

**SUPREME COURT OF INDIA**

Ramji Gupta

Vs.

Gopi Krishan Agrawal (D)

C.A.No.629 of 2004

(Dr.B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

11.04.2013

**JUDGMENT**

**DR. B.S. CHAUHAN, J.**

C.A. No.629 of 2004

1. This appeal has been preferred against the judgment and order dated 6.9.2002, passed by the High Court of Allahabad in CMWP No.25785 of 2002, by way of which, the High Court has dismissed the writ petition of the appellants, affirming the judgment and decree of the Small Causes Court dated 20.4.2001, which stood affirmed by the Revisional Court, vide judgment and decree dated 13.5.2002. Civil Appeal No.630 of 2004 has been filed against the judgment and order dated 25.2.2003, in Review Application No.206905 of 2002 of the High Court of Judicature at Allahabad, dismissing the review petition. In the aforesaid judgments, the courts below have held, that the relationship of a landlord and tenant did not exist between respondent nos.1 and 2 and the appellants.

2. Facts and circumstances giving rise to this appeal are that:

A. The dispute pertains to the ownership of shop no.53/11 (old number) corresponding to its new number, i.e. 53/8, Nayayaganj, Kanpur Nagar. Janki Bibi (1st) daughter of Har Dayal, was married to one Durga Prasad, son of Dina Nath. Radhey Shyam was the adopted son of Durga Prasad, whose son Shyam Sunder was married to Janki Bibi (2nd). Shyam Sunder died in the year 1914. Thus, Radhey Shyam created a life interest in the

property in favour of Janki Bibi (2nd), by way of an oral Will, which further provided that she would have the right to adopt a son only with the consent of Mohan Lal, the grand son of Har Dayal. Gopi Krishan, the great grand son of Mohan Lal, claims to have been adopted by Janki Bibi (2nd), with the consent of Mohan Lal, and as regards the same, a registered document was also prepared.

B. Gopi Krishan filed a Regular Suit No.45 of 1956 against Smt. Janki Bibi (2nd) in the Court of the Civil Judge, Mohanlal Ganj in Lucknow, seeking the relief of declaration, stating that Janki Bibi was only a life estate holder in respect of the properties shown in Schedule 'A', and that further, she was not entitled to receive any compensation or rehabilitation grant bonds with respect to the village Nawai Perg, Jhalotar Ajgain, Tehsil Hasangunj, District Unnao. He stated all this, while claiming himself to be her adopted son.

C. Janki Bibi (2nd) contested the suit, denying the aforesaid adoption. However, the suit was decreed vide judgment and decree dated 23.4.1958, holding that while Smt. Janki Bibi (2nd) was in fact the life estate holder of Radhey Shyam's property, she was also entitled to receive the said compensation, in respect of the property in question herein.

D. The suit shop was under the tenancy of one Shri Badri Vishal. However, Janki Bibi (2nd) transferred the same in favour of the appellant's mother Smt. Ram Kumari, wife of Shri Badri Vishal, vide registered sale deed dated 7.5.1974. The said tenant, Shri Badri Vishal died on 23.1.1986, and the tenancy was hence inherited by the appellants. They thus, continued to pay rent to the vendee Smt. Ram Kumari. Smt. Janki Bibi (2nd) died on 27.2.1996.

E. Respondent no.1 Gopi Krishan, filed SCC Suit No.77 of 1989 on 21.2.1989, alleging that the appellants had defaulted in making the payment of rent, and that a sum of Rs.2,768.62 was outstanding against them, as rent payable between the time period 17.2.1986 to 13.8.1988, and also damages for the period 14.8.1988 to 21.2.1989, amongst other amounts due. During the pendency of the suit, Shri Gopi Krishan respondent no.1, sold the said suit property to Smt. Vidyawati Rathaur respondent no.2, vide registered sale deed dated 3.8.1989. In view thereof, respondent no.2 got herself impleaded as plaintiff no.2 in Suit No.77 of 1989.

F. The appellants contested the suit on various grounds, claiming themselves to be the owners of the property on the basis of a sale deed. Smt. Vidyawati Rathaur respondent no.2, also filed Suit No.792 of 1995 before the Civil Court, Kanpur, seeking permanent injunction, restraining the appellants from causing any addition(s) or alteration(s) in the shop in dispute. The said suit is still pending.

