KERALA HIGH COURT

P.V.N. Devoki Amma

Vs

P.V.N. Kunhi Raman

A.S. No. 234 of 1975

(V. Balakrishna Eradi, C.J. and K.K. Narendran, J.)

30.04.1980

JUDGEMENT

Balakrishna Eradi, C.J.

1. The plaintiffs in O.S. No. 37 of 1973 on the file of the Subordinate Judge's Court, Tellicherry are the appellants in this appeal. They instituted the suit for partition and recovery of possession of 10/14, shares in the plaint B schedule properties on the basis that they belonged to an undivided tavazhy consisting of the plaintiffs and the defendants. The defendants contended that items Nos. 1 and 2 of the Plaint B schedule alone belonged to the tavazhy and are available for partition and that the remaining items included in the plaint B schedule are the separate acquisitions and that the tavazhy has no right, title or interest in the rest of the properties included in the plaint B schedule. It was also contended by the defendants that the plaintiffs are barred by *res judicata* from putting forward the plea that plaint items Nos. 3 to 15 are tavazhy properties by reason of the decision rendered by the Munsiff's Court Koothuparamba in O.S. No. 149 of 1961, as per the judgment and decree evidenced by Exts. B3 and B2, that only plaint B schedule items Nos. 1 and 2 belonged to the tavazhy and that the remaining items included in the plaint schedule are not tavazhy properties.

2. The lower Court upheld the contention put forward by the defendants that Exts. B2 and B3 operate as *res judicata* against the plaintiffs in respect of the claim for partition of plaint items Nos. 3 to 14. On the merits also the court below found that what is available for partition as the common asset belonging to the tavazhy is only the tenancy right in plaint B schedule items Nos. 1 and 2 inclusive of the house situated therein and that the remaining items Nos. 3 to 14 at the plaint B schedule do not belong to the tavazhy. Accordingly, the plaintiffs were granted a preliminary decree for partition and separate possession of 10/14 shares in items Nos. 1 and 2 of the plaint B schedule only, with proportionate share of profits from the same for three years prior to the institution of the suit, and future manse profits.

3. The correctness of the aforesaid conclusions recorded by the Court below is challenged by the appellants in this appeal.

4. The plaintiffs have claimed a partition of the properties included in the plaint B schedule on the allegation that they belonged to the tavazhy of one Mathu Amma, wife of Chandu Nair. Mathu Amma had seven children - six sons and one daughter. Two of the sons, namely, Kammaran and Sankaran, are no more. Defendants Nos. 1 to 4 are the remaining four sons and the 1st, plaintiff Devaki Amma is the daughter of Mathu Amma. Plaintiffs Nos. 1 to 4 are the children of Devaki Amma and plaintiffs Nos. 8 to 10 are her grand-children through the 2nd plaintiff.

5. O.S. No. 149 of 1961 of the Munsiff's Court, Koothuparamba was a suit instituted by the 1st plaintiff and her children (plaintiffs Nos. 2 to 7) along with another son of the 1st plaintiff by name Ravichandran, who has since died, against the present defendants Nos. 1 to 4 for recovery of a sum of Rs. 125/- by way of maintenance from out of the present plaint B schedule properties on the allegation that those properties belonged to the tavazhy and the plaintiffs are entitled to get a decree for maintenance charged on those properties. The defendants contended in that suit that excepting for the present plaint B schedule items Nos. 1 and 2 (which were plaint items Nos. 1 and 2 in the earlier suit also) the remaining items did not belong to the tavazhy find hence the plaintiffs were not entitled to any decree for maintenance charged on those items. Issue No. 1 raised in that suit was "whether plaint items 3 to 12 belonged to the tavazhy" ? The parties adduced oral and documentary evidence in respect at the said question and after a detailed consideration of such evidence the Munsiff's Court held in the judgement Ext. B3 that plaint items Nos. 3 to 12 (corresponding to items Nos. 3 to 14 of the plaint B schedule in the present suit) did not belong to the tavazhy of the plaintiffs and the defendants. The question is whether the said decision rendered by the Munsiff's Court would operate as *res judicata* against the plaintiffs in the present suit for partition of the properties instituted in the Subordinate Judge's Court, Tellicherry.

