

ALLAHABAD HIGH COURT

Rang Lal

Vs

Gajraj Singh

(Collister, J.)

02.11.1938

JUDGMENT

Collister, J.

1. This is an execution second appeal by a decree-holder. The appellant instituted a suit against Ajodhia Singh and Mt. Neksi Kuar, the widow of Hakim Singh. Ajodhia Singh was subsequently exempted, and the appellant obtained a decree against the assets of Hakim Singh, in the hands of his widow Mt. Neksi Kuar. He attached certain property, but the attachment and sale were objected to by Gajraj Singh, who claimed that the property was his, having previously belonged to his father Ajodhia Singh. In order to understand the position it is necessary to give a short pedigree. Ajodhia Singh and Kanjal Singh were brothers. Ajodhia Singh had a son, Gajraj Singh, who is the objector-respondent. Kanjal Singh had a son Khub Singh, and Khub Singh had two sons, Bachchu Singh and Hakim Singh. Hakim Singh was the appellant's debtor. The Courts below have allowed the objection of Gajraj Singh on the ground that a judgment in a suit between Mt. Neksi Kuar and Ajodhia Singh operated as *res judicata*. This judgment was apparently the only evidence in these proceedings before the executing Court. It appears that Mt. Neksi Kuar instituted a suit against Ajodhia Singh and others (Suit No. 15 of 1931) for possession of this and another property. Her suit was dismissed by the Subordinate Judge on 2nd July 1932 on the ground that she had failed to prove her title, and this decree was confirmed by the Chief Court of Oudh on 9th January 1937 : *Mt. Neksi Kuar v. Mt. Jwala Kuar*¹ Apparently the property had originally belonged to Hakim Singh and his brother Bachchu Singh jointly. These two brothers perished on the same day in a fire, and it was not proved that Hakim Singh expired after Bachchu Singh. The first plea taken before me is that Section 11, Civil P. C, is not applicable for the reason that the Court which tried the earlier suit was not competent to entertain the present proceedings, the earlier suit having been tried at Sitapur in the Province of Oudh. I do not think that there is any force whatsoever in this plea inasmuch as competency within the meaning of Section 11 has no reference to territorial jurisdiction. The point was not pressed with much vigour.

2. The main plea which has been taken before me is that the decree-holder appellant is not claiming under Mt. Neksi Kuar or Hakim Singh, and therefore Section 11, Civil P.C., is inapplicable. It is also argued that, since the previous suit was decided on the ground that Mt. Neksi Kuar had failed to prove her title and not on the ground that title was in the objector respondent, the latter cannot succeed on the basis of that judgment, inasmuch as it is for him to prove his title, and the judgment on which reliance is placed does not establish such title. If this contention is correct, it will mean that the decree of the Chief Court of Oudh is nugatory as against a creditor of Mt. Neksi Kuar or Hakim Singh; in other words, although Mt. Neksi Kuar failed to establish her title as against the objector in the earlier suit, any judgment creditor of Mt. Neksi Kuar or her late husband can come along and sell this property as belonging to Mt. Neksi Kuar or as having belonged to her husband and thus nullify the decree of the Chief Court. Learned Counsel for the objector, respondent has referred me to *Ram Sewak v. Bahal*². In that case a man named Sita Ram attached certain property in execution of his decree against one Raghbir. Ram Sewak sued Sita Ram and Raghbir for a declaration that he was the owner of the property and that Raghbir had no interest in it, and that it was not saleable in execution of Sita Ram's decree. It was held that Ram Sewak was the full owner, and his suit was accordingly decreed. Two years later another judgment-creditor of Raghbir, a man named Bahal, executed his decree and had this property again attached and put up for sale. The property was purchased by a certain person, but before confirmation of the sale Ram Sewak instituted a suit against Bahal, claiming the property to be his. It was held by this Court that the matter was *res judicata*. Sulaiman C.J., who delivered the judgment, observed:

It seems to us that the suit brought by Ram Sewak against Sita Ram and Raghbir was for a declaration of title in respect of this very property. Raghbir was not a mere pro forma defendant, but a principal party thereto, and the relief claimed was both against him and Sita Ram. The question was one of title as to whether the property belonged to Raghbir or to Ram Sewak, and the finding of the Court is binding on Raghbir and all his subsequent representatives. It is not open to any representative of Raghbir to go behind that decree, unless fraud or collusion is proved. The position of Bahal was that of an attaching creditor, but he attached the property subsequent to the decree passed in the earlier suit. He must be deemed to be the representative of Raghbir so far as Ram Sewak is concerned. He is bound by the decree in the same way as Raghbir. It will be intolerable for Ram Sewak if all simple money creditors of Raghbir were to call upon him to prove his title over and over again. We think that the principle of *res judicata* certainly applies to this case, and the previous finding binds Bahal.

3. The facts of that case are of course not identical with the facts of the case with which I am now dealing; but the principle is, I think, the same and I am clearly of opinion that the view taken by the Courts; below in the present case is correct. I think that the principle of *res judicata* applies to the facts of this case and that the judgment-creditor must be held to represent his judgment-debtor in respect to this property which his judgment-debtor had claimed by a suit as belonging to herself, but had failed to establish such claim as against the objector-respondent. I am of opinion that this appeal must fail, and it is accordingly dismissed with costs. Permission to appeal

under the Letters Patent is granted.

Cases Referred.

1(1934) 21 A.I.R. Oudh 101

2(1935) 22 A.I.R. All. 888