

Abdul Rashid Vs. SirajuddIn and ors.

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Court : Allahabad

Decided On : Nov-29-1932

Reported in : AIR1933All206; 145Ind.Cas.461

Appellant : Abdul Rashid

Respondent : SirajuddIn and ors.

Judgement :

Iqbal Ahmad, J.

1. This is a plaintiff's appeal and arises out of a suit for a declaration of the plaintiff's right to and for joint possession over the properties detailed at the foot of the plaint. The plaintiff also claimed mesne profits. The parties to the present litigation are descended from a common ancestor named Lal Muhammad. Lal Muhammad died leaving eight sons:

LAL MUHAMMAD

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Sabit Safdar Qadir Nadir Afzal Abdul Abdul Abdul

Ali died Ali died Baksh died Ali died Ali died Latif died Wahid died Ghafur died

1881. 1882. 1887. 1893. 1898. April 1905. July 1905. 1918.

2. The eight sons mentioned above died in the years noted against their names. A complete pedigree of the family is to be found at P. 6 of the printed record.

3. The plaintiff-appellant before us is one of the sons of Afzal Ali and of the contesting defendants Sirajuddin, defendant 1, is the own brother of the plaintiff-appellant. The other contesting defendants are the heirs of Safdar Ali and Qadir Baksh. Of the eight brothers Nadir Ali and Abdul Latif died issueless. All the persons who were the legal heirs of the eight sons of Lal Mohammad were impleaded as defendants in the suit and most of them admitted the plaintiff's claim. The plaintiff's case was that all the eight sons of Lal Muhammad and their descendants were joint in business and that the various properties in dispute were purchased with joint funds in the names of one or some of the members of the family and that the entire properties acquired up to the year 1916 or 1917 belonged to all the members of the family in accordance with the legal shares enjoined by Mahomedan law and and that, as such, the plaintiff was entitled to the shares claimed by him in the various properties. The plaintiff embraced in the suit his claim to various shares as an heir of his father Afzal Ali, of his uncle Nadir Ali and of certain ladies who had also inherited shares in the various properties. It was common ground that originally various properties were purchased with joint funds in the name of Sabit Ali and that each of the sons of Lal Mohammad had a 1/8th share in the properties so purchased. On the death of Sabit Ali the name of Abdul Wahid, his brother, was recorded as against the properties purchased in the name of Sabit Ali and Abdul Wahid managed those properties on behalf of the whole family. After the death of Sabit Ali in 1882, Abdul Wahid got the names of the sons of Safdar Ali, the names of the sons of Sabit Ali, and his own name, and the names of his remaining five brothers entered against the properties in equal shares, i.e., 1/8th of the properties acquired up to that time were recorded in the name of each branch of the eight sons of Lal Muhammad. The plaintiff alleged that even after 1883 acquisitions used to be made from joint funds for the benefit of all the heirs of Lal Muhammad in the names of one or of other members of the family

and that all the heirs of Lal Muhammad were entitled to the properties acquired up to the year 1916 or 1917.

4. The suit, as already stated, was contested by Sirajuddin and certain other defendants. They, while admitting that the acquisitions up to the year 1886 were for the benefit of all the members of the family of Lal Muhammad, denied that the properties acquired since 1886 were acquired from joint funds or for the benefit of any persons other than those in whose names the various acquisitions were made. They asserted that the vendees under the various sale-deeds, by means of which properties were acquired since the year 1886, were the real owners of the properties purchased in their names and not benamidars on behalf of all the members of family of Lal Muhammad. In short, they put the plaintiff to proof of his title to all the properties that were acquired in the name of one or other of the contesting defendants or of their ancestors since the year 1886. The plaintiff, on the other hand, contended that the defence now raised by Sirajuddin and the other contesting defendants was, in view of decisions in certain earlier suits, to which reference shall presently be made, barred by the principle of *res judicata*. The learned Subordinate Judge accepted the contention of the defendants and dismissed the plaintiff's suit. The plaintiff has come up in appeal to this Court and it is argued on his behalf that the defendants were estopped from raising the defence that they did in the Court below and that the finding of the learned Subordinate Judge that the plaintiff failed to substantiate his allegation that the various acquisitions were made for the benefit of all the members of the family is against the weight of evidence upon the record.

5. It appears that in the years 1916 and 1917 no less than five suits were filed by some of the members of the family of the parties to the present litigation on exactly similar allegations as those on which the present suit was based. The plaint of one of those suits is printed at p. 119 of the record. That suit was filed by the sons of Abdul Wahid and all the descendants of Lal Mohammad including the plaintiff and the contesting defendants in the present litigation were arrayed as defendants to that suit. The other four suits were consolidated with the suit filed by the sons of Abdul Wahid and were tried together. In those suits Sirajuddin, one of the contesting defendants in the present case, resisted the claims of the various

plaintiffs on allegations identical with the allegations on which he resisted the present suit. The written statement of Sirajuddin is printed at p. 135 of the record. Abdul Rashid the present plaintiff also filed a written statement which is to be found at p. 129 of the record. The case put forward by him in that written statement was exactly the same as is now embodied in the plaint of the present litigation. The learned Subordinate Judge held in that case that all the properties including those that were acquired after 1886 were acquired out of joint funds of the family and that all the heirs of Lal Mohammad were entitled to a share in the same in accordance with their legal shares and accordingly decreed all the five suits. It was contended on behalf of the plaintiff-appellant that the decision in the suits mentioned above operated as res judicata between the co-defendants of those suits, and as the contesting defendants in the present suit and the plaintiff were arrayed as defendants in the former suits mentioned above, the present contesting defendants were estopped from raising the defence that they did in the present suit and that has been accepted by the Court below. In our judgment this contention is well founded and ought to prevail. It has been laid down by their Lordships of the Privy Council in the case of Munni Bibi v. Tirloki Nath , that the correct criterion in cases where it is sought to apply the rule of res judicata as between co-defendants is to be determined :

