SUPREME COURT OF INDIA

Brij Narain Singh

Vs

Adya Prasad (dead) & Ors

(Dr. Arijit Pasayat and R.V. Raveendran)

Appeal (civil) 5689 of 2000

18/02/2008

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court allowing the writ petition filed by the respondents. The writ petitioners had questioned order dated 24.2.1973 passed by the Assistant Settlement Officer, Consolidation, Jaunpur and the order dated 28.2.1978 passed by the Deputy Director, Consolidation Jaunpur who were the respondents 1 and 2 in the writ petition.

2. The factual position needs to be noted in brief as essentially the pivotal question relates to the applicability of the principle of res judicata.

2.1 One Gajadhar owned several lands situate in the villages of Kurthuwa, Meerapur Siroman,

Manapur and Ghuskhuri, as fixed rate tenant, including the suit lands. The fixed rate tenancy of the lands in those villages was mortgaged by Gajadhar. Gajadhar died leaving behind him his widow Sirtaji, who through registered sale deed dated 8.6.1885 sold her right of redemption in regard to those lands to her relative Mata Badal.

2.2. On the death of Mata Badal, his wife Sheorani, sold the right of redemption in regard to some of the lands to third parties. After the death of Sheorani, the nephews of Mata Badal, namely Muneshwar, Bindeshwari and Bal Karan, sold the right of redemption in respect of the suit properties in Kurthuwa in favour of Bhagwan Din Singh (grandfather of appellant) under registered sale deed dated 19.6.1911. It would appear that after the purchase of equity of redemption, the said Bhagwan Din Singh cleared mortgage and was in possession of the suit lands. Bhagwan Din Singh died leaving him surviving his son Bhagwati Din Singh (father of appellant - respondent no. 3 in the writ petition from which this appeal arises).

2.3. Sirtaji who executed the sale deed on 8.6.1885 in favour of Mata Badal died in the year 1940. On her death, Ganga Prasad and Bhagwati Din (ancestors of Respondents 1 to 6 herein) filed four suits 97 to 100 for partition before the SDC, Machhli Shahar, Jaunpur, claiming that Gajadhar died issueless, that his wife Sirtaji had inherited only a life interest in the lands of her husband Gajadhar in the four villages, and that on her death, the lands of Gajadhar devolved on the near relatives of Gajadhar, namely plaintiffs 1 and 2 and Defendants 1 and 2 in the four suits, who were reversioners in regard to estate of Gajadhar. Suits 97, 98, 99 and 100 respectively related to the lands in the villages of Meerapur Siroman, Kurthuwa, Ghuskhuri and Manapur. Bhagwati Din Singh (father of Appellant) was impleaded as Defendant No.3 in suit no.98, as his father, Bhagwan Din Singh had purchased the right of redemption in respect of the Kurthuwa lands.

2.4. The following genealogical tree accepted in the earlier proceedings, traces Gajadhar's relationship with the plaintiffs (Ganga Prasad and Bhagwati Din Singh) and defendants 1 and 2 (Raj Narain and Chandra Bali), in the four suits as also with Mata Badal:

