Balbir Singh
v.
The State
———
Tek Chand, J.

the start to the finish with unabated vigour and undiminished fury. The accused struck blows on Malkiat Singh with relentless determination, which knew no mercy or moderation and did not depend on provocation for a prod.

After giving the facts and circumstances of this case my careful consideration, I feel convinced that there was not a semblance of the exercise of the right of private defence upon the part of the accused. There is no question of such a right having been exceeded with a view to convert the offence of murder under section 302, Indian Penal Code, into one of culpable homicide under section 304, Indian Penal Code. In my view, Balbir Singh, the accused appellant in this case, is guilty of murder and was rightly convicted. The Sessions Judge has already awarded him lesser penalty and therefore there is no further scope for any interference with the sentence. The appeal deserves to fail and should be dismissed.

G. D. Khosla, J.

G. D. KHOSLA, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before K. L. Gosain and A. N. Grover, JJ.

MAHARAJA PATESHWARI PARSHAD SINGH,—*Appellant*

versus

A. S. GILANI,—*Respondent*

Regular First Appeal No. 20 of 1957.

1959
———
Mar., 30th

Code of Civil Procedure (Act V of 1908)—Section 11—Decision by Court of Small Causes—Whether operates as res judicata *in a subsequent suit not triable by that Court—Court of Small Causes—Whether a Court of exclusive jurisdiction.*

Held, that a decision of the Court of Small Causes in a previous suit does not operate as *res judicata* in a subsequent suit which is not triable by that Court.

Held, that a Court of Small Causes cannot be regarded to be a court of exclusive jurisdiction like the Revenue Courts, Land Acquisition Courts and Administration Courts etc., which have the exclusive jurisdiction over a particular subject-matter. The court of Small Causes can only be regarded to be a court of preferential jurisdiction in the sense that because of its existence at a particular place it has the sole jurisdiction to try and entertain a suit by virtue of the provisions contained in the Small Cause Courts Act and not because "the matter" covered by the suit is triable by it alone in the same way as probate or acquisition matter would be entertainable only by a Probate Court or Acquisition Court.

Regular First Appeal from the decree of Shri Dev Raj Saini, Sub-Judge, Ist Class, Jagraon, dated 18th day of January, 1957 passing a decree for Rs. 18,000 in favour of the plaintiff against the defendant.

A. HUSSAIN, D. C. GUPTA and J. N. KAUSHAL, for Appellant.

F. C. MITTAL and D. D. KHANNA, for Respondent.

JUDGMENT

Grover, J.

GROVER, J.—This appeal is directed against a decree for Rs. 18,000 granted in favour of the plaintiff-respondent against the defendant-appellant.

According to the allegations of the plaintiff he was appointed in the year 1923 as agricultural adviser of the Balrampur Estate belonging to the defendant with benefit of provident fund contribution by the U.P. Court of Wards and by the plaintiff. The Estate was released from the superintendence of the Court of Wards in the year 1937, and thereafter the defendant agreed to retain the plaintiff as agricultural adviser and he continued in service of the Estate. The plaintiff

Maharaja Pateshwari Parshad Singh
v.
A. S. Gilani

Grover, J.

was given an option either to continue to enjoy the benefit of the contributory provident fund as before or to agree to accept on retirement such pension as might be fixed by the defendant at the time of retirement "or in default of such fixation, as may be permissible under the rules of the Raj on the condition of the plaintiff refunding the amount contributed by the Estate towards the provident fund" (*vide* paragraph 4 of the plaint). The plaintiff opted for the second alternative and refunded Rs. 17,000 odd which had been contributed by the Estate towards the provident fund and agreed to pension being given to him after his retirement. In the year 1944 the plaintiff retired from the defendant's service with his permission, and the defendant in pursuance of the agreement mentioned above, and also because the amount contributed by the Estate towards the provident fund had been refunded, fixed Rs. 500 per mensem as the plaintiff's pension which was agreed to be paid wherever the plaintiff might be. The defendant had been paying the plaintiff's pension up to January, 1951, when it was stopped. The plaintiff instituted a suit for recovery of pension for the month of February, 1951, amounting to Rs. 500 in the Court of Judge, Small Causes, Simla, on 9th March, 1953, in which issues were framed and decided and the suit was decreed. The plaintiff claimed that the aforesaid judgment operated as *re judicata* in the present case so far as all the points which had been decided previously were concerned. The plaintiff further alleged that a sum of Rs. 32,500 was due from March, 1951 to the end of July, 1956, on account of the arrears of pension, but the plaintiff sued only for the recovery of Rs. 18,000 as pension due from 1st August, 1953. to the 31st July, 1956, and the balance of the claim was given up. The suit was resisted by the defendant and a large number of pleas were raised

