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Court : Allahabad

Decided On : Oct-18-1938

Reported in : AIR1939All110

Appellant : Ram Narain

Respondent : Ram Narain and ors.

Judgement :

Mulla, J.

1. These are two second appeals (Nos. 1006 and 1007 of 1936) which arise out of the same suit. The appellant in both appeals is the plaintiff in the suit. The suit was for possession of the site of a kotha by demolition of the constructions existing thereon and of an adjoining piece of land by demolition of the walls enclosing it. It was instituted in the following circumstances:

The plaintiff, Ram Narain, who is one of the zamindars of the village in which the property in dispute is situated, obtained a decree for arrears of rent against Ram Sahai and others. He put that decree into execution and attached a kotha which he alleged was owned and possessed by Ram Sahai. Thereupon Ram Narain, son of Than Singh, who is a respondent in both appeals, made an objection under Order 21, Rule 58, Civil P.C. alleging that the kotha really belonged to him and he was in possession thereof. This objection was dismissed by the first Court, but allowed in appeal with the result that the kotha was released from attachment. The

plaintiff then filed a suit under Order 21, Rule 63, Civil P.C. on 11th September 1931 (No. 459 of 1931) claiming a declaration that the kotha in question was owned and possessed by Ram Sahai and was consequently liable to sale in execution of the plaintiff's decree against Ram Sahai and others. That suit was, in the first instance, decreed ex parte against the respondent Ram Narain, who alone was contesting it. It appears that on the date on which the ex parte decree was passed the counsel appearing for the plaintiff made a statement that the relief claimed by the plaintiff was confined to the materials of the kotha. That ex parte decree was however set aside upon an application made by the respondent Ram Narain, who then proceeded to file a written statement in which he put forward the case that the kotha in dispute had been built by him 14 or 15 years ago with the permission of several zamindars of the village, and that Ram Sahai, the judgment-debtor of the plaintiff, had no right of any kind in that kotha. There is nothing to show that the respondent Ram Narain was aware of the fact that the relief originally claimed by the plaintiff had been modified by a subsequent statement of the plaintiff's counsel as mentioned above. The suit ended in a decree based upon a compromise between the parties. The compromise is to be found on the record in the shape of a statement made by the parties' counsel. As the question which arises for consideration in these appeals turns principally upon a correct interpretation of this compromise, I consider it necessary to set it out in extenso. Literally translated, it runs as follows:

We the parties have arrived at the following settlement, that if defendant 1 (Ram Narain) pays a sum of Rs. 36 to the plaintiff by 1st June 1932, the plaintiff's suit shall be dismissed and the parties shall bear their own costs. And the plaintiff shall set off the said amount against his decree of the Revenue Court. And if defendant 1 fails to pay the said amount within the prescribed period, then the plaintiff's suit shall be deemed to have been decreed with costs.

2. A decree followed upon this compromise at agreement between the parties, but it is to be noted that besides incorporating the abovementioned terms, the decree contains an addition to the following effect:

Then the, plaintiff's suit shall be deemed to have been decreed with costs, that is the materials of a kutch built, house bounded as given below...shall be liable to attachment and sale in execution of the decrees No. 135 of 1928 dated 19th December 1928, Ham Narain v. Ram Sahai and Ors.

3. It is admitted that the respondent Ram Narain carried out his part of the agreement by laying the sum of Rs. 36 to the plaintiff. The legal effect of this decree is the principal point which arises for consideration in these appeals. On 25th January the plaintiff instituted the suit out of which these appeals arise. In this suit the plaintiff's case is that the kotha in question was originally in the occupation of one of his tenants named Parmai, who was the father of Ram Sahai and died about 15 years ago. Upon his death his son Ram Sahai, who was then a minor, became entitled to the kotha, but as he lived with some of his relations in another house, the kotha remained unoccupied and gradually fell into ruin and finally collapsed about six years ago. Taking advantage of these facts, the respondent Ram Narain who lived with some of his relations in an adjacent house wrongfully took possession of the kotha and connected it with the house in which he lived by opening a door of communication in between. Later on, about four years ago, he encroached upon an adjoining piece of land belonging to the plaintiff and took possession of it by enclosing it with walls all round and turning it into a compound. The plaintiff alleges that Ram Sahai, who alone was entitled to occupy the kotha, abandoned it some time ago and gave up his residence in the village so that the plaintiff as one of the zamindars of the village has the right to re-enter upon the site of the kotha. On these allegations he claims possession of the site of the kotha and of the adjoining piece of land by demolition of all constructions standing thereon.

4. The respondent, Ram Narain, who alone has contested the suit, has raised several pleas but the only one with which we are concerned in these appeals is that the compromise decree referred to above which was passed in Suit No. 459 of 1931 operates as *res judicata* in the present case. He does not deny the proprietary right of the plaintiff as a zamindar in the site of the kotha and the adjoining piece of land, but he claims in effect that he has acquired the right to occupy the kotha and the land by virtue of the compromise in the previous suit.

