The National Tobacco Company of India Ltd. *v.* Simla Banking and Industrial Company Ltd. (in Liquidation)

Falshaw, J.

Rs. 3,00,000 had been exceeded by Rs. 10,000. It does not seem to me possible on the available material to hold the Bank at Calcutta to have been at fault because it was unwilling either to accept the promise of the Bank at Simla to adjust matters if the drafts were honoured, or to meet the drafts by selling securities of the Simla Bank by which its overdraft was secured, and I am, therefore, of the opinion that it must be held that the drafts were issued by the Bank at Simla without arrangements having been made to meet them and with the likelihood that they would not be honoured. Once this finding is reached I consider that it must also be held that the fiduciary relationship between the Bank and the Company was not terminated merely by the issuing of the drafts. I would accordingly hold that the Company is entitled to recover the full sum of Rs. 38,619-7-3 as a preferential creditor of the Bank in liquidation, but would disallow any claim to interest and leave the parties to bear their own costs.

Tek Chand, J.

TEK CHAND, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before G. D. Khosla, C.J.

SARVAN NATH SETHI,—*Appellant.*

versus

RAM KISHAN SETHI AND SONS,—*Respondents.*

Civil Revision No. 85-D of 1958.

1961

Sept., 14th

Jurisdiction of Courts—Two suits consolidated and decided by one judgment—Appeal in each of the suits—Whether to lie in a Court having jurisdiction according to its own valuation—Principles of Res Judicata—*Whether applicable.*

Held, that where two suits are separately filed but are consolidated for the purposes of trial and both the suits are dismissed, the appeal in each suit will lie to a Court in which

the appeal lies in that suit according to its jurisdictional value. The plaintiff in the other suit not having filed the appeal, can file cross-objections in the appeal filed by the other party and the appellant in that case cannot raise a plea of *res-judicata* with regard to the claim of the cross-objectors if they choose to raise it. They can legally raise it in the appeal but it can have no effect whatsoever on the question of jurisdiction. Merely because the petitioners have a right to file cross-objections and to re-agitate the question of the claim of Rs. 5,900 is not a ground for compelling the respondents to file an appeal in the High Court when their suit was for rendition of accounts and was valued at Rs. 130. They can choose their forum according to the jurisdictional value.

Petition under Section 115 of Act 5 of 1908, read with Section 44 of the Punjab Courts Act from the order of Shri G. S. Bedi, Additional District Judge, Delhi, dated 21st January, 1958, ordering that there was no justification for ordering the return of the memorandum of appeal which had been preferred as valued at Rs. 130 and the appeal lay to the Senior Sub-Judge from whose court it was transferred and made over to this Court. The preliminary objection was over-ruled.

H. R. SAWHNEY, ADVOCATE, for the Petitioner.

N. D. BALI, ADVOCATE, for the Respondent.

ORDER

Khosla, C. J.

G. D. KHOSLA, C.J.—This revision petition has arisen in the following circumstances. The petitioners before me brought a suit for the recovery of a sum of Rs. 5,900. Soon after this the respondents brought a suit for rendition of accounts against the petitioners. The parties agreed to have these suits heard together and the suits were accordingly consolidated. They were disposed of by one judgment by which the trial Judge dismissed both the suits. The respondents who were the plaintiffs in the suit for rendition of accounts took an appeal against the dismissal of their suit in the Court of the District Judge. No appeal was preferred by the petitioners in their suit for the recovery of Rs. 5,900.

Sarvan Nath Sethi
v.
Ram Kishan Sethi and Sons

Khosla, C. J.

Before the Additional District Judge the petitioners took objection to the maintainability of the appeal on the grounds that since both the suits had been consolidated the jurisdictional value of the suits had become Rs. 5,900 and that an appeal against the dismissal of the respondents' suit was not maintainable in the Court of the District Judge but should have been filed in the High Court.