Maharaja Pateshwari Parshad Singh v. A. S. Gilani

Grover, J.

which need not be stated in their entirety. It was denied that any contract had been made with the plaintiff for payment of the pension. According to the defendant, the sum of Rs. 17,000 contributed out of the income of Balrampur Raj towards the provident fund was also paid to the plaintiff in 1944 at the time of his retirement with an additional amount of Rs. 8,000, the total being Rs. 25,000 and this payment was *ex gratia* and an annuity of Rs. 500 per mensem was further awarded purely "as a favour for such time as the defendant so wished". The defendant also denied any personal liability to pay the pension to the employees of the Raj after the Raj had ceased to exist. It was, however, not admitted that the defendant was liable personally to make payment periodically of the sum of Rs. 500 per mensem. According to the defendant, the alleged agreement was without consideration and unenforceable at law and the plaintiff's claim was barred by limitation. The defendant denied that the judgment given by the Court of Small Causes on 9th March, 1953, operated as *res judicata*.

On the pleadings of the parties the trial Court framed the following preliminary issues :—

(1) Has this Court territorial jurisdiction to hear the suit ?

(2) Does the judgment dated 30th April, 1954, in suit No. 23 of 1953, operate as *res judicata* ? If so, on what points ?

(3) Is the plaint not correctly valued for the purposes of court-fee ? If so, what is the correct valuation ?

All the issues were found in favour of the plaintiff with the result that the suit was decreed. It would

be best to state the conclusion of the trial Court in its own words—

Maharaja Pateshwari Parshad Singh
v.
A. S. Gilani

Grover, J.

> "In my opinion, the judgment dated the 30th April, 1954, operates as *res judicata* on all the points decided therein. No other point arises for decision in the present suit. The issue is accordingly decided in favour of the plaintiff:"

It has been contended on behalf of the appellant that the previous judgment given by the Judge, Small Cause Court, Simla, could not operate as *res judicata* in the present case. The suit was for recovery of Rs. 500 alleged to be due to the plaintiff on account of pension for the month of February, 1951, and the allegations were practically the same as they are in the present suit. It is submitted, however, that the present suit being for recovery of Rs. 18,000 was beyond the jurisdiction of the Judge, Small Cause Court, and, therefore, section 11 of the Code of Civil Procedure could not apply. This matter was conceded even by the trial Court, but it proceeded to decide in favour of the plaintiff on the authority of *Ishwar Datt Churamani* v. *General Assurance Society, Limited* (1), In that case Bhide, J., had occasion to consider the applicability of the general principle of *res judicata* in cases where section 11 of the Code did not apply. A suit had been instituted for about Rs. 109 in the Small Cause Court claimed by way of commission. That suit had been dismissed on the finding that the plaintiff had violated the terms of the agreement. Subsequently another suit was filed by the same person in the Court of Subordinate Judge, IV Class, for an account. It was not denied that the plaintiff's claim was based

(1) A.I.R. 1937 Lah. 346

Maharaja Pateshwari Parshad Singh v. A. S. Gilani

Grover, J.

on the same agreement in both the suits. Bhide, J., observed as follows:—

> "But the principle of *res judicata* is of wider application, as pointed out by their Lordships of the Privy Council in *George Henry Hook* v. *Administrator-General of Bengal* (1), and *Ram Chandra Rao* v. *Ram Chandra Rao* (2), It has been held to govern cases where the matter in issue is the same and has been previously decided by a competent Court. For instance, when a Court has exclusive jurisdiction to try any matter its decision on that point will operate as *res judicata*."

