name so entered. The High Court further held that in the court sale, Kashi Nath Dawn had purchased the half share owned by Panchanan Roy in Monza Asansol and as such he had title to half share in plot No. 936 notwithstanding the fact that Kashi Nath Dawn was not able to establish that Pancbanan Roy was in possession and actual enjoyment of his half share. In this view the High Court modified the decree of the learned Additional District Judge and held that in respect of plot No. 936 both Kasbi Nath Dawn and Bhaktabala Dasi were entitled to half share each and in that proportion were also entitled to the compensation amount. As the full right of Kashi Nath Dawn in plot No. 936 was not recognised by the High Court, Civil Appeal 436 of 1967 has been filed. Regarding plot No. 9202 the High Court agreed with the Land Acquisition Court and held that in the court sale, Kashi Nath Dawn had not purchased any property in Mouza Asansol Municipality and therefore he had no. title thereto. The claim that Panchanan Roy was in possession of this plot was also rejected. A plea of res judicata raised by Kashi Nath Dawn based upon Ex. 7 the decree of the Land Acquisition Case No. 242 of 1938, with reference to plot No. 9202, was also rejected by the High Court. The request for adducing additional evidence made on behalf of Kashi Nath Dawn was also rejected by the High Court. In consequence First Appeal No. 312 of 1956 was dismissed against which Civil Appeal No. 437 of 1967 has been filed.

We will first take up the claim of full ownership made by Kashi Nath Dawn in respect of plot No. 936 of Monza Asansol, which is the subject of Civil Appeal No. 436 of 1967. Mr. Dr. N. Mukherjee,

learned counsel for the appellants, who, as we have stated earlier, are the legal representatives of deceased Kashi Nath Dawn, urged that the High Court should have accepted the plea made by Kashi Nath Dawn that he was entitled to the full ownership of this plot. The counsel urged that the relevant entries in the settlement registers' have not been properly construed 'by the High Court. According to him all the rights which Ramanugraha Roy had in plot No. 936 of Monza Asansol had accrued to Panchanan Roy, whose rights had been purchased by Kashi Nath Dawn in court sale. The High Court having held that there was no fraud perpetrated by Panchanan Roy in having his name entered in the settlement registers, the full rights of Panchanan Roy in plot No. 936 as the original owner and of Kashi Nath Dawn as purchaser in court sale should have been upheld.

We are not inclined to accept this contention of the learned counsel. No doubt, the learned District Judge held that Panchanan Roy fraudulently got his name entered in the settlement registers when he was in management of the properties during the life time of Manmohini, widow of Ramanugraha Roy. This finding was not accepted by the High Court. The High Court has considered the recitals in Ex. A, the Settlement Khatian No. 16 of Mauza Asansol which is also a khatian in respect of the permanent tenure Jagir Nakari Ramakrishna Roy. The High Court has adverted to the fact that in Ex. A the holders are divided into 17 groups but the holders of 'ka' group were described as Manmohini wife of Ramanugraha Roy and Panchanan Roy s/o Umesh Chandra Roy. These two persons were also described as being entitled to 8 g. 1 k. 5 tils each. Plot No. 936 has been found to be one of the plots recorded as in khas possession of 'ka' group in Ex. A. It is on this basis that the High Court differing from the learned District Judge held that Panchanan Roy had been the owner of half share in this plot and Kashi Nath Dawn as purchaser of this half share of Panchanan Roy was entitled to half of the compensation amount. Mr. Mukherjee was not able to satisfy as to how Kashi Nath Dawn was entitled to full ownership of plot No. 936. We are in agreement with the decision of the High Court on this point, and as such hold that there is no merit in Civil Appeal No. 436 of 1967.

