

Ragho Prasad Gupta vs Shri Krishna Poddar on 23 August, 1968

Equivalent citations: AIR1969SC316, 1969(17)BLJR426, [1969]1SCR834, AIR 1969 SUPREME COURT 316, 1969 (1) SCR 834 ILR 48 PAT 118, ILR 48 PAT 118

Author: R.S. Bachawat

Bench: S.M. Sikri, R.S. Bachawat, K.S. Hegde

JUDGMENT

R.S. Bachawat, J.

1. One Lakhan Lal obtained from the Ramgarh Raj a settlement in respect of .08 acre of land in Plot No. 439, Khata No. 125 in village Ramgarh. It is now common case that in obtaining this settlement he acted as the benamidar of the appellant. The respondent claimed the land on the basis of another settlement from the Ramgarh Raj. There were proceedings under Section 144 of the Code of Criminal Procedure at the instance of the respondent against the appellant and Lakhan Lal. Eventually the respondent and Lakhan Lal agreed to refer the dispute to the arbitration of one Bateshwar Prasad Singh. On May 16, 1951 the arbitrator made his award. The award was filed in the court of the Additional Munsif Hazaribagh and the proceeding under Section 14 of the Indian Arbitration Act, 1940 was marked as T. S. No. 160 of 1951. On November 9, 1953 an application in the form of a written statement on behalf of Lakhan Lal was filed setting forth the objections to the award and praying that the award be set aside and the suit be dismissed. The appellant who held a special power of attorney from Lakhan Lal verified and signed the written statement On July 1, 1955, Lakhan Lal died and his heirs were substituted in his place in the proceedings. On April 30, 1956 the heirs of Lakhan Lal filed a written statement adopting the earlier written statement and stating that the appellant was the real owner and a necessary party. On May 16, 1956 the appellant filed an application praying that he be joined as a defendant. By an order dated June 13, 1956 the Munsif dismissed the application. He observed that only Lakhan Lal and the respondent were parties to the arbitration and the appellant had no locus standi to be added as a party. He added:-

"If that award is enforced and decree passed on its basis, parties concerning the award are to be bound by that and no-body else. If out of the suit land under award Mr. Ragho Prasad Gupta is the owner and in possession of 4 decimal out of 8 decimal land and if he was not a party to that award the decree if allowed on the basis of that award in question shall not bind him." Thereafter the objections to the award were vigorously pressed by the heirs of Lakhan Lal. On December 22, 1956 the Munsif dismissed the suit and declined to pass a decree in terms of the award mainly on the ground that Bateshwar Prasad was disqualified from acting as an arbitrator. The

respondent filed an appeal from this decree. On July 18, 1958 the 1st Additional Sub-ordinate Judge, Hazaribagh, allowed the appeal, dismissed all the objections and passed a decree in terms of the award. On April 9, 1960 the respondent started Execution Case No. 58 of 1960 in the court of the Munsif, Hazaribagh, asking for delivery of possession of the land in accordance with the award decree. The Munsif made an order for delivery of possession. On May 22, 1961 the appellant obstructed the court peon in giving possession of the property. On June 6, 1961 the respondent filed an application against the appellant under Order 21, Rule 97 of the Code of Civil Procedure. On December 18, 1962 the Munsif dismissed the application. He observed that as the appellant's prayer for being added as a party to the proceedings in T. S. No. 160 of 1951 had been rejected he was not bound by the decree passed. against his benamidar. The respondent filed a revision petition Under Section 115 of the Code of Civil Procedure. On December 17, 1963 the High Court allowed the revision petition, set aside the order of the Munsif and directed the executing court to deliver possession of the land to the respondent. The present appeal has been filed by the appellant after obtaining special leave from this Court.

2. The crucial question in this appeal is whether the respondent (appellant?) is bound by the decree passed in the previous suit against the heirs of his benamidar. In *Gur Narayan v. Sheo Lal Singh*, 46 Ind App 1 = (AIR 1918 PC 140) the Judicial Committee held:

"The benamidar has no beneficial interest in the property or business that stands in his name; he represents, in fact, the real owner, and so far as their relative legal position is concerned he is a mere trustee for him.... The bulk of judicial opinion in India is in favour of the proposition that in a proceeding by or against the benamidar, the person beneficially entitled is fully affected by the rules of *res judicata*. With this view their Lordships concur. It is open to the latter to apply to be joined in the action; but whether he is made a party or not, a proceeding by or against his representative in its ultimate result is fully binding on him. In a contest between an alleged benamidar, and an alleged real owner, other considerations arise with which their Lordships are not concerned in the present case."