G. The Small Causes Court, Kanpur, dismissed Suit No.77 of 1989 vide judgment and decree dated 10.5.1999, holding that no relationship of landlord and tenant existed between respondent nos.1 and 2 and the appellants. However, the said judgment and decree was set aside by the Revisional Court, vide judgment and decree dated 8.3.2000, and the case was remanded to the Judge, Small Causes Court for deciding the same afresh.

H. After such remand, the suit was decreed vide judgment and decree dated 20.4.2001, holding that the suit property had been acquired by Gopi Krishan Agrawal, plaintiff/respondent, by virtue of the judgment in Suit No.45 of 1956, which was decided on 23.4.1958, and that the relationship of a landlord and tenant, could in fact be deemed to have been created between the parties. The appellants/defendants had hence, been in default of payment of rent.

I. Aggrieved, the appellants filed Revision No.57 of 2001 before the learned District Judge, Kanpur, which was dismissed vide judgment and order dated 13.5.2002. The said judgment and order has been affirmed by the High Court, dismissing the writ petition vide judgment and order dated 6.9.2002.

J. Aggrieved, the appellants preferred a review petition, which has also been dismissed by the impugned judgment and order dated 25.2.2003.

Hence, this appeal.

3. Shri D.K. Garg, learned counsel appearing for the appellants, has submitted that the Small Causes Court has no jurisdiction/ competence, to determine the issue of title over the property, and that all the courts below have erred, as they have adjudicated upon the issue of title. Such a course is not permissible in collateral proceedings, as the issue of title can be adjudicated upon, only by the Civil Court.

Moreover, the judgment and order dated 23.4.1958 could not be given effect, in view of the provisions of Section 14(2) of the Hindu Succession Act, 1956 (hereinafter referred to as the 'Act, 1956'). Therefore, the appeal deserves to be allowed.

4. Per contra, Shri Rakesh Dwivedi, learned senior counsel and Shri Arvind Kumar, learned counsel, appearing for the respondents, have opposed the appeals, contending that the courts below have not touched upon or determined the issue of title. It was necessary for the courts below, to rely upon the said judgment and decree dated 23.4.1958, wherein it was categorically held that Smt. Janki Bibi (2nd) was a life estate holder, and that as she had not acquired absolute title over the property, the sale deed executed by her in favour of Smt. Ram Kumari, was null and void. The said judgment and decree dated 23.4.1958, was also relied upon in collateral proceedings, wherein Smt. Ram Kumari, mother of the appellants and vendee in the sale deed dated 7.5.1974, had taken several pleas, all of which were rejected, and such findings have been affirmed by the High Court. Thus, the appeal has no merit, and is hence, liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties, and perused the record.

6. In Shivdev Kaur (D) by L.Rs. Ors. v. R.S. Grewal (Civil Appeal Nos.5063-5065 of 2005, decided on 20.3.2013), this Court dealt with the issue of Section 14(2) of the Act 1956 and held :- “Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a “life interest”, through Will or gift or any other document referred to in Section 14 of the Act 1956, the said rights would not stand crystallised into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the Act 1956, the provisions of Sections 14(2) and 30 of the Act 1956 would become otios.

Section 14(2) carves out an exception to rule provided in sub-section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a “life interest”, it would remain the same even after commencement of the Act 1956, and such a Hindu female cannot acquire absolute title.”

While deciding the said issue, this Court has placed reliance upon various previous judgments of this Court, including *Mst. Karmi v. Amru Ors.*, AIR 1971 SC 745; *Navneet Lal @ Rangi v. Gokul Ors.*, AIR 1976 SC 794; *Sadhu Singh v. Gurdwara Sahib Narike Ors.*, AIR 2006 SC 3282; and *Jagan Singh (Dead) Through LRs. v. Dhanwanti Anr.*, (2012) 2 SCC 628.

(See also: *Muniananjappa Ors. v. R. Manual Anr.*, AIR 2001 SC 1754; *Sharad Subramanyan v. Soumi Mazumdar Ors.*, AIR 2006 SC 1993; and *Gaddam Ramakrishnareddy Ors. v. Gaddam Ramireddy Anr.*, (2010) 9 SCC 602).