- (1) whether there was conflict of interest between the defendants concerned;
- (2) was it necessary to decide that conflict in order to give the plaintiff the relief that he claimed, and
- (3) was the question finally decided between the defendants. If all these conditions are satisfied then the decision will operate as res judicata as between the defendants inter se. To the same effect is the decision of their Lordships of the Privy Council in Maang Sein Done v. Ma Pan Nyan .

6. It appears to us that all the essentials that are requisite to constitute a decision resjudicata as between co-defendants are to be found in the decisions in the suits that were filed in 1916 and 1917. In those suits certain members of the family of Lal Muhammad laid a claim to certain shares in the properties on the allegation that the properties belonged jointly to the plaintiffs and the defendants of those

suits. This allegation of the plaintiffs of those suits was denied by Sirajuddin and certain other persons who contested the claims but was admitted by Abdul Rashid, the present plaintiff, and certain other members of the family of Lal Muhammad. In order to decide those suits it was necessary for the Court to determine whether or not the properties in dispute belonged jointly to the plaintiffs, the non-contesting defendants and the contesting defendants of those suits. Further in order to ascertain the shares of the plaintiffs of those suits it was necessary to determine the extent of the shares held by the various defendants. It is clear therefore that in order to grant relief to the plaintiffs of those suits it was necessary to adjudicate upon the rights of both the contesting and non-contesting defendants in those suits,

7. The interest of the plaintiffs and non-contesting defendants were identical and were opposed to the interests of the contesting defendants. An adjudication on this conflict of interest was necessary in order to adjudicate the rights of the parties. The Court as a matter of fact did decide' this controversy between the various parties. It is manifest therefore that the decisions in the earlier suits were binding as between the contesting defendants of those suits and the non-contesting defendants. It has been stated above that the contesting defendants in the present suit were also contesting defendants in the earlier suits and that Abdul Rashid the present plaintiff was a party to the earlier suit. There is no escape from the conclusion therefore that the defence now raised by Sirajuddin and others is barred by the decisions in the earlier suits. The learned Counsel for the respondents has placed reliance on a number of decisions. All those cases are authorities for the proposition that in order to constitute res judicata between co-defendants it is necessary that there should be active controversy between those defendants and an adjudication upon that controversy should be necessary for the purpose of granting relief to the plaintiff. This proposition of law is well established and no exception can be taken to it, but as it has already been observed, those elements were present in the former litigations to which the plaintiff and the defendants of the present suit were parties. We must however notice two of the cases relied upon by the learned Counsel. The learned Counsel places great reliance on the case of Mohammad Ahmad v. Zahur Ahmad AIR 1922 All 19. In that case it was held that

where in a previous suit for partition the parties to the subsequent suit were arrayed as co-defendants, but the decision in that suit did not affect any question of partition of their respective shares

the decision could not be held to have the effect of *res judicata* as between the persons who had been arrayed as co-defendants in the previous suit. It would appear by a reference to the report at p. 197 (of 20 A.L.J.) that the issue in the previous suit was not identical with the issue that arose for determination in the subsequent suit in which the earlier decision was pleaded as having the effect of *res judicata* between the co-defendants. That case has no application to the case before us for the simple reason that the issue that arose for determination in the present suit was identical with the issue that formed the subject-matter of consideration and was actually decided by the Court in the previous five suits between the members of the family of Lal Muhammad. The second case relied upon by the learned Counsel is a Full Bench decision of the Madras High Court reported as *Somasundara Mudali v. Kulandaivela Pillai* (1905) 28 Mad 457. The question whether a decision in an earlier suit is *res judicata* in a subsequent suit between the co-defendants was neither considered nor decided in that case. The sole question that engaged the attention of the Full Bench was whether the earlier litigation was or was not in a representative capacity so as to come within the purview of Expl. 5 to Section 13, Civil P.C., 1882. For the reasons given above we hold that Sirajuddin and the other contesting defendants were barred from raising the defence that they raised in the present suit. We now pass to a consideration of the question of fact. We wish to make it perfectly clear that we are alive to the fact that the presumptions that hold good in the case of acquisitions in the names of individual members of a joint Hindu family have no application to acquisitions made in the names of individual members of a Mahomedan family. We further note the fact that the law does not recognize the existence of a joint Mahomedan family or tenancy in common so far as a Mahomedan family is concerned. It is further to be borne in mind that in a case like the present the burden lies on the plaintiff to substantiate his allegation that certain acquisitions that were made in the name of particular persons were acquisitions for the benefit of persons other than those in whose names the acquisitions were made. In the light of these principles we have approached the consideration of the evidence in the present

case. (Their Lordships considered the whole evidence, oral and documentary and held that the plaintiff had succeeded in proving the allegations on which his claim was based. The judgment then proceeded). The Court below held that the claim with respect to certain properties was barred by Section 66, Civil P.C., and that the suit was also barred by limitation. The decree of the Court below has not been supported before us on either of these grounds. (The rest of the judgment is not necessary for the purposes of this report).

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