Coming to plot No. 9202 of Monza Asansol Municipality Mr. D. N. Mukherjee raised two contentions : (i) the High Court was in error in holding that Ex. 2, the sale certificate does not take in this item and (ii) the claim of the respondent was barred by res judicate, by the decree of the Land Acquisition Court Ex. 7 and the High Court was again in error in holding that there is no bar of res-judicata. So far as the first contention is concerned, it is an attack on a finding of fact recorded by the High Court. We have already pointed out that even the Land Acquisition Court held that Kashi Nath Dawn did not purchase in the court sale any property of Panchanan Roy in Mouza Asansol Municipality. The High Court has agreed with this finding. The entire claim of title in respect of both the items was based on the sale certificate Ex. 2. Both the District Judge and the High Court have held that what was sold in court sale was only the interest of Panchanan Roy in the permanent tenure in respect of Mouza Asansol and not in respect of any other Mouza. The High Court has further held that Mouza Asansol Municipality and Mouza Asansol were different entities even from about 1896 and the court sale which took place in or about 1930 related only to the properties in Mouza Asansol. The description of the properties given in the sale certificate Ex. 2, according to the High Court, clearly establishes that what was sold in court auction and purchased by Kashi Nath Dawn was only the property that was situated in Mouza Asansol as defined by the District Settlement Operations and not a different Mouza Asansol as it might have existed prior to 1896. The High Court has

-one more elaborately into this aspect than the District Court and held that Kasbi Nath Dawn did not purchase in the court auction any property of Panchanan Roy in Mouza Asansol Municipality. We find no flaw in the finding of the High Court. Therefore, on this finding it follows that Kashi Nath Dawn, through whom the appellants claimed, had no right, title or interest in plot No, 9202.

Faced with this situation Mr. Mukherjee raised his second contention that the claims of Bhaktabala Dasi and her sister, Subasini Dasi were barred by res-judicata.

The bar of res-judicata is pleaded as follows Certain other plots in Mouza Asansol Municipality were acquired under the Land Acquisition Act and there was a dispute regarding the persons entitled to compensation amount. Kashi Nath Dawn made a-claim for payment of the full compensation as the owner of those plots. That claim was resisted by Subasini Dasi and her sons and they claimed in turn to be entitled to the compensation amount. But the Land Acquisition Court upheld the claim of Kashi Nath Dawn and that decree has become final. Under Ex. 7 the title of Kashi Nath Dawn in the properties of Mouza Asansol Municipality having been recognised, it was no longer open to the respondents herein to urge that Kashi Nath Dawn had no title to plot No. 9202, which is situated in Mouza Asansol Municipality. The High Court had rejected this plea on the ground that the claims of Subasini Dasi in the prior land acquisition proceedings having been dismissed for default, would not prevent her from claiming title to other plots pertaining to the same interest inasmuch as the question of ownership of the interest as a whole was 'not heard and decided. Mr. Mukherjee, learned counsel for the appellants attacks this reasoning of the High Court as fallacious. He urged that Subasini Dasi and her sons having made a claim before the Land Acquisition Court for payment of compensation on the basis of their title, which was rejected are not entitled to, put forward any further claim to this item. This plea of res-judicata raised by Mr. Mukherjee has to be approached from two points of view : (i) as a bar against Bhakta bala Dasi and (ii) as a bar against Subasini Dasi. We have already referred to the case set up by Bhaktabala Dasi regarding the interest of herself and her sister Subasini Dasi in plot No. 9202. This case has been accepted by both the courts. From the nature of the claim, it is clear that Bhaktab-ala Dasi was not claiming any title through Subasini Dasi, on the other hand she was claiming half share in her own right as the daughter of Ramanugraha Roy and according to her, her sister Subasini Dasi was also entitled to an equal share. Bhaktabala Dasi, it is admit- ted, was not a party to the decree Ex. 7. If that is so, there is no question of any bar of res-judicata so far as half share of Bhaktabala Dasi is concerned. Then the question is whether the claim of Subasini Dasi to half share in this item is barred by Ex. 7. If the appellants' contention in this regard is accepted they will be entitled to at least claim the half share of Subasini Dasi in plot No. 9202. Now it is necessary to refer to the nature of the proceedings covered by Ex. 7. Nine plots of land referred to therein and situate in Monza Asansol Municipality appear to have been acquired under the Land Acquisition Act for the expansion of a road level crossing. There appear to have been disputes amongst various parties with regard to right to receive compensa-

