

# ALLAHABAD HIGH COURT

Lala Jageshwar Prasad

Vs.

Shyam Behari Lal

Second Appeal No. 3858 of 1962. against judgment of First Civil J. Kanpur  
(S.S. Dhavan, J.)

06.07.1962. 20.05.1965

## JUDGMENT

**S.S. Dhavan, J.**

1. This is a landlord's second appeal from the concurrent decisions of the courts below dismissing his suit for the recovery of rent from the defendant respondent. It raises an important question of law concerning the application of the principle of res judicata to the findings of a Court of Small Causes. The appellant Jageshwar Prasad filed this suit against Shyam Behari Lal for the recovery of Rs. 1440 as arrears of rent on the basis of an agreement of tenancy. The defendant resisted the suit and denied that there was any contract of tenancy between him and the plaintiff. He also raised a number of other pleas which it is not necessary to consider in this appeal. The plaintiff contended that the finding of the Small Cause Court, in his previous suit for the recovery of rent from the defendant for an earlier period, that there was an agreement of tenancy between the parties, operated as res judicata in the present suit and the defendant could not be permitted to deny the tenancy. This plea was overruled by the Additional Munsif, Kanpur who decided this question on merits, and held that the plaintiff had not proved the agreement of tenancy between him and the defendant. He dismissed the suit. The lower appellate court confirmed this decision and the plaintiff has come to this Court in second appeal.

2. Learned counsel for the plaintiff-appellant has argued that the view of the courts below that the finding of the Small Cause Court in the previous suit that there was a contract of tenancy between the parties does not operate as res judicata in the present suit is erroneous. On the other hand, it has been argued on behalf of the respondent by

Mr. K. C. Saxena that Section 11 C. P. C. will apply only under certain conditions specified in the Section, and as these are not present in this case the earlier decision cannot operate as res judicata.

3. The question of law involved in this appeal is whether the finding of the Small Cause Court, in a suit by the landlord for recovery of rent from the tenant, that there is an agreement of tenancy between the parties, operates as res judicata in a subsequent suit by the landlord for the recovery of rent for a different period but under the same agreement, filed in a Civil Court. The answer to this question depends upon whether the decision of the Small Cause Court, for purposes of res judicata is governed by the provisions of Section 11 of the Code of Civil procedure or by the general principles of res judicata. The relevant words of Section 11 (1) are as follows :

"(11) Res Judicata : No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

4. The vital words for the purpose of the present controversy are "in a Court competent to try such subsequent suit." They mean that in order that a decision may prevent a re-hearing of the same matter by another Court, the Court whose decision is to operate as res judicata in the subsequent suit must be competent to hear not only the suit in which the decision was given but also the one in which it is to operate as res judicata. The reason for imposing the second condition lies in the nature of our judicial system which consists of a hierarchy of subordinate Courts, and it was evidently felt that the decision of a Court of inferior status cannot bar the jurisdiction of a Court of superior status, and only the decision of a Court of co-ordinate jurisdiction alone will be potent enough to prevent another Court from hearing the same disputes between the same parties. The words "competent to try the subsequent suit" incorporate this principle.

5. But this condition of competency to try the subsequent suit is imposed by Section 11 C. P. C. and not by the general principle of res judicata. This principle is wider in its scope than Section 11 which applies to "suits" only. The general principle, like Section 11 C. P. C., requires that the Court whose decision is to operate as res judicata

in a subsequent suit should be competent to hear its own suit, but unlike Section 11, it does not require that it should be competent to hear the subsequent suit as well. However, the restrictive condition, imposed by Section 11, of the two-fold competency of the Court whose decision is to be operated as res judicata does not apply to Courts with exclusive jurisdiction. If the previous decision, was delivered by a Court which has exclusive jurisdiction to hear the matter before it that is, if no other Court could have heard that matter, its verdict will operate as res judicata in any subsequent proceedings even if it was not competent to hear the subsequent suit. The reason for this exception is that the exclusive jurisdiction conferred on the Court by law will cease to be exclusive if a matter decided by it is permitted to be re-heard by another Court. Therefore, the decisions of the revenue court, the Land Acquisition Court, or any other court, in a matter which it has the exclusive jurisdiction to hear and decide will bar a subsequent hearing of the same matter by a Civil Court.