7. In order to operate as *res judicata*, the finding must be such, that it disposes of a matter that is directly and substantially in issue in the former suit, and that the said issue must have been heard and finally decided by the court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding a matter which is directly in issue in the case, cannot be made the basis for a plea of *res judicata*. A question regarding title in a small cause suit, may be regarded as incidental only to the substantial issue in the suit, and therefore, when a finding as regards title to immovable property is rendered by a Small Causes Court, *res judicata* cannot be pleaded as a bar in the subsequent regular suit, for the determination or enforcement of any right or interest in the immovable property. (Vide: *Dhulabai etc. v. State of M.P. Anr.*, AIR 1969 SC 78; *Smt. Gangabai w/o Rambilas Gilda v. Smt. Chhabubai w/o Pukharajji Gandhi*, (1982) 1 SCC 4; *Life Insurance Corporation of India v. M/s. India Automobiles Co. Ors.*, AIR 1991 SC 884; and *Rameshwar Dayal v. Banda (Dead) through His L.Rs. Anr.* (1993) 1 SCC 531).

8. In *Nirmal Jeet Singh Hoon v. Irtiza Hussain Ors.*, (2010) 14 SCC 564, this Court has held, that the Small Causes Court has no right to adjudicate upon the title of the property, as Section 23 of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as the Act, 1887) reads:

“Return of plaints in suits involving questions of title-(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Cause depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) xx xx xx xx”

(Emphasis added)

Thus, it is evident from the above, that the Small Causes Court cannot adjudicate upon the issue of title. In the instant case therefore, the trial court has rightly refused to go into such issue, and neither can any fault be found with the findings recorded by the courts below in this regard. Furthermore, as it is an admitted fact that defendant nos.1 and 2 were tenants of the original plaintiffs, the question of title could not be adjudicated at the behest of the appellants under any circumstance.

9. While dealing with the provisions of Section 23 of the Act, 1887, this Court in *Budhu Mal v. Mahabir Prasad Ors.*, AIR 1988 SC 1772 held, that a question of title could also be decided upon incidentally, and that any finding recorded by a Judge, Small Causes Court in this behalf, could not operate as *res judicata* in a suit based on title.

Furthermore, the procedure adopted in the trial of a case before the Small Causes Court is summary in nature. Clause (35) of Schedule II to the Act 1887, has made the Small Causes Court a court of limited jurisdiction. Certain suits are such, in which the dispute is incapable of being decided in a summarily.

10. We have further examined the record of the case, and the Court of Small Causes, while determining the issues involved therein, has taken note of the result of the earlier Suit No.45 of 1956, decreed vide judgment and decree dated 23.4.1958, and also of the Execution Appeal No.64 of 1965, in the matter of *Smt. Bibi Devi v. Janki Bibi*, wherein it was held, that Janki Devi (2nd), being a life estate holder had no right to transfer the property. In Execution Appeal No.64 of 1965, *Smt. Ram Kumari*, mother of the appellants was made a party, however, so far as the issue of title by the courts below is concerned, the trial court held as under:

“This court cannot determine the question relating to proprietary right/ownership of the parties. On this point, this court has limited jurisdiction to decide as to whether there exists the relationship of house-owner and tenants in between the parties or not. As per the judgment passed

by the competent court, Smt. Janakibibi had the right in the disputed property during her life time only. She had no right or authority to sale or transfer the disputed property. This court is bound to accept the aforesaid conclusion. Therefore, if Smt. Janakibibi has transferred the disputed property, contrary to her rights, to the defendant no. 4 – Smt. Ramkumari on 7th of May, 1974, then because of that, no rights are established to Smt. Ramkumari. Such document is a nullity and no legal cognizance can be taken in account.” (Emphasis added)

The said finding has been upheld by all the courts.

11. We are not inclined to enter into the controversy regarding Section 34 of the Specific Relief Act, 1963, as it has been submitted that the remedy of declaration envisaged by the said provisions is not exhaustive, and that there can be a declaration even outside the scope of the said Section 34. In support of the said contention, submissions have been made on the basis of the judgments of this Court in Radha Rani Bhargava v. Hanuman Prasad Bhargava (deceased) thr. L.Rs. Ors., AIR 1966 SC 216; and M/s. Supreme General Films Exchange Ltd. v. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar Ors., AIR 1975 SC 1810.

12. In view of the above, we do not see any cogent reason to interfere with the impugned judgments. The appeal lacks merit and is accordingly, dismissed.

C.A. No. 630 of 2004

In view of the judgment in C.A. No.629 of 2004, no specific order is required in this appeal. It is accordingly dismissed.