Sheo Upadhyay

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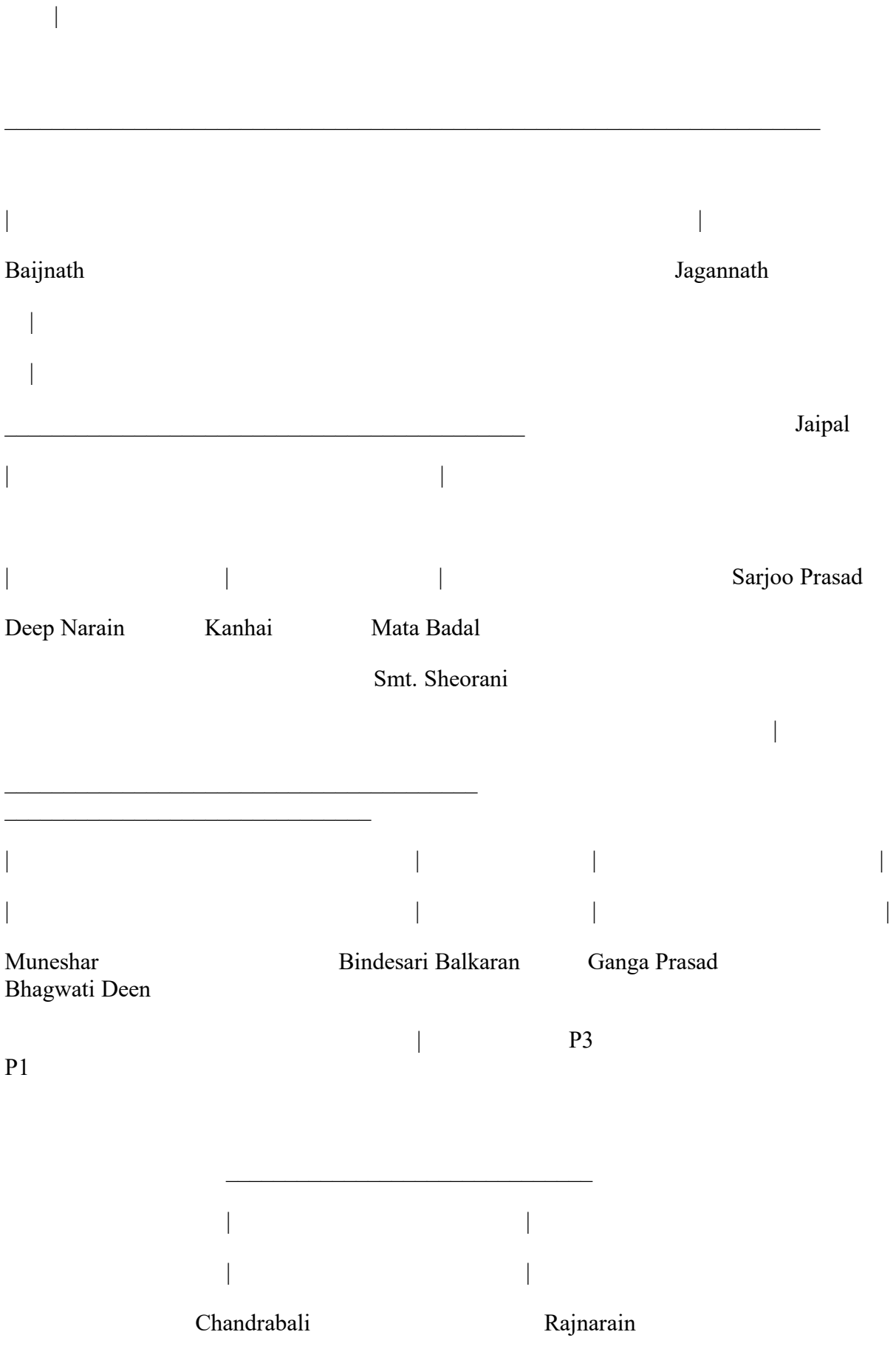
Meharban Palai


Baijnath
Jagannath
Jaipal
Deep Narain
Kanhai
Mata Badal
Sarjoo Prasad
Smt. Sheorani
Muneshar
Bindesari Balkaran
Ganga Prasad
Bhagwati Deen
P1
P3
Chandrabali
Rajnarain

D2 D1

2.5. The four suits were decreed by Sri Ishwar Sahai, SDC Machhali Shahar, Jounpur, by a common judgment dated 20.3.1944. He held that the sale by Sirtaji under deed dated 8.6.1885 was not for legal necessity. Bhagwati Din Singh challenged the judgment in Suit No.98. The first appellate court (Additional Commissioner, Varanasi) dismissed the appeal (Appeal No.4/327) filed by Bhagwati Din Singh on 2.1.1945 on the ground of delay. No further appeal was filed and the decision in Suit No.98 attained finality insofar as Kurthuwa lands claimed by Bhagwati Din Singh. After dismissal of the appeal on 2.1.1945, on an application by the plaintiffs in Suit No.98, a final decree was passed on 3.4.1945 and possession was taken by plaintiffs in terms of the decree.