tion and therefore the matter was referred to the Court of the District Judge. Burdwan in Land Acquisition Case No. 42 of 1938. Neither the actual pleadings in order to ascertain the nature of the claim that was made by the parties nor the judgment in the land acquisition case have been filed in these proceedings. The only document that has been filed is the decree Ex. 7. From the decree it is

seen that Kashi Nath Dawn was party No. 7 and Subasini Dasi and her sons were parties Nos. 9 to 12. Parties Nos. 9 to 12 claimed compensation amount as against party No. 7, and the claim of Subasini Dasi was dismissed for default by the learned District Judge under Ex. 7 dated March 3, 1939 and the result of the decision was that the claim of Kashi Nath Dawn was upheld and that of Subasini Dasi and her sons was rejected, though on default.

Mr. Mukherjee, learned counsel for the appellants has urged that the same title to the property which was in dispute and decided in Ex. 7 in favour of Kashi Nath Dawn again arises for consideration in these proceedings. The title of Subasini Dasi having been once rejected by the court cannot again be the subject matter of a fresh adjudication. We are not inclined to accept the contention of Mr. Mukherjee that Ex. 7 operates as res-judicata in respect of the claim even of Subasini Dasi and her sons in respect of half share claimed in plot No. 9202. Though it is true that Subasini Dasi appears to have contested the claim of Kashi Nath Dawn in the proceedings leading up to Ex. 7, in our opinion, it cannot be said that in those proceedings the issue as to title was heard and finally decided. We have already pointed out that the claim of Subasini Dasi was dismissed for default.

Mr. Mukherjee drew our attention to certain decisions and urged that the decision of the Land Acquisition Court operates as res judicata. He further urged that even though the property in the previous land acquisition proceedings may have been of a very small extent, when once the title to the compensation amount which really relates to the nature of the title to the property has been raised and decided, that decision will operate as res-judicata. The proposition enunciated by Mr. Mukherjee and set out, above as such are beyond controversy but we are of the opinion that the facts before us are totally different.

We will now advert to the decisions cited by Mr. Mukherjee. In Raj Lakshmi Dasi and others v. Banamali Sen and others(1) this Court had to consider the question whether a previous decision on title in land acquisition proceedings operated as resjudicata in a subsequent suit between the same parties when the (1) [1953] .CR. 154.

question of title was again raised. The facts in that case were briefly as follows : Certain properties were acquired in land acquisition proceedings and there was a triangular contest about the right to receive compensation between A and B, the rival claimants, and C, a mortgagee from B. All the parties required the question of apportionment to be referred to the Land Acquisition Court. The court decided the question of title in favour of B after contest. This decision was confirmed by the High Court on appeal. That means that the title of B and his mortgagee C to receive compensation amount was upheld by the Land Acquisition Court and the High Court. A took the matter to the Privy Council, which reversed the decision of the High Court and the Land Acquisition Court and the title of B and C were negatived. In a subsequent suit between the same parties the question of title was again raised and this Court held that the decision of the Privy Council operated as res-judicata in respect of the subsequent proceedings notwithstanding the fact that B and his mortgagee C did not appear before the Privy Council and their claim was rejected in default. Considerable reliance has been placed by Mr. Mukherjee on this decision in support of his contention that Ex. 7 though a decision given against Subasini Dasi and her sons ill default of their appearance operates

res-judicata. In our opinion, the decision of this Court referred to above does not assist the appellants. It is now well established that where a dispute as to title to receive compensation amount has been referred to a court, a decree thereon not appealed from renders the question of title res-judicata in a suit between the same parties to the dispute. A party in such circumstances cannot be heard to say that the value of the subject matter on which the former decision was pronounced was comparatively so trifling that it was not worth their while to appeal from it. It is true that the test of resjudicata is the identity of title in the two litigations and not the identity of the actual property involved in the two cases but the previous decision must be one on a title in respect of which a dispute has been raised and which dispute was heard and finally decided by the court.