The learned Judge affirmed the decisions of the Courts below that the subsequent suit was barred in view of the principle referred to above. Bhide, J., relied mainly on *Velji Dayalji* v. *Firm of Nand Lal* (3), which was followed in *Hemraj Harnam Das* v. *Hargolal* (4), and reference was made by him to *Champat* v. *Toti Ram* (5), *Daulat Ram* v. *Munshi Ram* (6), and *Mauj* v. *Sardara* (7).

In *Velji Dayalji's case* (3), Kennedy and Rupchand Bilaram, A.J.C., laid down that section 11 of the Code was not exhaustive and the plea of *res judicata* was not limited to a judgment of a Court of concurrent jurisdiction being pleaded as a bar to the subsequent suit but it extended also to a judgment of a Court of exclusive jurisdiction. In that case also the previous judgment was of a Court of Small Causes. The basis of the decision

(1) I.L.R. 48 Cal. 499
(2) I.L.R. 45 Mad. 320
(3) A.I.R. 1926 Sind 236
(4) A.I.R. 1934 Sind 112
(5) A.I.R. 1934 Lah. 324
(6) A.I.R. 1932 Lah. 623
(7) A.I.R. 1929 Lah. 586

Maharaja Pateshwari Parshad Singh v. A. S. Gilani

Grover, J.

was that the Court of Small Causes was a Court of exclusive jurisdiction and, therefore, by the application of the wider provisions of *res judicata* it would have the force of finality, and any points decided by such Court would be conclusive in any subsequent litigation. In *Hemraj's case* (1), Aston, A.J.C., referred to several cases but appears to have been influenced naturally by the strong opinion expressed in the earlier Bench decision of that Court. In *Champat* v. *Toti Ram* (2), Hilton, J., referred to the decision of the Sind Court in *Velji Dayalji's case* (3), and observed that the judgment of a Court of exclusive jurisdiction could operate as *res judicata* only on a matter which that Court could exclusively decide. In the case decided by him it was held by the learned Judge that the Small Cause Court had not exclusive jurisdiction to decide the question of title, nor to decide the character of the plaintiff or defendant's possession. In *Daulat Ram* v. *Munshi Ram and others* (4), the question was whether the decision of a revenue Court would operate as *res judicata* in a civil Court. It was held by Dalip Singh, J., that a revenue Court's decision was binding on the civil Court so far as the issue raised then was raised again. In *Mauj* v. *Sardara* (5), Shadi Lal, C.J., and Broadway, J., expressed the view that the decision of a revenue Court in matters in which it had exclusive jurisdiction would be *res judicata* in a subsequent suit in a civil Court. In *Hayat Mohammad* v. *Bar Gaushala Limited, Lyallpur* (6), Skemp, J., agreed with the view of Bhide, J., that if a Small Cause Court decided a mater on which it had exclusive jurisdiction, then that decision would be

(1) A.I.R. 1934 Sind 112
(2) A.I.R. 1934 Lah. 324
(3) A.I.R. 1926 Sind 236
(4) A.I.R. 1932 Lah. 623
(5) A.I.R. 1929 Lah. 586
(6) A.I.R. 1938 Lah. 811

Maharaja Pateshwari Parshad Singh
v.
A. S. Gilani

Grover, J.

binding on subsequent Courts. In that case, however, the decision of the Small Cause Court on title in a suit for rent was not accepted to have the force of *res judicata* by the learned Judge in a subsequent suit for rent and ejectment on the ground that the prayer for ejectment took the suit away from the jurisdiction of the Court of Small Causes.