6. On behalf of the appellants it is contended that since the Munsiff's Court, Koothuparamba, which rendered the judgement evidenced by Ext. B3, was not competent to entertain and try the suit now instituted for the relief of partition of the plaint schedule properties, the principle of *res judicata* embodied in Section 11, C.P.C., does not get attracted to the case. This argument, however, overlooks the provision inserted into the Section as Explanation VIII which was newly added by the Civil Procedure Code (Amendment) Act 104 of 1976. Under Section 97(3) of the amending Act the provisions of Section 11 as amended by the said Act will govern every suit proceeding, appeal or application, pending at the commencement of the amending Act or instituted or filed after such commencement. The present appeal has, therefore, to be decided in accordance with the amended provisions of Section 11. Explanation VIII to Section 11 added by the amending Act is in the following terms :-

> "An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised". It appears to us that the intention of the Parliament in introducing the Explanation was to widen the scope of Section 11 by relaxing the condition or limitation that the earlier decision on the issue concerned should have been rendered by a court competent to try the subsequent suit, such relaxation being limited to cases where the earlier decision had been rendered by courts of limited

jurisdiction which were fully competent to decide such issue. It is a notorious fact that the wholesome principle of *res judicata* embodied in the Section as it originally stood was being successfully circumvented by the simple process of reagitating the same issue by so framing the subsequent suit as to take it out of the pecuniary jurisdiction of the Court which tried the earlier suit, which could easily be done by the inclusion of additional properties or reliefs in the subsequent suit. The result was that the object and purpose underlying the rule of *res judicata* could to a large extent, be easily nullified. It appears to us manifest that the Parliament's object in introducing Explanation VIII was to remove this anomaly and to render the principle of *res judicata* more effective by providing that the prior decision rendered on the issue concerned by a Court of limited jurisdiction competent to decide such issue shall operate as *res judicata* in a subsequent suit notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit.

7. It was strongly contended before us on behalf of the appellants that the expression "Court of limited jurisdiction" signifies Courts other than ordinary Courts of civil judicature such as revenue Courts, land acquisition Courts, insolvency Courts, probate Courts etc. In support of this contention counsel for the appellants relied strongly on the decision of a Division Bench of the Calcutta High Court in *Nabin Majhi v. Tela Majhi*[1], In that decision the learned Judges have observed as follows :-

"What is then the meaning of the expression "a Court of limited jurisdiction" ? In our view, Courts of limited jurisdiction are Courts other than the ordinary Civil Courts. These Courts are Revenue Courts Land Acquisition Courts, Administrative Courts, Insolvency Courts, Guardianship Courts, Probate Courts etc. These Courts are to try certain specific matters and in that sense they may be said to be Courts of limited jurisdiction. These Courts are also Courts of exclusive jurisdiction in respect of the matters they are to try. The decisions of such Courts operated as *res judicata* in subsequent suits not by virtue of Section 11 but on the general principles of res judicata. By enacting Explanation VIII, the legislature brought the decisions of such Courts within the purview of Section 11. In other words, it is not necessary now to apply the general principles of res judicata, but in view of Explanation VIII the decisions of the Courts of limited jurisdiction or exclusive jurisdiction will operate as *res judicata* in subsequent suits under Section 11. The general principles of *res judicata* would apply where the former proceeding is not a suit but Section 11 would only apply where the two proceedings are suits. Under Explanation VIII, the provision of Section 11 will apply to the subsequent suit when an issue has been heard and finally decided by a Court of limited jurisdiction in a former proceeding. There is a clear indication in that regard in Explanation VIII, for it does not say that the decision of an issue by a Court of limited jurisdiction has to be made in a former suit. This is also an indication that Explanation VIII does not contemplate that the two proceedings must be suits,