It is interesting to note that though it was urged that the decision of the Privy Council was given in default of appearance of B and his mortgagee C and therefore the said decision will not operate as res-judicata, this Court did not hold that a decision given even in the first instance in default of appearance of a party will operate as res- judicata. On the other hand, this Court categorically held that C, the mortgagee had fought out the title of mortgagor B, both before the Land Acquisition Court and the High Court and had obtained a judgment in his favour after a full contest.

It is the view of this Court that the mere fact that the mortgagee did not choose to appear before the Privy Council and the decision of the Privy Council was given in the absence of the mortgagee, is of no consequence as the decisions of the High Court and the District Court have been given after contest. Therefore it will be seen that the decision of this Court relied on by Mr. Mukherjee is no authority for the wide proposition that even if there has been no hearing and final decision by any court at any stage, after contest, the decision will operate as res- judicata.

For an earlier decision to operate as res-judicata it has been held by this Court in Pulavarthi Venkata Subba Rao and others v. Valluri Jagannadha Rao and others(1) that the same must have been on a matter which was 'heard and finally decided'.

In Sheodan Singh v. Smt. Daryao Kunwar(2) the question whether a decision given by the High Court dismissing certain appeal on the ground of limitation or on the ground that the party had not taken steps to prosecute the appeal operates as resjudicata, was considered by this Court. In that case A had instituted against B two suits asserting, title to a certain property. B contested those claims and also instituted two other suits to establish his title to the same property as against A. A's suits were decreed and B's suits were dismissed. B filed four appeals, two appeals against the decision given in A's suits and two appeals against the dismissal of his two suits. It is seen that all the appeals were taken on the file of the High Court but the two appeals filed by B against the decision in the suits instituted by him were dismissed by the High Court on the grounds that one was filed beyond the period of limitation and the other for non-prosecution. At the final hearing the High Court took the view that the dismissal of B's two appeals, referred to above, operated as resjudicata in the two appeals filed by B against the decision in A's suits on the question of title to the property. It was urged before this Court on behalf of B that the dismissal of his appeals on the grounds of limitation and non-prosecution by the High Court does not operate as res-judicata as the High Court cannot be considered to have 'heard and finally decided' the question of tit,--. This contention was not accepted. This Court referred to instances where a former suit was dismissed by

a trial court for want of jurisdiction or for default of plaintiff's appearance etc. and pointed out that in respect of such class of cases, the decision not being on merits, would not be res-judicata in a subsequent suit. It was further pointed out that none of those considerations apply to a case where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some (1) [1964] 2.S.C.R.310.

(2) [1966] 3 S.C.R. 300.

preliminary ground, like limitation or default in printing. It was held that such dismissal 'by an appellate court has the effect of confirming the decision of the trial court on merits, and that it amounts to the appeal being heard and finally decided on the merits whatever may be the ground. for dismissal of the appeal".

It will be seen from the above reasoning that in order to operate as res-judicata, the previous decision must have been given after the matter was heard and finally decided on merits. This Court has further held' that the High Court, in that case, when it dismissed the two appeals in' question, though on a preliminary ground of limitation or default in printing must be considered to have heard and finally decided on merits. Far from supporting Mr. Mukherjee's contention that a decision given in default of appearance under any circumstance, operates as res-judicata, the above decision lays down clearly that a previous decision to operate as res-judicata must be one in a case heard and finally decided on merits.

To conclude Ex. 7, in our opinion, does not operate as res- judicata even against the claim of Subasini Dasi and her sons inasmuch as the matter was not heard and finally decided on merits after contest by the Land Acquisition Court. We have already pointed out that if the plea of res- judicata is not accepted the decision of the two, courts, regarding Subasini Dasi's having in plot No. 9202 half share will have also to be sustained.

In the result the appeals fait and are dismissed. As there is no appearance for the respondents, there will be no order, as to costs.

V.P.S. Appeals dismissed.