

Shyam Behari Lal

Vs

Lalla Jageshwar Prasad

Civil Appeal No. 839 of 1966

(J. C. Shah, V. Ramaswami-I, A. N. Grover, Saiyid JJ)

04.04.1969

JUDGMENT

RAMASWAMI, J. –

1. This appeal is brought by special leave from the judgment of the Allahabad High Court, dated May 20th, 1965 in Second Appeal No. 3858 of 1962.
2. The respondent Jageshwar Prasad purchased house No. 18/168 situated in Kursawan Muhalla, Kanpur city, from one Harinarayan, under a registered sale deed, dated January 22/23, 1946. At the time of the purchase by the respondent, a portion of the house was in the occupation of one Shri Jagmohan Lal. After purchasing the house, the respondent filed a suit for recovery of possession and mesne profits against Jagmohan Lal and the suit was decreed by the First Civil Judge, Kanpur, on December 6th, 1947. In execution of the decree, the respondent obtained possession of the house on January 30th, 1961. In 1962 the respondent filed suit No. 1138 of 1952 in the Court of the Judge, Small Cause, Kanpur, against the appellant and Smt. Kamla Devi for recovery of Rs. 580/- as arrears of rent for the period January 30th, 1961 to March 30th, 1962. In the suit the appellant put in appearance in September, 1955 and prayed for leave to contest the suit and the Court by its order, dated September 22, 1955, granted him permission to contest the suit on payment of Rs. 25/- as costs. The appellant, however, did not pay the costs and the suit was decreed ex parte against him by the Court of Judge Small Causes, Kanpur, on 13th March, 1956. The appellant applied for setting aside the ex parte decree under Order IX, Rule 13, C.P.C. and Section 151, C.P.C. but the application of the appellant filed by the appellant for the review of the order, dated July 14, 1956 was also rejected by the Court by its order, dated February 8, 1958. The appellant thereafter filed suit No. 606 of 1968 in the Court of Additional Munsif, Kanpur, for setting aside the decree, dated March 13, 1966 in suit No. 1138 of 1952 on the ground that the decree had been obtained by the respondent fraudulently. But the suit was dismissed by the Additional Munsif, Kanpur, by his judgment, dated July 28, 1960 and the appeal filed by the appellant against the judgment of the Munsif was dismissed by the first Civil Judge, Kanpur, by judgment, dated July 6, 1962. In the meanwhile on July 30, 1966, the respondent filed suit No. 1965 of 1966 giving rise to the present appeal, in the Court of Munsif, Kanpur, against the appellant for recovery of Rs. 1440/- as rent for the period July 30, 1953 to July 20, 1956. The suit was based on the allegation that the appellant was the tenant of the first floor of the house above referred at a monthly rent of Rs. 40/- and that the appellant had been held to be a tenant of the respondent in suit No. 1138 of 1952 by Judge, Small Cause Court, Kanpur. The appellant contested the suit and denied the relationship of landlord and tenant between him and the respondent and further admitted that the house was under the occupation of appellant's wife, Smt. Kamala Devi, since 1950 and that she was a tenant of Jagmohan Lal, owner of the house and not of the respondent.

3. The Trial Court held that the decree passed by the Judge, Small Cause Court in Suit No. 1138 of 1952 did not operate as res judicata in the present suit. On the merits of the case the Trial Court found that the respondent had failed to prove that the appellant had taken the accommodation on monthly rent of Rs. 40/- and so the appellant was not liable to pay the rent. The respondent took the matter in appeal but it was dismissed by the First Civil Judge, Kanpur, by his judgment, dated July 6, 1962. The respondent thereafter filed the second appeal in the Allahabad High Court. The appeal was allowed by the High Court by its judgment and decree dated, May 20, 1966, on the ground that the finding of the Judge, Small Cause Court, Kanpur, in suit No. 1138 of 1952 that there was an agreement of tenancy between the parties operates as res judicata in the present suit.

4. The question for consideration in this appeal is whether the High court was right in holding that the Small Cause Court was a court of exclusive jurisdiction and that its decision is governed by general principle of res judicata and not by Section 11 of the code of Civil Procedure.