[1] AIR 1978 Cal 440

> but as stated already, the decision has been given in a former proceeding by a Court of limited jurisdiction and not in a former suit. This excludes any argument that Explanation VIII has removed the condition of competency of the former Court finally deciding a suit or issue to try the subsequent suit. So where both the former and the subsequent proceedings are suits, to invoke the bar of *res judicata* the condition as to the competency of the former Court to try the subsequent suit must be fulfilled. If the former Court is not competent to try the subsequent suit for want of pecuniary jurisdiction, Section 11 will not apply. In these circumstances, we are unable to accept the contention made on behalf of the appellant that the finding of the learned Munsif in the former suit that there was a previous partition operates as *res judicata* in the present suit for partition instituted in the Court of the Subordinate Judge, for the learned Munsif is not competent to try the present suit".

With respect, we do not find it possible to accept the aforesaid view as correct. In our opinion, the expression "a Court of limited jurisdiction" is wide enough to include a Court whose jurisdiction is subject to a pecuniary limitation and it will not be right to interpret the said expression as connoting only Courts (other than ordinary Civil Courts. Such a narrow and restricted interpretation is not warranted by the words used by the Parliament. The statement of objects and reasons for the bill which was subsequently enacted as amending act 104 of 1976 and the report of the joint select Committee, which effected some substantial changes in the bill as originally drafted, make it abundantly clear that the intention underlying the introduction of Explanation VIII was that the decisions of the Courts of limited jurisdiction should operate as *res judicata* in a subsequent suit although the Court of limited jurisdiction may not be competent to try such subsequent suit. With respect, we are unable to agree with the view expressed by the Division Bench of the Calcutta High Court that by enacting Explanation VIII the intention of Parliament was only to bring the decisions of courts other than ordinary Civil Courts, such as revenue Courts, land acquisition Courts, insolvency Courts etc. within the purview of Section 11. In our opinion, the object and purpose underlying the introduction of Explanation VIII was much wider, namely, to render the principle of *res judicata* fully effective so that issues heard and finally decided between the parties to an action by any Court competent to decide such issues should not be allowed to be reagitated by such parties or persons claiming through them in a subsequent litigation.

8. It is true that while adding Explanation VIII Parliament has not deleted from the main body of tire Section the words "in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised". The retention of those words in the main body of the Section does provide room for the argument that only a restricted interpretation should be given to Explanation VIII. We are, however, of opinion that the correct mode of interpretation is to read the Section in combination and harmony with Explanation VIII. The result that flows from such an interpretation is that a decision on an issue heard and finally decided by a Court of limited jurisdiction (which expression will include a Court of limited pecuniary jurisdiction) will operate as *res judicata* in a subsequent suit notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit. This, according to us, is the true effect of the amended provisions of Section 11 read along with Explanation VIII thereto.

9. In the light of what is stated above, it must follow that the finding entered by the Munsiff's Court in the judgement Ext. B3 that only plaint items Nos. 1 and 2 belonged to the tavazhy operates as *res judicata* against the plaintiffs so as to debar them from contending that the remaining items included in the plaint B schedule are tavazhy properties in respect of which a partition can be claimed by them. The conclusion recorded by the lower Court that Ext. B3 operates as *res judicata* against the plaintiffs is, therefore, perfectly correct and sound.

10. In view of the conclusion reached by us on the question of *res judicata* it is unnecessary for us to consider whether the Court below was right in holding on the merits that plaint items Numbers 3 to 14 did not belong to the tavazhy.

11. The judgment and decree of the Court below are accordingly confirmed and this appeal is dismissed with costs.

12. Immediately after the pronouncement of the judgment the learned advocate appearing on behalf of the appellate orally prayed for the grant of a certificate under Article 133(1) of the Constitution. This request will be considered after the reopening of the High Court, for which purpose the appeal will be posted before the Division Bench at 1.30 P.M. on 3rd June, 1980.
(3-6-1980)

13. Heard counsel. We do not consider this a fit case for the grant of a certificate under Article 133(1) of the Constitution since this case does not involve any substantial question of law of general importance on which a pronouncement by the Supreme Court is needed. The prayer for the grant of the certificate is, therefore, disallowed.

Order accordingly.