SUPREME COURT OF INDIA

Jeevantha and Others

v.

Hanumantha and Others

(Mahajan J. and others)

November 20, 1950

Judgment

Mahajan J.

1. These two appeals were presented to the Judicial Committee of the State and are now before us under Article 374(4) of the Constitution.

2. On January 30, 1913 a suit was brought by the father of the present plaintiffs against the present appellants for a declaration of his title in respect of three survey numbers, 36, 38 and 54, which were assessed at Rs. 84/- land revenue. It was also prayed that a sale deed that had been executed in respect of this property by defendants 1 and 3 in favour of defendant 2 be cancelled. The defendants denied the plaintiff's claim. They pleaded that the plaintiff was not a shikmedar in the land in suit and that he was not the owner of it under any sale deed and was not in possession of it. Issues 2 and 3 in this suit were in these terms:

> *"2. Whether the plaintiff is in possession as a shikmedar on half of the land in dispute and whether the other half was sold in his favour by the pattadar in the sum of Rs. 64/- and therefore he is in possession as an owner of the whole of the land in dispute.*
> *3. Whether defendant 1 was competent to execute a sale deed of the land in favour of defendant 2."*

3. The valuation of the suit for purposes of jurisdiction was not stated in the plaint but it was mentioned therein that the land revenue assessed on it was Rs. 84/-. The suit was tried by the Munsif who was competent to try suits up to the pecuniary limit of Rs. 1,000/-. On issues 2 and 3 the Munsif found that the plaintiff's title both as a shikmedar and purchaser was not proved. It was further found that the defendants were owners of this land and were in possession of it. On appeal the decision of the Munsif was upheld. There was a further appeal against this decree but it was dismissed in default. As no application for restoration of the appeal was made within the time prescribed, the order for dismissal became final. The result was that the plaintiff's claim for declaration and for cancellation of the sale deed was dismissed.

4. On March 10, 1930 the plaintiffs brought the suit out of which this appeal arises. In this suit they claimed possession of the same survey numbers, 36, 38 and 54, on the same allegations which were made by their father in the earlier suit. This suit was valued for purposes of jurisdiction at Rs. 1,040/-, the land revenue assessed on the land at the date of the suit being Rs 104/-. The defendants pleaded that the suit was barred by *res judicata* by reason of the decision in the former suit. This plea was resisted by the plaintiffs on the ground that the Munsif who tried the former suit was not competent to try the present suit because his pecuniary jurisdiction to hear cases was below the jurisdictional value of this suit. This plea for *res judicata* was negatived in the three Courts below on the ground that the Munsif who tried the former suit was not competent to try the present suit.

5. On the merits of the case the plaintiffs succeeded to the extent of one half of their title as shikmedars but their title on the foot of the sale deed was held not proved. This decision was maintained on appeal. On second appeal the High Court not only upheld their title as shikmedars

but also held their title on the sale deed proved. In the result a decree in favour of the plaintiffs was passed in respect of the whole of the property. Against this decision these two appeals have been preferred on behalf of the defendants.

6. It is unnecessary to go into the merits of the case because we think that the defendants have made out their plea of *res judicata* and the decisions of the Courts below on this issue are erroneous. It is true that in order to make out a plea of *res judicata* it is necessary to prove that the Court that tried the former suit was competent to try the present suit. There can be no question about it but it is also well settled that in order to determine whether a Court which decided the former suit had jurisdiction to try the subsequent suit, regard must be had to the jurisdiction of that Court at the date of the former suit and not to its jurisdiction at the date of the subsequent suit. If at that time such a Court would have been competent to try the subsequent suit, had it been then brought, the decision of such Court would operate as *res judicata* although subsequently by a rise, in the value of the property that Court had ceased to be a proper Court, so far as regards its pecuniary jurisdiction, to take cognizance of a suit relating to that very property.

7. It seems to us that this rule of law was overlooked in all the Courts below. The property in dispute in the two suits is identical. At the date of the earlier suit it was assessed to land revenue in the sum of Rs. 84/-, while at the date of the later suit it was assessed in the sum of Rs. 104/-. The difference in the jurisdictional value has arisen by reason of the increase in the land revenue assessment. This circumstance, however, could not affect the plea of *res judicata*. The present suit, if brought in the year 1913, would have been within the competence of the Munsif who tried the first suit because the land revenue assessed on these survey numbers then was only Rs. 84/- and the valuation of the suit would have been Rs. 840/-, within the Munsif's pecuniary jurisdiction. This was the only ground urged against the application of the rule of *res judicata* to this case. In all other respects it was admitted that the case was within that rule. The result therefore is that the plaintiffs' suit is barred by *res judicata* by reason of the decision of the former suit decided in the year 1921.

8. For the reasons given above we allow both these appeals, set aside the judgments of the three Courts below and dismiss the plaintiffs' suit with costs throughout.

Case Number(s)
Not stated in the source

Statute(s) referred

Statute	Section/Article	Para
Constitution of India	Article 374(4)	1

Advocate(s)
Not stated in the source text.
(P) – Provisional