2.6. Two other appeals filed by the purchasers of lands at Ghuskhuri and Manapur villages, against the common judgment dated 20.3.1944 in Suit Nos. 99 and 1000 travelled up to Board of Revenue and were remanded to the first appellate court. The said two appeals arising out of suit nos.99 and 100 were heard by Additional Commissioner, Varanasi Division. He held that the sale deed dated 8.6.1885 executed by Smt. Sirtaji in favour of Mata Badal was for legal necessity, that Mata Badal got valid title, and that the sale deeds executed by Sheorani and others as legal heirs of Mata Badal were valid. He, therefore, dismissed the two suits (Suit Nos. 99 and 100). That decision was upheld by the Board of Revenue on 26.12.1967 and judgment which ended in dismissal of suit

Nos. 99 and 100 also attained finality.

3. The resultant position was that there was two diverse decisions in regard to the same sale deed dated 8.6.1885. The first in regard to Kurthuwa village lands in Suit No.98 (purchased by Bhagwan Din Singh) where it was held that the sale by Sirtaji in favour of Mata Badal on 8.6.1885 was not for legal necessity, that Mata Badal, a relative of her late husband by taking undue advantage of her young age had obtained the said sale deed from Sirtaji, and therefore, on her death, the reversioners of her husband's estate namely plaintiffs 1 & 2 (Bhagwan Din Singh and Ganga Prasad) and defendants 1 & 2 (Raj Narain and Chandar Bata) were entitled to the lands. Consequently, sales by persons claiming through Mata Badal did not have any title after the death of Sirtaji in the year 1940. On the otherhand, the second decision, relating to Ghuskhuri and Manapur villages, in suit nos. 99 and 100, it was held that the sale by Sirtaji under deed dated 8.6.1885 in favour of Mata Badal was for legal necessity and therefore, Mata Badal got valid title and consequently, the sale deeds executed by persons claiming through Mata Badal were valid, and the suits filed by persons claiming to be reversioners in respect of the estate of Gajadhar did not have any right, title or interests in the lands sold by Sirtaji.

4. When matters stood thus, in the consolidation proceedings, the Bhagwati Din Singh (son of Bhagwan Din Singh and father of appellant) filed an objection under section 9 of UP Consolidation of Holdings Act, 1954 (in short 'Act') contending that the finding recorded by the court in Suit

Nos.97 to 100 under section 49 of the UP Tenancy Act, 1939 (in short 'Tenancy Act') that the sale deed dated 8.6.1885 by Smt. Sirtaji was not for legal necessity was the subject matter of appeals before the Addl. Commissioner, Varanasi on 5.9.1966 in Appeal no.231/22 and Appeal no.232/23 who held that the sale deed dated 8.6.1885 executed by Smt. Sirtaji in favour of Mata Badal was for discharging the debts incurred by Gajadhar, and therefore, was for legal necessity. He contended that judgment dated 20.3.1944 in suit no.98 to the effect that the sale was not for legal necessity should be deemed to have been set aside or superseded by the subsequent appellate judgment in the appeals arising from the suit nos. 99 and 100 which involved an identical issue and that the decision dated 5.9.1966 would operate as res judicata, in any subsequent proceedings relating to the lands which were the subject matter of Suit No.98 even though the decision dated 5.9.1966 did not relate to Suit No.98.

5. The Consolidation Officer held that the order dated 5.9.1966 was in respect of other village; and was not concerned with the property in question. He ordered for expunging the name of Bhagwati Din Singh (the original respondent no.3) from basic year entry. Bhagwati Din Singh filed an appeal before the Settlement Officer (Consolidation) who allowed the appeal and held that though the writ petitioners had taken possession on the basis of decree dated 21.6.1945 arising out of Suit No.98, but appeals were filed relating to arising out of Suit Nos.99 and 100 against the judgment dated 20.3.1944 and in those appeals the Additional Commissioner had decided against the writ petitioners on 5.9.1966 and the judgment passed by the trial Court on 20.3.1944 against Bhagwati Din Singh in suit No. 98 shall be deemed to have been set aside and the judgment dated 5.9.1966 passed by the Commissioner shall be deemed to be final. It was held that since the order dated 20.3.1944 was a common judgment, therefore, it shall be deemed to have been set aside in all the suits. He further held that though the possession was delivered on the basis of the order dated 21.6.1945 to the writ petitioners, after the decision dated 5.9.1966, Bhagwati Din Singh had the right to get possession

