Ram Gobinda Dawan and Others

Vs

Smt. Bhaktabala

Ram Gobinda Dawan and Others

Vs

Sunil Kumar Roy and Another

Civil Appeals Nos. 436 and 437 of 1967

(J. M. Shelat, C. A. Vaidialingam JJ)

08.01.1971

JUDGMENT

VAIDIALINGAM, J. -

1. 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.

2. Two plots of land bearing No. 936 of Mouza Asansol and plot No. 9202 of Mouza Asansol Municipality were acquired under the Land Acquisition Act. The notification under Section 4 of the Land Acquisition Act, dated December 13, 1947, was published in the Calcutta Gazette of 25th December, 1947. The declaration under Section 6, dated December 30, 1947, was published in Calcutta Gazette on 8th January, 1948. For plot No. 936 of Mouza Asansol measuring about 31 acres, the Land Acquisition Collector awarded a total compensation of Rs. 1,707/- 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.

3. 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 Dawan 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 Dawan.

4. The case of Kashi Nath Dawan 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

Dawan 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 Dawan claimed title to the two plots.

5. The case of Bhaktabala Dasi, who alone contested the claim of Kashi Nath Dawan 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 an Baktabala. On the death of Ramanugraha 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 Manmohini, Panchanan Roy had married Santabala and on her death he married her sister Subasini. Panchanan Roy during the life-time of the 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 Mouza Asansol and of the entire interest in Mouza 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 daughters Subasini and Bhaktabala were in possession and enjoyment. There was a partition between the two sisters of Mouza Asansol property and in consequence plot No. 936 of Mouza 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 compensation on that basis.

6. 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 Mouza 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 Mouza Asansol Municipality, it was held that long before the sale in Execution Case No. 120 of 1929, the Katiyana and the maps had been published and they conclusively show that Mouza Asansol Municipality was a Mouza different from Mouza Asansol with different J.L. number. The sale certificate Ex. 2 under which Kashi Nath Dawan claimed title was scrutinized by the Court which held that the description of the various items clearly sowed that no land of Mouza Asansol Municipality was included therein. The Court did not also accept the claim Kashi Nath Dawan that for the purpose of G.S. operation only the land within Mouza Asansol Municipality were separately recorded and that they were also included within Mouza Asansol. In this view the learned Additional District Judge held that the Kashi Nath Dawan did not purchase in the court sale any plot of land within Mouza 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 Dawan was not entitled to claim any portion of the compensation amount in respect of the two plots.

7. Kashi Nath Dawan 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 Nos. 436 and 437 of 1967 are 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 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 Mouza 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 Dawan had purchased the half share owned by Panchanan Roy in Mouza Asansol and as such he had title to half share in plot No. 936 notwithstanding the fact that Kashi Nath Dawan was not able to establish that Panchanan Roy was in possession and actual enjoyment of his half share. In this view that High Court modified the decree of learned Additional District Judge and held that in respect of plot No. 936 both Kashi Nath Dawan 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 Dawan in plot No. 936 was not recognised by the High Court, Civil Appeal No. 436 of 1967 has been filed.

8. Regarding plot No. 9202 the High Court agreed with the Land Acquisition Court and held that in the court sale, Kashi Nath Dawan 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 Dawan 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 Dawan 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.

9. We will first take up the claim of full ownership made by Kashi Nath Dawan in respect of plot No. 936 of Mouza Asansol which is the subject of Civil Appeal No. 436 of 1967.

10. Mr. D. N. Mukherjee, learned counsel for the appellants, who, as we have stated earlier, are the legal representatives of deceased Kashi Nath Dawan, urged that the High Court should have accepted the plea made by Kashi Nath Dawan 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 Mouza Asansol had accrued to Panchanan Roy, whose rights had been purchased by Kashi Nath Dawan 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 Dawan as purchaser in court sale should have been upheld.

11. 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 Mouza Asansol which is also a Khatian in respect of the permanent tenure Jagir Nakari Ramkrishna 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. 15 tile each. Plot No. 936 has also 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 Dawan 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 Dawan 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 old that there is no merit in Civil Appeal No. 436 of 1967.

12. Coming to plot No. 9202 of Mouza 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 judicata, 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.

13. 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 Dawan 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 Dawan 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 gone more elaborately into this aspect than the District Court and held that Kashi Nath Dawan 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 Dawan, through whom the appellants claimed, had no right, title or interest in plot No. 9202.

14. 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.

15. 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 disputed regarding the persons entitled to compensation amount. Kashi Nath Dawan 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 Dawan and that decree has become final. Under Ex. 7 the title of Kashi Nath Dawan in the properties of Mouza Asansol Municipality having been recognised, it was no longer open to the respondents herein to urge that Kashi Nath Dawan 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.

16. 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 claims to this item. This plea of res judicata raised by Mr. Mukherjee has to be approached from two points view : (i) as a bar against Bhaktabala 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 Bhaktabala Dasi was not claiming any title through Subasini Dasi, on the other hand she was claiming half share in her own right as daughter of Ramanugraha Roy and according to her, her sister Subasini Dasi was also entitled to an equal share. Bhaktabala Dasi, it is admitted, was not a party to the decree Ex. A. 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 Mouza 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 compensation 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 iled in these proceedings. The only document that has been filed is the decree Ex. 7. From the decree it is seen that Kashi Nath Dawan 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 Dawan was upheld and that of Subasini Dasi and her sons was rejected, though on default.

17. 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 Dawan 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 Dawan 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.

18. Mr. Mukherjee drew our attention to certain decisions and urged that the decision of the Land Acquisition Court operates as res judicata. The 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.

19. We will now advert to the decisions cited by Mr. Mukherjee. In Raj Lakshmi Dasi and Others v. Banamali Sen and Others, ((1953) SCR 154 : AIR 1953 SC 33 : 1952 SCJ 618 : 1953 SCA 22.) this Court had to consider the question whether a previous decision on title in land acquisition proceedings operated as res judicata in a subsequent suit between the same parties when the 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 titles 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 in default of their appearance, operates as res judicata.

20. 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 res judicata 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.

21. 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.

22. 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.

23. 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 Jagannatha Rao and Others, ((1064) 2 SCR 310 : AIR 1967 SC 591 : (1964) 2 SCJ 518.) that the same must have been on a matter which was 'heard and finally decided'.

24. In Sheodan Singh v. Smt. Daryan Kunwar ((1966) 3 SCR 300 : AIR 1966 SC 1332; (1966) 2 SCJ 768.) 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 res judicata, was considered by this Court. In that case A had instituted against B two suits asserting title to 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 dismissed of B's two appeals, referred to above, operated as res judicata 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 ground 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 title. 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 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".

25. 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. Mukerjee's contention that a decision given in default of appearance under any circumstance, operates as res judicata, the above decision lays down clearly that previous decision to operate as res judicata must be one in a case heard and finally decided on merits.

26. 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.

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

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