
As regards the attack on the validity of notification under section 4 based on non-publication thereof in terms of sub-section (1), the same must fail, for the allegations of facts in this regard have been emphatically denied.

In view of the above, I allow the writ petition with costs and direct the Collector (respondent No. 2) to serve notice upon the petitioner in strict compliance with the provisions of section 9(3) of the Act and thereafter give his award in accordance with law.

B.S.G.

Before R. N. Mittal, J.

NIKKA SINGH,—Appellant.

versus

BABU SINGH AND ANOTHER,—Respondents.

R.S.A. 904 of 1963

August 5, 1974.

Code of Civil Procedure (Act V of 1908)—Section 11—Punjab Tenancy Act (XVI of 1887)—Section 77—Cases exclusively triable by a Revenue Court under—Finding by the Revenue Court on the Collateral question of title in such a case—Whether operates as res-judicata on its general principles in a subsequent civil suit.

Held, that if a Revenue Court, while deciding cases falling within its jurisdiction under section 77 of Punjab Tenancy Act, 1887 has to decide Collateral questions which are not within its exclusive jurisdiction, the decision on the Collateral question can not operate as res-judicata when such a question comes up before a Civil Court in a subsequent litigation. The section does not confer on the Revenue Court jurisdiction to decide the questions of title. The Revenue Court can, however, decide the question of title collaterally while deciding a suit falling within its jurisdiction, but the finding of the Revenue Court regarding question of title so decided does not operate as res-judicata in a subsequent civil suit between the parties involving question of title.

Regular Second Appeal from the decree of the Court of Shri Om Parkash Sharma, Additional District Judge Patiala, dated the 2nd day of February, 1963, affirming with costs that of Shri R. K. Battas, Sub-Judge, 1st Class, Rajpura, dated the 8th January, 1962, granting the plaintiff a decree for declaration that he became

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owner of the suit and by its purchase on 12th September, 1953 and the defendant is not entitled to any rent for the period thereafter and further restraining the defendant from realising any rent from the plaintiff after 12th September, 1953. The defendant would also bear the costs of the suit.

Puran Chand, Advocate, for the appellant.

D. C. Ahluwalia, Advocate, for respondent No. 1.

JUDGMENT

MITTAL, J.—This second appeal has been filed against the judgment of the Additional District Judge, Patiala, dated February 2, 1963, by the defendants.

(2) Briefly, the facts of the case are that Nikka Singh defendant sold the land in dispute to the plaintiff on September 12, 1953 for a sum of Rs. 2,500 and received Rs. 1,500 in cash. It was recorded in a resolution which was signed by the defendant. The plaintiff had been in possession of the suit property after the sale. He has prayed that a decree for declaration that the defendant had sold his one-half share in the said land, be passed in favour of the plaintiff. The suit has been contested by Nikka Singh, defendant No. 1. He denied the allegations of the plaintiff and stated that he never sold this land to him (plaintiff). He had been in joint possession of the suit land along with the plaintiff. The plaintiff did not pay him the share of the profits arising out of the land and he instituted a suit for recovery thereof in the Revenue Court. One of the issues in that case was regarding the ownership of the land in dispute. That issue was decided in favour of the answering defendant. That judgment of the Revenue Court operates as *res judicata* between the parties. The trial Court held that the plaintiff had become the owner of the suit land by purchase from Nikka Singh, defendant and that the judgment of the Revenue Court does not operate as *res judicata* between the parties. Consequently, it decreed suit of the plaintiff. Defendant No. 1 went up in appeal before the Additional District Judge, Patiala, who affirmed the judgment and decree of the trial Court and dismissed the appeal. He has come up in appeal against the judgment and decree of the Additional District Judge, Patiala, to this Court.

(3) The first contention of the learned counsel for the appellant is that no sale was effected by the appellant in favour of respondent No. 1. He further submits that the resolution Exhibit P-5

dated September 12, 1953 during the consolidation proceedings on the basis of which respondent No. 1 claimed to have become owner of the land in dispute, is not admissible into evidence for want of registration.

(4) Both the Courts have given the concurrent finding of fact after taking into consideration all the documents on the record and the oral evidence that the transaction had already completed and the resolution during the consolidation proceedings was the memorandum of the completed transaction. Such memorandum of a transaction is not required to be registered under the Registration Act. It is admitted by the counsel for the parties that section 54 of the Transfer of Property Act was not applicable in Pepsu at the time of alleged transaction. In this situation it was not necessary that a registered sale deed should have been executed by the appellant in favour of respondent No. 1. The property in dispute could be sold orally in his favour by the appellant.