under Section 144 of the Code of Civil Procedure, 1908 (in short 'CPC'). But since the possession is joint, therefore, possession shall not be deemed to have come to an end. A revision petition was filed by the writ petitioners against the judgment before the Deputy Director of Consolidation, who dismissed the same affirming the findings of the Settlement Officer by order dated 28.2.1978.

6. Before the High Court the stand of the present appellant further was that what was necessary to be determined was the effect of the judgment dated 5.9.1966. It was pointed out that since the appeal filed by the writ petitioners (respondents herein) has been dismissed, holding that the sale deed dated 8.6.1885 was valid, they were not entitled to the benefit of the judgment dated 20.3.1944.

7. Stand of the present appellant was that when the trial Court's common judgment dated 20.3.1944 that the sale was not for legal necessity, was set aside by the judgment of appellate authority dated 5.9.1966 in the other appeals arising from Suit Nos. 99 and 100, it would have binding effect on the parties in O.S.No.98 also. The High Court was of the view that the sole controversy was as to whether judgment dated 20.3.1944 affirmed by the appellate Court in the appeal in 1945 relating to

Suit No.98 in the case of appellant's predecessor will operate as res judicata between the writ petitioners and Bhagwati Din Singh or the judgment which was delivered on 5.9.1966 in the appeals arising from Suit Nos.99 and 100 will have the effect of res judicata and the judgment dated 20.3.1944 shall be deemed to have been set aside. The High Court considered the effect of the principles of res judicata and held that the judgment dated 5.9.1966 will not operate as res judicata between the writ petitioners and Bhagwati Din Singh (respondent no.3) as that judgment was not between the same parties. Therefore, it was held that the order of the Consolidation Officer was correct and the orders of the Settlement Officer and the Deputy Director Consolidation were not legally sustainable. The writ petition was accordingly allowed.

8. In support of the appeal, learned counsel for the appellant submitted that the judgment dated 5.9.1966 in the two connected appeals was in respect of a common judgment dated 20.3.1944. It was held that the sale was for legal necessity and that will have effect notwithstanding the fact that the appeal filed by the appellant was dismissed. He placed strong reliance on a decision of this Court in Narhari and Ors. V. Shanker and Ors. (AIR 1953 SC 419).

9. On the other hand, learned counsel for the respondents submitted that the appeal filed by the appellant was dismissed and there was no further challenge. In the circumstances, the benefit of the findings recorded in the other appeals cannot be extended to the appellant.

10. The submission needs careful consideration. At the threshold it must be stated that the decision in Narhari's case (supra) is clearly distinguishable. The relevant portion of the judgment in question relied on by the appellant reads as follows:

"4. In the judgment of the High Court, though reference is given to some of these decisions, it is merely mentioned that the appellant relies on these decisions. The learned Judges perhaps thought that in the presence of the Hyderabad Judicial Committee decision in Jethmal v. Ranglal they need not comment on these decisions at all. There is also a later decision of the Judicial Committee of the State in Bansilal v. Mohanlal where the well known and exhaustive authority of the Lahore High Court in Mst Lachmi v. Mst Bhuli was followed. In the Lahore case, there were two cross suits about the same subject-matter, filed simultaneously between the same parties, whereas in the present case, there was only one suit and one judgment was given by the trial court and even in the first appeal to the Sadar Adalat, there was only one judgment, in spite of there being two appeals by the two sets of defendants. The plaintiffs in their appeal to the High Court have impleaded all the defendants as respondents and their prayer covers both the appeals and they have paid consolidated court-fee for the whole suit. It is now well settled that where there has been one trial, one finding, and one decision, there need not be two appeals even though two decrees may have been drawn up. As has been observed by Tek Chand, J. in his learned judgment in Mst Lachmi v. Mst Bhuli mentioned above, the determining factor is not the decree but the matter in controversy. As he puts it later in his judgment, the estoppel is not created by the decree but it can only be created by the judgment. The question of res judicata arises only when there are two suits. Even when there are