The learned counsel for the appellant does not and indeed cannot challenge the correctness of the view expressed in several English cases and in *Srimati Raj Lakshmi Dasi and other* v. *Banamali Sen and others* (1), that the condition regarding the competency of the former Court to try the subsequent suit is one of the limitations engrafted on the general rule of *res judicata* by section 11 of the Act and has application to suits alone and a plea of *res judicata* on general principles can be successfully taken in respect of judgments of Courts of exclusive jurisdiction. It is urged that a Small Cause Court is not a Court of exclusive jurisdiction but it is a Court of preferential jurisdiction and cannot be put in the same category as a Revenue Court, Land Acquisition Court, Administration Court, Insolvency Court, Guardian Court, Probate Court and the like. It is pointed out that Courts of exclusive jurisdiction are those which have been conferred exclusive powers to decide certain matters and a Court of Small Causes cannot be regarded to be such a Court as has exclusive jurisdiction to decide a particular matter. It certainly has preferential jurisdiction with regard to certain suits where such a Court exists; otherwise a suit which is of a Small Cause nature is triable by any civil Court of competent jurisdiction. By way of illustration it is pointed out that Courts of Small Causes in the Punjab State exist

(1) A.I.R. 1953 S.C. 33

Maharaja Pateshwari Parshad Singh
v.
A. S. Gilani

Grover, J.

only in some places like Amritsar and Simla and have not been established anywhere else. If the suit which was instituted by the present plaintiff at Simla on the previous occasion had been instituted anywhere else, it would have been cognizable by any Court of competent jurisdiction there. Even in Simla if the Court of Small Causes had not been established, the suit would have been triable by the Court having jurisdiction to try civil suits there. It is merely because a Court of Small Causes has been established there that the suit became cognizable and triable by it in accordance with the provisions contained in section 16 of the Provincial Small Cause Courts Act. The suit filed by the plaintiff at Simla was cognizable by a Court of Small Causes there not because of "any matter" falling exclusively within the jurisdiction of a particular Court, but it became triable by the Court of Small Causes as the same existed there and it had to be given preference. Reference in this connection has been made to certain decisions in which the view has been taken that Small Cause Court has preferential jurisdiction only and its decisions cannot operate as *res judicata* for the purposes of other suits which it was not competent to try. In *Dulare Lal* v. *Hazari Lal* (1), Sunder Lal, J., held that a small cause suit which was transferred to a Munsif retained its character as such and no appeal lay against the decision of the Munsif in such a suit, nor could his decision operate as *res judicata* for purposes of other suits not cognizable by the Court of Small Causes. Similarly in *Shakira Bibi* v. *Nandan Rai and another* (2), Stuart, J., considered that a judgment did not operate as *res judicata* where the Munsif in his capacity of an officer hearing a suit of a small cause court nature was not competent to try the

(1) A.I.R. 1914 All. 229
(2) A.I.R. 1922 All. 241

Maharaja Pateshwari Parshad Singh
v.
A. S. Gilani

Grover, J.

later suit. In *Ghulappa Bin Balappa* v. *Raghavendra Swamirao* (1), Jenkins, C. J.; and Betty, J., considered that a Court of Small Causes was a Court of preferential jurisdiction. In *Mohihi Mohan Roy* v. *Ramadas Paramhansa* (2), Rankin and Ghosh, JJ., held that if a later suit was not of of a small cause nature, a decree for money made in a previous suit instituted in the Small Cause Court did not operate as *res judicata.* In *Madhorao* v. *Amrit Rao* (3), the view that has been expressed is that the decision of a Subordinate Judge in a previous suit is *res judicata* in a subsequent small cause suit between the same parties inasmuch as the inability of the Subordinate Judge to entertain a claim of a Small Cause nature arises not from the incompetence but from the existence of another Court with a preferential jurisdiction. The Nagpur Court followed the view of Jenkins, C.J., in *Ghulappa Bin Balappa's case* (1). In *Raja Simhadri Appa Row* v. *Ramachandrudu* (4), the question was whether the decision of the Court of Appeal in an original suit on the file of the District Munsif with regard to the rate of rent was *res judicata* in a subsequent suit. Boddan and Bhashyam Ayyangar, JJ., made the following observations—

> "Under the Small Cause Courts Act a suit cognizable by a Small Cause Court is not to be instituted and tried by an ordinary civil Court if, and so long as, within the local limits of its jurisdiction a Small Cause Court is established competent to take cognizance of such small cause suit."

