Yeshwant Bala Vs. Babai

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Court : Mumbai

Decided On : Mar-03-1944

Reported in : AIR1945Bom67; (1944)46BOMLR728

Judge : Macklin and ;Sen, JJ.

Appeal No. : First Appeal No. 8 of 1939

Appellant : Yeshwant Bala

Respondent : Babai

Disposition : Appeal dismissed

Judgement :

Macklin, J.

1. This is a plaintiff's appeal against the dismissal of his suit by the First Class Subordinate Judge of Satara. The suit was brought by the plaintiff as a person adopted into a joint family, and he claimed the property in suit from the persons in whose possession it was. But his suit was dismissed principally on the ground that the matter was res judkata by reason of the decision in some litigation that was launched in 1914. Other questions; as to the validity of the adoption and limitation were raised in the suit; but it is not necessary to deal with them in this appeal.

2. In 1907 one Bhiku was the last surviving male member of the joint family. He died in that year Waving a daughter named Chandrabhaga, who was married to a man named Anant. At the same time there was in existence one Nana (defendant No. 2 in the present litigation), who was the son of Bhiku's half sister Babai. There was also in existence another Babai (defendant No. 1 in the present litigation), the widow of Bhiku's predeceased brother, Bala. In 1908 the present plaintiff, Yeshwant, was adopted to Bala by his widow, Babai. In 1914 Chandrabhaga, claiming to be Bhiku's heir and as such the owner of the entire property once held by the joint family, brought suits against; the present plaintiff and defendants Nos. 1 and 2 for possession of the property. The suits were brought in the Court at Wai, which had jurisdiction to try them by reason of the fact that the property had been artificially split up so as to give rise to several claims in separate suits. The trial Court decided in favour of the plaintiff in the suits, and she was declared to be the owner of the property. The present plaintiff, Yeshwant, did not appeal against the decision; but the other parties appealed, and the matter came as far as the High Court. But Chandrabhaga had died in 1916 while, the matter was under appeal in the District Court. ThereuponChandrabhaga's husband, Anant, put in a claim to be regarded as legal representative and heir of Chandrabhaga, and Babai also (the present defendant No. 1), though a defendant in that suit, claimed to be the legal representative and heir of the deceasedChandrabhaga, the plaintiff in. the suit. The appeal was compromised in the DistrictCourt; but Anant was not a party to the compromise, and he appealed to the High Court. The High Court thought that'it was undesirable that a compromise in circumstances such as these should be accepted, since it was possible that it was collusive. It therefore restored the decree of the trial Court recognising Chandrabhaga as the owner of the property, but gave Anant liberty to establish his. own position as: heir of the deceased Chandrabhaga in a separate suit, if so advised. He filed a suit in 1921, but, compromised it; and we are no longer concerned withhim.

3. In the present suit there is prima facie a bar of res judkata in the way of the plaintiff. The! plaintiff's position now is exactly the same as it was in 1914. If he has now a good case for a claim to the property by reason of his adoption, he had an equally good case then ; and if he did not put it forward in that litigation, he ought to have put it. It is obvious that the owner of the property in that litigation could

have been none another than either Chandrabhaga or the present plaintiff, Chandra bhaga as heir of her father Bhiku or the plaintiff as adopted son of the predeceased coparcenerBala no one else had any claim) at all. But whether he put it forward or not, the case was decided in favour, of Chandrabhaga and against the plaintiff; and on the principles of res judicata it is evident that the present suit is barred, unless on some technical ground it is possible for the plaintiff to escape from the consequences. His learned counsel argues that on the law as it was understood in 1914 the plaintiff had no chance of convincing any Court that his adoption was a valid adoption (valid in the sense that it was capable of giving the plaintiff a title to the property). That may be so; but if by reason of recent decisions it is possible that the plaintiff could at the present time be held to have a valid title 'to the property by reason of his adoption, then in theory that should have been the position in 1914 also. The fact that the case law is changed does not alter the fact that the true law must be deemed to have been the same in 1914 as it is at the present time.

4. The other ground for disputing the application of the principle of res judicata is based on the wording of Section 11 relating to the jurisdiction of the Courts, Section 11 requires as a condition for the application of the principle of res judicata that the Court which tried the former suit or issue should be a Court competent to try the subsequent suit or issue or the suit in which the issue has been subsequently raised ; and it is argued that the Second Class Court at Wai could not have had jurisdiction to try the present suit, since the present suit is a First Class suit valued at Rs. 8,000 for the purposes of jurisdiction. But what happened in 1914 was that the items of property with which the1 present suit is concerned were split up so as to provide causes of action for several suits, and those suits were all filed separately but were heard together in a Second Class Court. But for this somewhat artificial method of dealing with the matter, the case would have gone to the First Class Court at Satara. Similarly, so far as we can see, the present case could 'have been artificially split up so as to give the Second Class Court at Wai jurisdiction. The distinction between the two sets of suits is thus a matter of form rather than a matter of substance. InBhugwanbutti Chowdhrani v. Forbes I.L.R. (1900) Cal. 78 it was pointed out that a (plaintiff cannot evade the provisions of what is now Section 11 of the Code of Civil Procedure by combining

several causes of action against the same defendant in a subsequent suit and instituting it in a Court of superior jurisdiction. Here we have the converse case. Instead of now combining several causes of action in order to give jurisdiction to a superior Court the position is that in 1914 the plaintiff (not the present plaintiff) split up the causes of action so as to give jurisdiction to an inferior Court. But the distinction, as I said, is one of form only and not one of substance; and the Privy Council has made it clear that an application of the rule of res judicata by the Courts in India should be influenced by no technical considerations of form but by matter of (substance within the limits allowed by law: see Kalipada De v. DwijapadaDas : 32 Bom. L.R. 505 s.c. where approval also was given to, a dictum of Lord Buckmaster in Ramachandra Rao v. Ramachandra Rao : 24 Bom. L.R. 963 s.c. that the principle which prevents the same case being twice litigated is of general application, and isi not limited by the specific words of the Code in this respect.'

5. As another branch of the same argument we were told that the value of the property has actually increased, and that when you have a case triable by a Second Class Court by reason of the value of the property at the date of the trial being less than Rs. 5,000, a subsequent rise in the value of the property to more than Rs. 5,000 would enable the litigation to bere-opened in a First Class Court, on the ground that the principles of res judicata would not apply to the suit in the First Class Court because at the date of such a suit the; Second Class Court would not have had jurisdiction to try1 it. There is no authority in support of such a contention ; and it seems to be unsound in view of the observations which I have already cited. We think that this suit is clearly barred as res judicata.

6. That being the position it is not necessary to consider the validity of the adoption of the plaintiff or the question whether this suit is barred by limitation. We have however been asked to give a declaration as to the validity of the adoption of .the plaintiff, because, we are told, there is certain watan property in the hands of other members of the family who are not parties to this litigation and were not parties to the litigation of 1914 or were not represented in that litigation, and the plaintiff wishes to be armed with a, declaration of the validity of his adoption in order that he may apply to the Collector in respect of the watan property. But to give the

plaintiff any such declaration, assuming that on the lawas at present understood he is a validly adopted son and is entitled to the watan property, would be going outside the scope of the suit, which is confined to property which is not watan property, just as1 in 1914 the suits were not concerned with the watan properties. That ground alone would make it impossible for us to give the plaintiff any such declaration. Whether it would be beyond our powers to give him any such declaration by reason of the principle of res' judicata, if the watan property had been included in this suit but had not been included in the litigation of 1914, is a question on which we do not feel called upon to express any opinion.

7. The appeal fails and is dismissed with costs payable to the heirs of defendant No. 2.