

ORISSA HIGH COURT

Kumarmoni Sa

Vs

Himachal Sahu

A.H.O. No. 56 of 1976

(N.K. Das and J.K. Mohanty, JJ.)

17.07.1981

JUDGEMENT

N.K. Das, J.

1. Plaintiff is the appellant in this Letters Patent Appeal against a reversing judgment in a suit for partition and for allotment of the property claimed by the plaintiff to have been purchased by him from defendant No. 1 as Karta of the joint family consisting of defendants Nos. 2 and 3. Plaintiff claimed that defendant No. 1 was the father of his two sons- defendants Nos. 2 and 3. The properties described in Schedules A and B of the plaintiff belonged to the joint family of defendants Nos. 1 to 3 and defendant No. 4, the wife of defendant No. 1. The first defendant as Karta of the joint family, sold the disputed properties by a registered sale deed dated 18-5-1963 for Rs. 1,710/- to the plaintiff. The B schedule properties had been mortgaged with defendant No. 5 by the time of the sale. Therefore, defendant No. 1 put the plaintiff in possession of the remaining properties except those covered by schedule B. It was agreed at the time of the sale that plaintiff would pay up the mortgage dues of the defendants and redeem the property. Accordingly, plaintiff filed Title Suit No. 64/66 in the Court of the Munsif for redemption impleading all the present defendants. The present defendant No. 1 also joined the plaintiff as a co-plaintiff in the said suit. The learned Munsif held that the sale in favour of the plaintiff was not for legal necessity. Accordingly, the relief for redemption was not granted to the plaintiff but it was granted to defendant No. 1 as co-plaintiff. The plaintiff filed the present suit for partition. Defendant No. 2 in his written statement clearly took the plea that the earlier decision operated as *res judicata* for the present suit; that the present suit was barred by Order 2 Rule 2 of the Civil Procedure Code and the plaintiff was not entitled to maintain the action. The trial court held that the suit was barred by *res judicata*. The question of *res judicata* was argued at length before the learned lower appellate court and the learned appellate Judge reversed the finding of the trial Court on the said issue and held that the suit was not barred by *res judicata*. Defendant No. 2 came up in Second Appeal to this Court. The Second Appeal was allowed and it was held that the suit was barred by *res judicata*.

2. The only point for consideration in this appeal is whether the present suit is barred by the principles of *res judicata*. Mr. Sinha, the learned counsel for the appellant, contended that the

learned Single Judge has not taken into consideration the fact that the Munsiff who tried the previous suit had no pecuniary jurisdiction to try the present suit. It is not disputed that considering the valuation of both the suits, the Munsif who tried the previous suit had no jurisdiction to try the present suit, Section 11 of the Civil Procedure Code provides that 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. The learned counsel for the appellant states that the previous suit was in respect of only the properties put under usufructuary mortgage, but the claim in the present suit is for partition in respect of properties including the properties of the former suit and according to the valuation of both the suits, the Court who tried the former suit was not competent to try the subsequent suit for want of pecuniary jurisdiction. Undoubtedly, the parties are the same and the property in dispute in the former suit was a part of the properties claimed in the present suit. The former suit was a suit for redemption and in that suit it was held that the present plaintiff who claimed by virtue of a sale in his favour had acquired no right to the property, inasmuch as the sale was not supported by legal necessity. The present suit is for partition of properties including the properties which were the subject-matter in the suit for redemption. The finding that the plaintiff has no right to the properties involved in the previous suit was concluded. By virtue of sale in his favour, the plaintiff has claimed partition of those properties as well as other properties in the present suit. As it has been held in the previous suit that the plaintiff has acquired no right to property, it is contended by the contesting defendant that by the virtue of the finding in the previous suit, the claim of the plaintiff for partition in the present suit is barred by principles of *res judicata*.

3. It is also not disputed that if it is held that the present suit is barred by principles of *res judicata*, there is no necessity of giving any finding on other matters arising in the the suit. By recent amendment of the Civil Procedure Code, Explanation VIII has been added to Section 11, which runs as follows:

"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 is contended by the learned counsel for the respondents that the previous position was that the decision of a Court trying a previous suit will not operate as *res judicata* if it was not competent to try the subsequent suit, but by virtue of the amendment, the bar has been removed and some finality is to be reached so as to avoid multiplicity of suits. Jurisdiction of a Court may be limited either locally, or personally, or as to amount, or as to the character of the questions to be determined (see *Dalmia Dadri Cement Co. Ltd. v. Commr. of Income-tax*¹). This question came up for consideration before a Division Bench of the Calcutta High Court in *Nabin Majhi v. Tela Majhi*², wherein it was held (at p. 442):

"An explanation to a section is primarily meant for explaining the section itself. In order to ascertain the true meaning of the Explanation VIII, it has to be read along with the

provision of the section and not de hors it. Section 11 retains the condition for the applicability of *res judicata*, that the former Court must be competent to try the subsequent suit.

Therefore, Explanation VIII cannot be interpreted as dispensing with that condition. The expression "a Court of limited jurisdiction" occurring in Explanation VIII means 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 not 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."

This was again followed in a single Judge decision of the Calcutta High Court in *Promode Ranjan Banerjee v. Nirapada Mondal*³, The single Judge only held that there was a decision of the Division Bench of that Court and he was bound by that decision. A Division Bench of the Kerala High Court considered this question in *P.V.N. Devoki Amma v. P.V.N. Kunhi Raman Nair*⁴, and it was held therein (at p. 232) :-

"The Parliament's object in introducing Explanation VIII was to remove the 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. In such case it cannot be said 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. 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 object and purpose underlying the introduction of Explanation VIII was much wide, 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.

It is true that while adding Explanation VIII Parliament has not deleted from the main body of the 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 these 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. 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."

4. It would thus be seen that the Calcutta High Court is of the view that those cases which were being tried by other tribunals and revenue courts etc. would operate as *res judicata* irrespective of the question whether those courts have or have not jurisdiction to try the subsequent suits. The Kerala High Court has assigned reasons and juristic principles behind the amendment. The amendment is purported to avoid multiplicity of suits and if one person goes on adding some property and increasing the value of the property from time to time by instituting suits one after the other, he can deliberately avoid the decision which was against him to operate as *res judicata*. There should be an end to the matter and multiplicity of litigations should be avoided. We are impressed with the reasons given by the Kerala High Court. On the aforesaid analysis, our conclusion is that the finding of the Munsif in the previous suit operates as *res judicata* in the present suit and as such we agree with the conclusion arrived at by the learned single Judge.

5. The appeal is, accordingly, dismissed, but in the circumstances of the case there will be no order as to costs.

J.K. Mohanty, J.

6. I agree.

Appeal dismissed.

Cases Referred.

¹ AIR 1955 Pepsu 3

² AIR 1978 Cal 440

³ AIR 1980 Cal 181

⁴ AIR 1980 Ker 230