The first Court allowed that plea to prevail in respect of the kotha, but not in respect of the adjoining piece of land, and consequently decreed the suit in part. The plaintiff appealed from that decree in so far as it dismissed his claim in respect of the kotha. The respondent Ram Narain filed a cross appeal in respect of the adjoining piece of land. The lower Appellate Court has disposed of both the appeals by the same judgment dismissing the plaintiff's appeal and allowing the cross-appeal made by the respondent Ram Narain, on the ground that the compromise decree in the previous suit operated as *res judicata* not only in respect of the kotha, but also in respect of the adjoining piece of land. Hence these two second appeals by the plaintiff.

5. The main argument on behalf of the plaintiff-appellant is that his capacity in the previous suit was that of a decree-holder trying to execute his decree and was entirely different from his capacity in the present suit which is that of a zamindar trying to enforce his proprietary right. Hence it is contended that he cannot be said to be litigating under the same title in both suits within the meaning of Section 11, Civil P.C. and consequently the decree in the previous suit cannot operate as *res judicata* in the present case. In my judgment, this argument rests upon a misapprehension of the true significance of 'capacity' and 'title' as contemplated by the law. In the eye of the law, a person occupies the same capacity so long as he 'sues or is sued for himself and in his own interest. The fact that in one case he sues as a decree-holder and in another as a zamindar makes no difference in his capacity which is in each case his individual capacity. The difference in such cases is not one of capacity or title as contemplated by Section 11, Civil P.C. but that of causes of action.

6. The change in capacity or title which matters in the eye of the law takes place only when in one case he sues or is sued for himself in his individual capacity and in another as a trustee or a person representing the interest of another. The same view of the law was taken by *Ashworth Rafiqunnissa Bibi v. Abdul Shakur Khan* : AIR1929 All400 . I therefore hold that the appellant's contention is not sound and cannot prevail. I am further of the opinion that the appellant's argument does not meet the real point in the case set up by the respondent Ham Narain, but only tries to demolish a plea which in its conception and construction is not strictly accurate.

I think the compromise decree in the previous suit really puts up a bar of estoppel by argument and not strictly that of res judicata.

7. The respondent's defence in effect is that by virtue of the compromise or agreement between him and the plaintiff in the previous suit he is entitled to remain in occupation of the kotha and the land in dispute and the plaintiff is estopped from enforcing his right as a zamindar to take possession of the property. The simple question for consideration therefore is what is the true interpretation of the compromise between the parties in the previous suit. On behalf of the respondent it is contended that he paid Rs. 36 to the plaintiff in the previous suit as a consideration for being allowed to remain in occupation of the property in dispute and the plaintiff got his suit dismissed on that payment and agreed not to enforce his right as a zamindar to eject the respondent from the property and to take possession thereof. Upon a careful consideration of the terms of the compromise in the light of the pleadings of the parties in the previous suit and all the surrounding circumstances, I think the respondent's contention is well founded so far as the kotha in dispute is concerned, though not in respect of the adjoining land. The dispute in that case was clearly confined to the kotha and had nothing to do with the adjoining land. The lower Appellate Court has relied upon certain documents for holding that the adjoining piece of land, which was admittedly in the respondent's possession at the date of the previous suit, was also the subject of dispute in that suit. The documents upon which the lower Appellate Court has based its finding in respect of the adjoining piece of land are the plaint in the previous suit, a site plan filed therein and the compromise decree.

8. All these documents give the boundaries of the house or kotha in dispute in that suit. The lower Appellate Court upon an interpretation of these boundaries has arrived at the result that they include the adjoining piece of land. I have carefully perused the plaint and the compromise decree, but I do not find anything in either of them even to suggest that the subject of dispute in that suit was not merely the kotha but also the adjoining land. On the other hand, the northern boundary of the kotha in dispute as given in all these documents is stated to be some land belonging to the plaintiff, and it is admitted that the piece of land in dispute in the present suit lies immediately to the north of the kotha. As regards the site plan

referred to by the lower Appellate Court, I find that it was filed in the previous suit not by the plain, tiff, but by the respondent Ram Narain, who claimed in his written statement that he was in possession not only of the kotha, but also of some land lying immediately to the north of it. The lower Appellate Court appears to have overlooked the fact that the copy of the site plan which is on the record of the present case is signed by Mewa Ram, who was the counsel for the respondents. It is obvious that no inference adverse to the plaintiff can possibly be drawn from the fact that in this site plan which was filed by the respondent to explain his written statement in the previous suit the land immediately to the north of the kotha in dispute was described as the respondent's 'sehan'. It is thus clear that the finding of the lower Appellate Court in respect of the land adjoining the kotha in dispute is not based upon any evidence bat entirely upon a misconstruction of certain documents and does not consequently have a binding effect.

9. The result therefore is that I allow the Appeal No. 1006 of 1936 and, setting aside the decree of the lower Appellate Court so far as it relates to the land adjoining the kotha in dispute, restore that of the trial Court. Appeal No. 1007 of 1936, which relates to the kotha in dispute, is dismissed. The parties shall bear their own costs. Leave to appeal by way of Letters Patent is refused.