6. The question is whether the decision of a Small Cause Court, for the purpose of res judicata, is subject to the condition of twofold competency imposed by Section 11 C. P. C. or a single competency to hear its own suit as required by the general principles of res judicata. The question arises in this way. On the one hand a Small Cause Court has exclusive jurisdiction to try certain classes of suits and therefore its decisions should be governed by the general principles of res judicata as in the case of other Courts of exclusive jurisdiction; but on the other hand the proceedings before it are a "suit" and therefore the conditions imposed by Section 11 C. P. C. should govern its decision, as regards res judicata, as in other suits. Which is to be, the wider general principle of res judicata, or the restricted provision of Section 11 that is the question. Some courts have taken the former view, and others the latter.

7. A large number of decisions were cited before me. *Raj Lakshmi Dasi v. Banamali Sen*,<sup>1</sup> *Bhagwan Dayal v. Reoti Devi*,<sup>2</sup> *Jankirama Iyer v. Nilakanta Iyer*,<sup>3</sup> *Gokul Mandar v. Pudmanund Singh*,<sup>4</sup> *Raja Simhadri Appa Rao v. Ramachandrudu*,<sup>5</sup> *Rukmini v. Rayaji Dattatraya*,<sup>6</sup> *Bodlu Bhonja v. Mohan Singh*,<sup>7</sup> *Nakched Chaudhari v. Sukdeo Chaudhari*,<sup>8</sup> *Misser Raghubardial v. Sheo Baksh Singh*,<sup>9</sup> *Dulare Lal v. Hazari Lal*,<sup>10</sup> *Shakira Bibi v. Nandan Rai*,<sup>11</sup> *Sarju Prasad v. Mahadeo Prasad*,<sup>12</sup> *Firm Ashar Lal Ramdeo v. Firm Ganeshiram Jagarnath*<sup>13</sup> *Newton v. Official Trustee of West Bengal*,<sup>14</sup>

8. I have read each one of these decisions carefully. But in my view the controversy is

concluded by the view of the Supreme Court expressed in the cases cited above.

9. The principle of res judicata as applied to courts of exclusive jurisdiction was enunciated in Rajlakshmi Dasi's case, AIR 1953 Supreme Court 33 thus :

"The condition regarding the competency of the former Court to try the subsequent suit is one of the limitation engrafted on the general rule of res judicata by Section 11 of the Code and has application to suits alone. When a plea of res judicata is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit. A plea of res judicata on general principles can be successfully taken in respect of judgments of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, administration Courts, etc. It is obvious that these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the statute." (p. 40).

I understand this observation to mean that the general principles of res judicata will govern the decision of every Court which is not entitled to try a regular suit, but has a special exclusive jurisdiction conferred on it by law to hear and decide certain matters. This, in my opinion, will include the decision of the Small Cause Court which has a restricted but special jurisdiction which however is exclusive. Section 15 of the Provincial Small Cause Courts Act enjoins that a Court of Small Causes shall not take cognizance of a large variety of suits which are specified in the second Schedule of the Act, and also restricts its pecuniary jurisdiction. Section 16 of the Act provides in effect that "a suit cognizable by a Court of Small Causes shall not be tried by any other Court within the local limits of the jurisdiction of the former Court." Section 27 provides in effect that a decree or order made by a Court of Small Causes shall be final. The effect of these three sections is to confer on the Small Cause Court a restricted but special jurisdiction which is exclusive, and make its decisions final. In my opinion its decisions for the purpose of res indicata are covered by the observation of the Supreme Court above.

10. In AIR 1962 Supreme Court 287 the Supreme Court observed that Section 11 C. P. C. is attracted if the matter was not within the exclusive jurisdiction of the Court

which delivered the judgment which is to operate as res judicata. It follows that if the Court has exclusive jurisdiction Section 11 will not apply to its decision. The decision in that case was of the revenue Court but the test of exclusive or non-exclusive jurisdiction was emphasized and intended to be of universal application.

11. In AIR 1962 Supreme Court 633 the Supreme Court observed that in a suit where the conditions imposed by Section 11 are not fulfilled it is not permissible to fall back on the general principles of res judicata. This observation was made in a suit which was, on the face of it, governed by Section 11 C. P. C. and was not intended to apply to decisions of Courts with exclusive jurisdiction. It is significant that the Supreme Court did not modify the principles, enunciated by them in the earlier two cases, governing the decisions of Courts with exclusive jurisdiction. For these reasons, I am of the opinion that as the Small Causes Court has a restricted, but exclusive jurisdiction conferred on it in a certain class of suits, its finding on an issue which it was competent to decide will operate as res judicata.