The respondents had valued their suit for the rendition of accounts at Rs. 130 and if their suit were considered in isolation it is clear that their appeal lay to the Court of the District Judge. The Additional District Judge took the view that the appeal lay before him and fixed a date for arguments in the appeal. Against this order the petitioners have come up in revision in this Court and on their behalf their learned counsel has argued that the appeal lies to this Court and not to the Court of the District Judge.

There is apparently no direct authority on the matter under consideration. Mr. Sawhney has, however, expended a considerable measure of vehemence and argued that since the two cases became one they became one for all purposes. He has relied mainly on two decisions, one of the Lahore High Court, in *Mt. Lachhmi* v. *Mt. Bhulli* (1), and the other of the Supreme Court in *Narhari and others* v. *Shankar and others* (2). In both these cases the question of *res-judicata* was considered and it was held that merely because the suits were consolidated and appeal had in one of them been filed and not in the other, the subject-matter in the suit in which appeal was filed was not ruled out of consideration by the principle of *res judicata*.

In the Lahore case what happened was that one Dewa Singh died leaving a widow and a widow of his predeceased son. Both these women came into possession of one-half of the property left by Dewa Singh and both brought suits claiming entire property left by Dewa Singh. The two suits

(1) A.I.R. 1927 Lah. 289
(2) 1950 S.C.R. 754

were consolidated and the final order was that Dewa Singh's widow was entitled to one-half of the property and the widow of his predeceased son, Lachhmi, was entitled to the other half on account of maintenance. No appeal was taken by the widow of Dewa Singh but the widow of the predeceased son took an appeal to the High Court and this appeal was met with the argument that since the matter had become final in the suit filed by the widow of Dewa Singh and the matter in dispute was one and identical, the non-filing of the appeal in the suit of Dewa Singh's widow had rendered the entire dispute between the parties *res-judicata*. Lachhmi, the widow of the predeceased son, could not reopen the matter (so it was argued by the respondent in the Punjab High Court) because the decision in favour of Bhulli had become final and, therefore, to the extent of one-half of the property left by Dewa Singh Lachhmi could not advance any argument whatsoever. The question of whether the non-filing of the appeal by Lachhmi against the decree in the suit of Bhulli prevented Lachhmi's appeal from proceeding, on the principle of *res-judicata*, was referred to a Full Bench and Tek Chand, J., who wrote the judgment considered the whole matter in detail and came to the conclusion that since the two suits had been consolidated, the non-filing of the appeal in the suit of Bhulli could not put out of Court Lachhmi who had filed the appeal because Lachhmi's suit was the same as Bhulli's suit. Nothing, however, was said about the question of jurisdiction. Mr. Sawhney, however, argues that this omission is due to the fact that both the appeals would have lain to the High Court and if Bhulli had chosen to appeal she would also have gone to the High Court. But in my view there was no reason whatsoever for referring to this matter because the matter was not to be considered by the High Court. The only question was whether the dispute was dead for ever and not whether a part of the dispute could have been agitated in one Court and a part in another. It is quite clear to me that had Bhulli, in that case, been awarded a decree an appeal from which lay to the District

Sarvan Nath Sethi
v.
Ram Kishan Sethi and Sons

Khosla, C. J.

Judge and if an appeal had in fact been taken to the District Judge the High Court would properly have ordered that both the appeals should have been brought before that Court. I can remember numerous instances in which an appeal had been filed in the Court of the District Judge and another appeal in the same matter or in a matter closely related to it had been filed to this Court and on a petition made by one of the parties the appeal originally filed in the Court of the District Judge was also brought to this Court. But this is not to say that the District Judge had no power to hear the appeal when there is nothing before the High Court. The reason for the transfer is that there should not be two contradictory decisions in the same matter by the High Court and by the District Judge.

The decision of the Supreme Court is to the same effect. Nothing whatever was said in that case about the question of jurisdiction and, therefore, the Supreme Court decision also has no relevancy to the matter before me.