two suits, it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of res judicata does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question of the application of the principle of res judicata. The same judgment cannot remain effective just because it was appealed against with a different number or a copy of it was attached to a different appeal. The two decrees in substance are one. Besides, the High Court was wrong in not giving to the appellants the benefit of Section 5 of the Limitation Act because there was conflict of decisions regarding this question not only in the High Court of the State but also among the different High Courts in India."

11. Res Judicata is a principle of judicial administration and is based on the common law maxim of public policy aiming at finality of litigation and preventing alitigant from being tried twice over on the same issue.

12. The Privy Council in a series of judgments explained this doctrine. In Kalipada De v. Dwijapada Das reported in 57 IA 24, the Privy Council held:

"The question as to what is to be considered to be res judicata is dealt with by Section 11 of the Code of Civil Procedure, 1908. In that Section are given many examples of circumstances in which the rule concerning res judicata applies; but it has often been explained by this Board that the terms of Section 11 are not be regarded as exhaustive."

13. In Kalipada's case (supra), Lord Justice Darling, speaking for the Bench, quoted with approval the observations of Sir Lowrence Jenkins on Res Judicata in Sheoparsan Singh and Ors. v. Ramnandan Singh reported in 43 LA. 91. Those observations are oft quoted and read as follows:

"..their Lordships desire to emphasise that the rule of res-judicata, while-founded on ancient precedent, is dictated by a wisdom which is for all time. 'It hath been well said,' declared Lord Coke, 'interest reipublicae ut sit finis litium-otherwise, great oppression might be done under colour and pretence of law' (6 Coke, 9a). Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former Judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person, though defeated at law, sue again, he should be answered, "You were defeated formerly." This is called the plea of former Judgment. (See the Mitakshara (Vyavaharaj, bk. II., ch. I., edited by J.R. Gharpure, p.14, and the Mayuka, ch.l., s.l, p.11, of Mandlik's edition.) And so the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law."

14. This statement of law in Sheoparsan's case (supra) has been approved by this Court in the case of Iftikhar Ahmed and Ors. v. Syed Meharban All and Ors. (1974 (2) SCC 151)

15. This Court in Lal Chand v. Radha Kishan (1977 (2) SCC 88) also held:

The principle of Res Judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.

16. Apart from following those principles, this Court in order to apply the bar of res judicata among co-defendants must consider several criteria pointed out in the case of Mt. Munni Bibi and Anr. V. Tirloki Nath and Ors. (AIR 1931 PC 114). In the said case three tests have been laid down to find out whether the decision in the former suit will operate as Res Judicata between co-defendants. Those tests are:

(i) There must be a conflict of interest between the co-defendants.

(ii) It must be necessary to decide this conflict in order to give relief to the petitioner.

(iii) The question between the co-respondent must be finally decided.

17. It is to be noted that the factual scenario was entirely different in the said case. It related to two separate decrees in one suit and therefore it was held that the principle of res judicata did not apply. Admittedly, in the instant case there were four suits. The decision that was relevant was in suit No.98 which attained finality. The decision in the appeals relating to Suit Nos. 99 and 100 does not affect the decision in Suit No.98 which had attained finality. On a closer reading of the decisions it is clear that it does not help the appellant, it goes against the submissions made. It also needs to be noted that the plaintiffs in all the four suits were common but the defendants in the suit were not common, and the properties were situated in different villages.

18. At this juncture, the provisions of the Order 41 Rule 33 CPC also need to be noted. By the said provision benefit is available to a party not appealing. But the emphasis is on the same suit. Therefore, the view of the High Court is irreversible.

19. The appeal is without merit and deserves dismissal which we direct. There shall be no order as to costs.