(5) I have also been taken through the evidence by the learned counsel for the parties. After examining the evidence I do not find sufficient reasons to interfere with the conclusion arrived at by the Courts below. Even otherwise, the finding of the first appellate Court being the finding of fact, is binding upon this Court. The said finding is not vitiated. In the circumstances I do not find any substance in the contention of the learned counsel for the appellant and reject the same.

(6) The second contention of the learned counsel for the appellant is that a suit was instituted by the appellant against respondent No. 1 for recovery of rent in a Revenue Court which was regarding the land in dispute. In that suit a plea was taken by respondent No. 1, that he was the owner of the land in dispute and an issue had been framed to that effect. The Revenue Court came to a conclusion that respondent No. 1 had not become owner of the land in dispute and it, therefore, decreed the suit of the appellant. The learned counsel for the appellant argues that the finding has been given by a court of exclusive jurisdiction and it operates as *res judicata* in the present case. He, therefore, urges that the present suit of respondent No. 1 is liable to be dismissed on this ground.

(7) I have examined the contention of the learned counsel for the appellant but do not find any substance in it. It is conceded

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by the learned counsel for the appellant that section 11 of the Code of Civil Procedure is not applicable to the present case. The case, therefore, will be governed by general principles of *res judicata*. The principle of law is that if a Revenue Court while deciding cases falling within its jurisdiction, has to decide collateral questions, which are not within its exclusive jurisdiction, the decision on the collateral questions cannot operate as *res judicata*, when such a question comes up before a Civil Court in a subsequent litigation. The cases which can be tried by the Revenue Courts have been given in section 77 of the Punjab Tenancy Act, 1887. That section does not confer on the Revenue Court a jurisdiction to decide the questions of title. The Revenue Court can, however, decide the question of title collaterally while deciding a suit falling within its jurisdiction. Applying the above principle to the present case, it is clear that the finding of the Revenue Court regarding question of title cannot operate as *res judicata* in a suit started subsequently in the Civil Court between the parties involving question of title.

(8) In this view I am supported by a Division Bench judgment of the Andhra Pradesh High Court in *Mylayarapu Chitti Sanyasi Prasad Rao v. Runku Lakshmayya* (1). In that case the Tenancy Court had been clothed with exclusive jurisdiction to direct the eviction of the tenants on the ground that the cultivating tenants was a defaulter. In order to determine the question whether eviction could be directed or not, it was necessary to find out whether the tenant was a defaulter. The finding on such a question did not fall within the exclusive jurisdiction of the Tenancy Court. It was held that in a subsequent civil suit to recover arrears of rent from the cultivating tenant, the findings of the Tenancy Court did not operate as *res judicata*. The relevant observations of the learned Court are as follows:—

“Under the general principles a judgment of a Court of exclusive jurisdiction can operate as *res judicata* only on a matter which that court could exclusively decide. It is not necessary that the Court of exclusive jurisdiction should be competent to hear subsequently filed suit. If for the purpose of deciding a question which relates to the exclusive jurisdiction, the special Tribunal finds it necessary to decide another matter, that matter does not

(1) A.I.R. 1967 A.P. 143.

become a matter of exclusive jurisdiction and any decision on any such matter neither binds the parties, nor can it operate as *res judicata*."

I am in respectful agreement with the observations of the learned Division Bench of Andhra Pradesh. The facts of the present case are similar to the facts of the above case and the observations of learned Judges are applicable to it. The learned counsel for the appellant has placed reliance on *Srimati Raj Lakshmi Dasi and others v. Banamali Sen and others*, (2). In that case it was held that on general principles, the findings of land Acquisition Courts, Administration Courts, Land Revenue Courts etc., operate as *res judicata*. There is no dispute about the proposition. In the case before the Supreme Court the finding of a Land Acquisition Court was held to be *res judicata* in a subsequent suit. The Supreme Court has not laid down that all findings of Courts of exclusive jurisdiction will operate as *res judicata* in the subsequent civil suit. As I have observed above, only those findings of the Courts of exclusive jurisdiction can operate as *res judicata* in subsequent civil suits which such Courts have exclusive jurisdiction to decide. The case before the Supreme Court is distinguishable on the facts and the observations in *Srimati Raj Lakshmi Dasi's case* (supra) will not be applicable to the facts of the present case.

(9) For the reasons recorded above, I dismiss the appeal with no order as to costs.

B. S. G.

Before A. D. Koshal and P. S. Pattar, JJ.

THE WARA WARYAM SINGH CO-OPERATIVE AGRICULTURAL SERVICE SOCIETY,—Appellant.

versus

GURBACHAN SINGH, PATWARI AND OTHERS,—Respondents.

L.P.A. No. 409 of 1973.

August 7, 1974.

Punjab Co-operative Societies Act (XXV of 1961)—Section 63—Constitution of India (1950)—Article 14—Section Providing more than one mode of execution of an award—Whether ultra-vires Article 14.

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