12. Mr. K. C. Saxena argued vehemently that the Supreme Court has held that Section 11 applies to suits, and as the Small Cause Court has jurisdiction to try suits of a civil nature, Section 11 will apply to its decisions. I do not agree. The word "suit" has not been defined either in the Code of Civil Procedure or by the Supreme Court. I do not think a rigid definition of the word is possible or even desirable. Many proceedings before the revenue Court are really civil suits which, but for the exclusive jurisdiction conferred on that Court, would be triable in the Civil Court; but the Supreme Court has held that the decisions of the revenue Court in these suits will operate as res judicata even in civil suits which the revenue Court is not competent to hear. In fact the Supreme Court has applied the general principles of res judicata to all courts with an exclusive jurisdiction and has made no exception in the case of the Court of Small Causes.

13. In considering the scope of the doctrine of res judicata, we must bear in mind the general principle on which it is founded. This principle, which is called by its Latin name of res judicata and which was evolved and developed by the jurists of ancient India under the title of prang nyaya ("previous decision"), prevents a party from re-agitating a dispute which has already been decided between the parties. We must bear in mind that the principle is not a technical doctrine but based upon equity, justice, and common sense. Its object is to prevent endless litigation and the repeated harassment

of a party which has obtained a decision from a court of competent jurisdiction in its favor after a fair hearing. But if the decision of a Small Cause Court in a matter which it is competent to decide cannot operate as *res judicata*, it will lead to strange results. Suppose a landlord files a suit for the recovery of Rs. 1,000 as rent from the tenant who pleads in defense that there was no agreement of tenancy and no relationship of landlord and tenant between the parties, and the Court finds that such a relationship does exist and decrees the suit. Suppose further that the tenant again defaults in payment of rent and the landlord files another suit for rent-this time for the recovery of Rs. 1050. Now he has to go to the Civil Court because the amount involved excludes the jurisdiction of the Small Cause Court, but the tenant, unless prevented by the principle of *res judicata*, will be at liberty to deny once again the relationship of landlord and tenant and the Court will be free to hold that no such relationship exists. Suppose further that a third suit is filed this time once again in the Small Cause Court; now that Court will be faced with two conflicting findings-its own and that of the Civil Court. I do not think that Section 11 was intended to lead to such absurd results.

14. For these reasons I am of the opinion that the finding of the Small Cause Court in the previous suit for the recovery of rent that there was an agreement of tenancy between the appellant and the respondent is conclusive in this suit.

15. Learned counsel for the respondent asked me to follow several decisions of the Punjab, Nagpur and Patna High Courts in which it was held that decision of the Small Cause Court does not operate as *res judicata* because of Section 11 C. P. C. With very great respect to all these decisions, which I have read with the respect and care that they deserve, I think the view of the other courts that the Small Cause Court being a court of exclusive jurisdiction, its decision is governed by the general principle of *res judicata*, is correct.

16. Before leaving this case I would like to mention that though the doctrine of *res judicata* was evolved by Indian jurists under the title of *prang nyaya* yet due to 200 years of British tutelage, many of us have not heard of *prang nyaya* and use instead of the Latin phrase, *res judicata*, though few of us know Latin or can pronounce this phrase correctly. It was left to the judges of the Privy Council in one of their judgments-reported in 43 Ind App 91 to remind us that the foundation of the principle of *res judicata* was laid by Indian jurists. I cannot help observing that as an Indian judge I feel somewhat small when I have to employ a Latin phrase, which I barely

understand, for expressing a legal principle for which a perfectly good Sanskrit equivalent is available. I agree with the view that we should have no complexes against the English language which I think has a creative role to play in this country. But must we continue to employ Latin phraseology even when it is no longer necessary? Today we have an official Sanskrit text of the English Constitution, but inconsistently enough we continue to repeat Latin Phrases, parrot fashion. I respectfully suggest that the Law Commission might take up the task of preparing a glossary of legal phrases derived from ancient texts which will gradually replace the existing Latin phrases.

17. I allow this appeal, set aside the decision of the lower appellate court, and decree the appellant's suit for recovery of rent with costs throughout.

Appeal allowed.

Cases Referred.

1. AIR 1953 SC 33
2. AIR 1962 SC 287
3. AIR 1962 SC 633
4. (1902) ILR 29 Cal 707 (PC)
5. (1904) ILR 27 Mad. 63
6. ILR 48 Bom 541: AIR 1924 Bom 454
7. ILR 39 All 717: AIR 1917 All 263
8. AIR 1930 All 430
9. (1883) ILR 9 Cal 439 (PC)
10. AIR 1914 All 229
11. AIR 1922 All 241
12. AIR 1932 All 483
13. AIR 1952 All 546
14. AIR 1954 Cal 506