(1) I.L'R. 28 Bom. 338
(2) A.I.R. 1924 Cal. 487
(3) A.I.R. 1918 Nag. 163
(4) I.L.R. 27 Mad. 63

Maharaja Pateshwari Parshad Singh v. A. S. Gilani

Grover, J.

A Full Bench of the same Court in *Avanasi Gounden and others* v. *Nachammal* (1), over ruled this authority, but that was on a different point. In *Afzal Hussain* v. *Mahmood Hussain* (2), it has been observed that section 16 of the Provincial Small Cause Courts Act only provides that a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction. It does not take away the jurisdiction of that Court. It is similar to section 15, Civil Procedure Code, which provides that every suit shall be instituted in the Court of the lowest grade competent to try it. Similarly, in *U. K. Seal* v. *Aramugam Chettyar* (3), Dunkley, J., was of the view that the character of the suit was not altered by the mode in which it was tried. It was further laid down by him that the effect of the provisions of section 16 was not to deprive the regular Court altogether of jurisdiction in suits cognizable by a Court of Small Causes, but merely to prevent the exercise of that jurisdiction by the regular Court so long as there was a Court of Small Causes having jurisdiction within the same local limits. In *Avanasi Gounden's case* (1), the question was whether the decision upon a matter which was directly and substantially in issue between the same parties in a suit, which, though tried by the District Munsif as an original Suit was yet one of a small cause nature and, therefore, in which no second appeal lay, was binding in respect of the same matter in a subsequent suit in which a second appeal lay. After considering a large number of authorities taking divergent views the observations of a Full Bench consisting of five judges at page 199 were as follows :—

> "Those learned Judges who hold, that in cases like the present, the decision in

(1) I.L.R. 29 Mad. 195
(2) A.I.R. 1943 Oudh. 449
(3) A.I.R. 1938 Rang. 35

Maharaja Pateshwari Parshad Singh
v.
A. S. Gilani

Grover, J.

the earlier suit operates as *res judicata* take the view that the language of the section is satisfied when the Court deciding the first suit was competent to try the subsequent suit, irrespective of the question whether the earlier decision was or was not subject to the same appeal as the decision in the subsequent suit would be, and that a different interpretation would be straining the language of the legislature. Those learned Judges on the other hand who take the opposite view consider that the words "of jurisdiction competent" in the section admit of the provisions of law relating to appealability being considered in giving effect to the principle of estoppel which the section is intended to enforce and that, having regard to the difference in the grades of the Courts administering justice in this country and the qualifications of Judges which differ greatly, it is better not to tie down, as far as possible, Courts of higher jurisdiction by the decisions of inferior Courts. Sir Barnes Peacock in the decision in *Mussamut Edun* v. *Mussamut Bechun* (1), which is referred to by the Judicial Committee in *Misir Raghobardial* v. *Sheo Baksh Singh* (2), as the leading case, and the Judicial Committee itself in that case lay much stress upon the said difference in the grades of Courts and the qualifications of Judges in connection with the question of estoppel by judgment, and the

(1) 8 W.R. 175
(2) I.L.R. 9 Cal. 439

> Committee further observe that 'although it may be desirable to put an end to litigation the inefficiency of many of the Indian Courts makes it advisable not to be too stringent in preventing a litigant from proving the truth of his case."

Maharaja Pateshwari Parshad Singh
v.
A. S. Gilani

Grover, J.

Thus, various previous decisions including *Raja Simhadri Appa Row's case* (1), were overruled and it was held that the decision in the former suit did not operate as *res judicata* and the fact that the former suit was one of a small cause nature prevented the decision therein from operating as *res judicata* in the present suit. The view expressed by the Full Bench, based as it is on very good reasoning, commends itself a great deal to us. There can be no doubt that while considering the applicability of the principle of *res judicata* the provisions relating to appealability must also be kept in view.