The only other case which was also indirectly relied upon by Mr. Sawhney is *Dalipa and others* v. *Rani Suraj Kaur* (1). The facts in that case were that a married daughter, on succeeding to her father's estate, brought a consolidated suit to challenge a number of alienations made by her mother and step-mother. The single suit was later divided into three suits. The challenges against some of the alienations were retained in the original suit and the other alienations were made the subject-matter of two other suits. All these suits were decreed by the trial Judge. In one of the suits the jurisdictional value was Rs. 295-5-0 and in this case the defendant who had lost the case in the trial Court appealed to the Court of the Divisional Judge. The Divisional Judge affirmed the decision of the trial Court upholding the plaintiff's right to challenge the alienation. The appeal in the other suit was taken to the Chief Court by the defeated defendants and it was met with the argument that

(1) 48 P.R. 1916

the matter having been concluded by the Divisional Court the appeal was not competent. The plaintiff's argument in that case was that the trial Court had held that she had a right to challenge the alienations. This right had been affirmed by the Divisional Court which was competent to hear the appeal before it. Therefore, it had been established that she had a right under custom to challenge the alienations and the defendants could not in a subsequent appeal question that right because no second appeal having been filed her right had become final and unquestionable. On behalf of the defendant-appellants, however, it was argued that since the three suits had been consolidated and disposed of by means of one judgment it could not be said that the decision of the Divisional Judge was a decision in a previous suit and this argument was upheld by the Chief Court and quite rightly, if I may say so with respect, because there could not be any question of the appeal before the Divisional Judge operating as *res judicata* because of the time factor. It must be remembered that the principle of *res judicata* rests on the time factor, namely, what has been decided once shall not be reopened on a subsequent date. If two matters are decided by means of one judgment they are disposed of simultaneously and there being no lapse of time between the decisions it cannot be said that simply because an appeal has failed in one of the suits it becomes a prior decision. It is this argument which was the basis of the decision before the Lahore High Court in *Mt. Lachhmi* v. *Mt. Bhulli* (1), and before the Supreme Court in *Narhari and others* v. *Shankar and others* (2), and in a number of other cases to which, at my suggestion, Mr. Sawhney refrained from referring because they were all matters of the same type.

The question of jurisdiction, however, is a wholly different matter. It has nothing to do with the priority in time nor has it any thing to do where a matter is decided simultaneously along with another matter which is of a different jurisdiction.

(1) A.I.R. 1927 Lah. 289
(2) 1950 S.C.R. 754

Sarvan Nath Sethi
v.
Ram Kishan Sethi and Sons

Khosla, C. J.

The question of jurisdiction must be considered by itself. The jurisdictional value of the suit or the claim brought by the respondents was Rs. 130 and they are entitled to agitate it in a Court which has jurisdiction to entertain claims of that value. They cannot of course raise a plea of *res judicata* because that has relation to time and previous decision. The fact that the petitioners have not chosen to file an appeal will not make their claim for Rs. 5,900 *res judicata* if they choose to raise it. They can legally raise it in the appeal in the suit for accounts but it can have no effect whatsoever on the question of jurisdiction. The plaintiffs' claim still remains a claim for rendition of accounts. It does not change its jurisdictional value, and because the petitioners have a right to file cross-objections and to re-agitate the question of the claim of Rs. 5,900 is not a ground for compelling the respondents to file an appeal in the High Court, they can choose their forum according to the jurisdictional value. For these reasons, I hold that the decision of the trial Court with regard to the jurisdiction was right and that this revision has no force. I accordingly dismiss it with costs and direct that the appeal will be disposed of by the District Judge as early as possible. The parties are directed to appear before the District Judge on 5th of October, 1961.

R. S.

APPELLATE CIVIL

Before Inder Dev Dua, J.

NAND SINGH—*Appellant.*

versus

PUNJAB KAUR,—*Respondent.*

Regular Second Appeal No. 1343 of 1959.

1961

Oct., 10th

Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act (III of 1953)—Section 3—Ownership rights acquired by a widow, she being the occupancy tenant at the relevant date—Whether