3. In view of this decision, it is now well settled that in any litigation with a third party, the benamidar can sufficiently represent the real owner. The decision in any proceeding brought by or against the benamidar will bind the real owner though he is not joined as a party unless it is shown that the benamidar could not or did not in fact represent the interest of the real owner in that proceeding.

4. Let us examine the facts of the present case. In the courts below it was not disputed that Lakhan Lal fully re- presented the appellant in the agreement of reference to arbitration and in the arbitration proceedings. It was not disputed before us that the award given by the arbitrator was as much binding upon the appellant as if the reference to arbitration was made by the appellant himself. The award was filed in court and the notice of the filing of the award was given to the appellant (respondent?) and Lakhan Lal, the two parties to the arbitration agreement. Upon service

of the notice, the proceeding for enforcement of the award under Section 14 of the Indian Arbitration Act commenced. The appellant was not a necessary party in the proceeding. As the attorney of Lakhan Lal, the appellant filed an application for setting aside the award within the time prescribed by Article 158 of the Indian Limitation Act, 1908 and thereafter actively conducted the proceedings. There can be no doubt that while Lakhan Lal was alive, he fully represented the appellant. On his death his heirs were brought on the record. They adopted his written statement and stated that the appellant was the real owner and a necessary party. At this stage the appellant filed an application for being added as a party. The Munsif dismissed the application observing that the appellant would not be bound by the decree in the proceedings. Now the question whether the respondent (appellant?) would be bound by the decree was not in issue before the Munsif and the expression of opinion on that question cannot operate as *res judicata*. The non-joinder of the appellant as a party did not cause him any prejudice. All the contentions which could be advanced on his behalf against the validity of the award were put forward by Lakhan Lal's heirs and vigorously pressed. Like Lakhan Lal, his heirs continued to represent the appellant in the proceedings. In somewhat similar circumstances the Calcutta High Court held in *Prokash Chandra v. Mahima Ranjan* that the decree against the heirs of the benamidar bound the real owner. There, a mortgagee brought a suit on his mortgage against the sons of a benamidar a mortgagor and the application of the real owners to be added as a party in the mortgage suit was rejected with the remark that "By the petitioners not being made parties, they will not be prejudiced in any way in this suit beyond the fact that, if their case be true, they will be driven to another litigation to fight out their own case."

After the rejection of the application the heirs of the benamidar contested the suit on behalf of the real owners. On these facts the court held that the real owners in possession of the property were bound by the decree passed in the mortgage suit and the sale in execution of the decree.

5. The appellant relied on the decision in *Mata Prasad v. Ram Charan Sahu*, ILR 36 All 446 = (AIR 1914 All 173). In that case, a suit for sale on a mortgage was brought against the ostensible purchaser of the mortgaged property. The defendant pleaded that she was the benamidar for his three sons and that the real owners should be brought on the record as defendants. But no steps were taken for adding them as parties. In a subsequent suit for possession of the property brought by her sons, the Court held that the decree in the earlier suit did not operate as *res judicata*. The reason was that some defences open to her sons were not open to her and the decree against her was based on the finding that she was not the benamidar for her sons and did not represent them. Some observations in this decision lend support to the contention that the benamidar ceases to re- present the real owner as soon as he discloses his benami status and pleads that the real owner should be added as a party to the suit. In our opinion the contention is unsound, and we are unable to agree with those broad observations.

6. It follows that the appellant is bound by the decree passed in the earlier suit. The decree can be executed against him under Order 21, Rule 35 C. P. C. and he is bound to vacate the property.

7. The appellant submitted that the High Court had no power to set aside the Munsifs order under Section 115 of the Code of Civil Procedure. This point was not taken in the High Court. If we allow the appellant to raise this contention there will be grave miscarriage of justice. The award was made

in 1951. The decree in accordance with the award was passed in 1958- For over 16 years the respondent has been deprived of the property awarded to him. Had the High Court dismissed the revision petition on the ground that it had no jurisdiction to interfere with the Munsif's order, the respondent would have immediately filed a suit under Order 21, Rule 23 C. P. C. to establish his right to the property. To that suit the appellant would have had no defence. He is bound by the decree in the earlier suit and is liable to be ejected. The ends of justice require that the appellant ought not to be permitted to raise this new contention now. It is therefore not necessary to decide whether this contention has any merit. The appeal is dismissed with costs.