On giving the matter our best consideration we are of the opinion that a Court of Small Causes cannot be regarded to be a Court of exclusive jurisdiction in the sense in which that expression is employed by their Lordships of the Supreme Court in *Srimati Raj Lakshmi Dasi's case* (2). It is noteworthy that in the illustrations given by their Lordships a reference has been made to the Revenue Courts, Land Acquisition Courts, Administration Courts, etc. These Courts have exclusive jurisdiction over a particular subject-matter. The Court of Small Causes can only be regarded to be a Court of preferential jurisdiction in the sense in which Jenkins, C.J., employed those words in *Ghulappa Bin Balappa's case* (3), In the

(1) I.L.R. 27 Mad. 63
(2) A.I.R. 1953 S.C. 33
(3) I.L.R. 28 Bom. 338

Maharaja Pateshwari Parshad Singh v. A. S. Gilani

Grover, J.

present case the suit was tried by the Court of Small Causes because it existed there and because of its establishment it came to have the sole jurisdiction to entertain that suit. It was not that the suit was entertainable only by such Court because "the matter" covered by the previous suit was triable by it alone in the same way as a probate or acquisition matter would be entertainable only by a Probate Court or Acquisition Court. Here the matter was such that it was triable by any Court of competent jurisdiction and it was tried by the Court of Small Causes as it was competent to try and entertain it by virtue of the provisions contained in the statute. If any other view is taken, it would also lead to strange and absurd results. It would be open then for a plaintiff to get suits of very large amounts which are triable by a Subordinate Judge on the regular side and against which an appeal lies to superior Court as of right decided by a Court of Small Causes by first instituting a suit which would lie to and can be entertained by that Court and against which only a revision would be competent and no appeal would lie. For instance in the present case there are several points of importance which have to be adjudicated upon. By adopting the device of filling a suit for Rs. 500 in the Court of Small Causes the plaintiff cannot be allowed to have those points adjudicated once and for all by a Court which from its very nature and the scheme of the Provincial Small Cause Courts Act is not expected to decide such matters. The object of the aforesaid statute is to have a speedy decision in suits which do not exceed Rs. 1,000 in valuation. In order to give finality to that decision no appeal has been provided against the decrees made by the Court of Small Causes except in matters covered by section 24 and only a revision is competent to this Court for the purposes of satisfying itself that the

Maharaja Pateshwari Parshad Singh v. A. S. Gilani

Grover, J.

decree or order made by the aforesaid Court was according to law. Schedule II read with section 15 excepts a large number of suits from the cognizance of a Court of Small Causes. Surely the intention of the legislature was not to confer powers on such Courts for decision of important matters. There can thus be no escape from the conclusion that in the present case the Court below was in error in considering that the previous decision of the Court of Small Causes operated as *res judicata* on account of the reasons given by Bhide, J., in *Ishwar Datt Churamani's case* (1). The entire basis of that decision is that such a Court is one of exclusive jurisdiction. Once that basis disappears, this case will have to be considered with reference to the provisions of section 11 of the Code only. It is not disputed that under section 11 the previous decision of the Simla Court cannot operate as *res judicata* so far as the present suit is concerned.

The learned counsel for the appellant also challenged the finding of the Court below on issue No. 1 and contended that that issue has also been decided in favour of the plaintiff because of the previous judgment which was considered to have the force of *res judicata*. As we are reversing the judgment of the trial Court on that point the finding on issue No. 1 is also hereby set aside.

For the reasons given above, this appeal is allowed and the decree of the Court below is set aside. The suit is remanded for a decision in accordance with law.

The parties have been directed to appear before the trial court on 4th May, 1959.

The Costs will abide the final event.

Gosain, J.

GOSAIN, J.—I agree.

B.R.T.

(1) A.I.R. 1937 Lah. 346