5. The plea of res judicata on general principle can be successfully taken in respect of judgments of courts of exclusive jurisdiction. Courts of exclusive jurisdiction are those which have been conferred exclusive powers to decide certain matters like revenue courts, land acquisition courts, probate courts, etc. It is obvious that these courts are not entitled to try regular suits. When the plea of res judicata is founded on general principles of law all that is necessary to establish is that the court that heard and decided the former case was a court of competent jurisdiction. It does not seem necessary in such cases to further prove they have jurisdiction to hear the latter suit. But if the plea of res judicata is raised under Section 11 of the Code of Civil Procedure one of the essential conditions to be satisfied is regarding the competency of the former court to try the subsequent suit. That is one of the limitations engrafted on the general rule of res judicata by Section 11 of the Code of Civil Procedure and has application to suits alone. (See the decision of this Court in Raj Lakshmi Pasi v. Banamali Sen.) (1953 SCR 154 : AIR 1953 SC 33) It was argued for the appellant that the Court of Small Cause cannot be regarded to be a court of exclusive jurisdiction but it has preferential jurisdiction with regard to certain suits. In support of this view reference was made to Dulare Lal v. Hazari Lal, (AIR 1914 All 229 : 12 ALJ 353) Ghulappa Bin Balappa v. Raghvendra; (ILR 28 Bom 338 : 6 Bom LR 77) Mohini Mohan Roy v. Ramadas Paramhansa; (AIR 1924 Cal 487 : 28 CWN 271 : 39 CLJ 532 : 80 IC 210) Madhorao v. Amrit Rao (AIR 1918 Nag 163 : 14 NLR 115) and Pateshwari Prashad v. A. S. Gilani. (AIR 1959 Punj 420 : 61 Punj LR 75 : ILR 1959 Punj 1503) It is not, however, necessary for us to express any concluded opinion on this point in the present case. We shall assume in favour of the appellant that Section 11, C.P.C. is applicable. On this assumption it is argued for the appellant that the condition imposed by Section 11 C.P.C. regarding the competency of the court is not satisfied because the Judge, Small Cause Court, Kanpur, had no pecuniary jurisdiction to hear a rent suit up to Rs. 1,440/-. There is, however, no material on the record of the case to show as to what was the pecuniary jurisdiction of the Judge, Court of Small Causes, Kanpur, on the relevant date. In the absence of the relevant information included on this point we are unable to accede to the argument of the appellant that the Judge, Small Cause Court, Kanpur, had not pecuniary jurisdiction up to Rs. 1,440/- which was the valuation of the latter suit. We, therefore, see no reason for interfering with the finding of the High Court, that the defence of the appellant in the present case is barred on the principle of res judicata.

6. It was also argued on behalf of the appellant that after obtaining the decree in suit No. 31 of 1946 the respondent started a garnishee proceeding in execution case No. 21 of 1951 in the Court of First Civil Judge, Kanpur, against the tenants of the house in dispute. In the garnishee proceeding Jageshwar Prashad alleged that the appellant Shyam Behari Lal was tenant of the house and as such he was liable to pay arrears of rent as being due to the original landlord. The garnishee proceedings

were contested by the appellant and on April 10, 1956, the Civil Judge, Kanpur, held that Shyam Behari Lal was not a tenant of the house but Smt. Kamala Devi was the tenant thereof. It is contended on behalf of the appellant that the finding of the civil Judge in the execution case in the garnishee proceeding operated as res judicata in the present suit. No such contention was advanced on behalf of the appellant before the High court. In any event it appears that the garnishee order was not made against Smt. Kamala Devi and the proceeding was dismissed on the ground that no debt was due to the original landlord. The order in garnishee proceeding was based on this finding and the issue as to whether Shyam Behari Lal or Smt. Kamala Devi was a tenant in the house was not necessary for the decision of that proceeding and it cannot be said, therefore, to have been a matter "heard and finally decided" within the meaning of Section 11 of the Code of Civil Procedure. We, therefore, reject the argument of the appellant on this point.

7. For the reasons already expressed we hold that the suit of the respondent has been rightly decreed by the High Court. We accordingly dismiss the appeal but there will be no order as to costs.

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