

Ramesh Chandra

Vs

Shiv Charan Dass and Others

Civil Appeal No. 2840 of 1982

(R. M. Sahai, M. H. Kania JJ)

21.09.1990

JUDGMENT

R. M. SAHAI, J. –

1. In this appeal by grant of special leave, directed against judgment of the Allahabad High Court in second appeal arising out of a suit for arrears of rent and ejection, the question is if the High Court committed any error of law in allowing the second appeal on the ground that the two courts below had erroneously held that finding recorded in an appeal, filed by one of the defendants who was sued as tenant in an earlier suit, could not operate as res judicata between plaintiff and respondents who were defendants 2 and 3 in that suit.

2. Unfortunately for appellant equity may or may not be in his favour as his father too acted shrewdly while purchasing house of daughter-in-law's father in law is certainly not in his favour. How dispute arose between parties, who are closely related, is quite interesting. Shiv Charan Das and Har Charan Das (respondents 1 and 3 in this appeal) are first cousins. Ravindra Kumar (respondent 2) is son of Shiv Charan. His sister was married to son of Ganga Prasad who purchased the only house of Shiv Charan and Ravindra Kumar with condition of repurchase by sellers after five years. He permitted them to remain in possession, but got a rent note executed by Har Charan. Purpose of this became apparent later as immediately after expiry of five years when the house was not repurchased Ganga Prasad (referred hereinafter as plaintiff) filed suit for ejection and arrears of rent against Har Charan, Shiv Charan and Ravindra (hereinafter referred as defendants 1, 2 and 3) claiming that defendant 1 was in arrears of rent and defendants 2 and 3 were his sub-tenants. The suit was contested by defendants 2 and 3 only. The trial court decreed the suit for arrears of rent against defendant 1. It was held that defendants 2 and 3 were not sub-tenants. Therefore suit for ejection was dismissed. The plaintiff submitted to this finding. Aggrieved by the decree for arrears of rent defendant 1 filed appeal which was dismissed. But the appellate court while observing that any evidence led by defendants 2 and 3 could not be read against defendant 1 observed that it appeared that they being closely related to defendant 1 were in possession on his behalf. This furnished occasion for plaintiff to file second suit against defendants 2 and 3 as they were licensees. Both defendant 1 separately and defendants 2 and 3 jointly filed two appeals but without any success. Both the sets approached the High Court also by way of separate appeals. The appeal of defendant 1 came up for hearing earlier but it was dismissed.

3. The appeal of defendants 2 and 3 came up for hearing before another Hon'ble Judge who allowed it and held that the finding recorded in appeal arising out of earlier suit that they were licensees did not operate as res judicata and the suit for ejection was dismissed. It is the correctness of this finding that has been assailed in this Court.

4. Although long arguments were advanced but in our opinion the only question that arises for consideration is if the finding recorded in the appeal filed by defendant 1 in which it was held that defendants 2 and 3 were in possession on his behalf was binding on them in the subsequent suit filed by the plaintiff. In that suit issue No. 2 was if defendant 2 and defendant 3 were sub tenants. And issue No. 5 was if they were liable to be ejected. The trial court while discussing these two issues held that there was no question of sub-tenancy of these persons as despite sale there was never a break in their possession. It was further held that they were not sub-tenants nor they claimed to be in possession through defendant 1. Therefore, they were not liable to ejection. Against this finding plaintiff did not file any appeal. The finding therefore between the plaintiff and defendant 2 and 3 became final and binding. The appeal was filed by defendant 1 as he was aggrieved by the decree of arrears of rent. In that appeal it was observed that the evidence led by defendant 2 and 3 could not be read against him. But the court while dismissing his appeal and upholding the decree of trial court observed that since they were close relations it appears that even though rent note was executed by defendant 1 the possession of the defendants 2 and 3 was on his behalf. This finding could not be taken advantage of by the plaintiff for more than one reason. This finding could not be taken advantage of by the plaintiff for more than one reason. This observation was unnecessary as the appeal was dismissed. One could understand if the appeal would have been allowed and the liability for payment of rent would have been fastened on defendants 2 and 3 as they were in possession. But since appeal was dismissed the order of trial court that liability to pay rent was of defendant 1 stood affirmed. Therefore it was an observation which was not only off the mark but unnecessary. It could not accordingly operate as res judicata between defendant 1 and defendants 2 and 3 and much less between plaintiff and defendants 2 and 3. One of the tests to ascertain if a finding operates as res judicata is the party aggrieved could challenge it. Since the dismissal of appeal or the appellate decree was not against defendants 2 and 3 they would not challenge the finding that liability of rent was of defendants 2 and 3 as they were in possession he did not file any written statement in the trial court raising any dispute between himself and defendants 2 and 3. There was thus no occasion for pleading nor evidence. Therefore, from either point of view the finding could not operate against defendants 2 and 3 as res judicata. Reliance by the appellant on *Keshardeo Chamria v. Radha Kissen Chamria* is of no assistance as it only lays down the binding effect of a decision in a subsequent suit.

5. For the reasons stated above this appeal fails and is dismissed. There shall be no order as to costs.

</html