

Jhuma Ram Vs. Prami Bai

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Court : Rajasthan

Decided On : Jan-31-1973

Reported in : AIR1973Raj234; 1973()WLN147

Judge : B.P. Beri and; M.L. Joshi, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 9; [Constitution of India](#) - Article 226

Appeal No. : Civil Spl. Appeal No. 30 of 1967

Appellant : Jhuma Ram

Respondent : Prami Bai

Advocate for Def. : H.M. Lodha, Adv.

Advocate for Pet/Ap. : H.C. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

Beri, J.

1. This is a special appeal under Section 18 of the Rajasthan High Court Ordinance, 1949 directed against the judgment of a learned Single Judge dated

12-4-1967 whereby he dismissed the plaintiff-appellant's appeal.

2. In order to appreciate the nature and the scope of the controversy it will be necessary to recall the various stages of the litigation between the parties. Mool Chand and Jhuma Ram two brothers migrated from Pakistan to India and settled in 10 G Chhoti Tehsil Ganganagar in 1947. The family was allotted 37 1/2 bishas of agricultural land in the name of Mool Chand, who was the Karta of the joint Hindu family. Mool Chand died on 19-10-1952. Laxmi Bai widow of Mool Chand applied under Section 9 of Displaced Persons (Compensation and Rehabilitation) Act, 1954, (hereinafter called 'the Act') for the partition of the land allotted to Mool Chand. Jhuma Ram resisted this application on the ground that the property was joint Hindu family property allotted to the family in satisfaction of the assets left by them in Pakistan, Jhu-maram's contention was repelled by the Settlement Officer, Ganganagar by his order dated 7th Jan., 1958. whereby he divided the land in two equal shares, one share whereof was given to Laxmi Bai and the other to Jhuma Ram.

Being dissatisfied Jhuma Ram preferred an appeal before the Assistant Settlement Commissioner, Raiasthan. who promptly dismissed the appeal on 8th March, 1958 Jhuma Ram then went up in revision before the Deputy Chief Settlement Commissioner. New Delhi. This re-vision was allowed to the extent that the land be allotted on the basis of the claims held by the parties and the order of partition by the Deputy Chief Settlement Commissioner (sic) was upheld. Jhuma Ram was still aggrieved by the order of the Deputy Chief Settlement Commissioner and challenged it by way of a writ petition under Article 226 of the [Constitution of India](#) in the Punjab High Court, and Mahajan J. by his judgment dated May 17, 1961 dismissed the said petition. Dissatisfied Jhumaram Preferred Letters Patent Appeal before a Division Bench of the Punjab High Court, which was also dismissed on 6th December, 1961.

Jhumaram thereafter instituted a suit before the Munsiff, Ganganagar on 3rd March, 1962 praying for a declaration that he was the sole and exclusive owner of the agricultural land measuring 37 1/2 bighas of land situated in 10 G Chhoti Tehsil Ganganagar and that the defendants be restrained from interfering with his

possession. This suit was resisted by smt. Laxmi Bai, inter alia on the ground that the Civil Court had no Jurisdiction to entertain the Suit. Out of the four issues framed, issue No. 3 was 'whether the suit was not cognizable by a Civil Court?' By his judgment dated 15-11-1962 the learned Munsiff dismissed the suit deciding this issue in favour of the defendant. An appeal was taken to the Senior Civil Judge, Ganganagar. but Jhuma Ram failed again when the same was dismissed on 14-5-63. Jhumaram came to the High Court in second appeal and the learned Single Judge by his judgment dated 12-4-1967 also dismissed the appeal on the ground that the Division Bench judgment of the Punjab High Court has concluded the controversy and the suit instituted by Jhumaram was barred by the doctrine of res iudicata. Jhumaram's tenacity remains unabated and he has come up in special appeal.

3. Mr. H. C. Jain learned counsel for the appellant argued the judgment of the Punjab High Court dated 6th December. 1961', could not operate as res iudicata against the appellant, for the Punjab High Court had not decided any Question finally. In the alternative he submitted that assuming, they had decided such a question then the respondent be deemed to have waived her right to raise the ground of res iudicata because the same was not pleaded in the written statement before the trial court and the first and the second appellate Court. He placed reliance on *Suravya v. Gangadhara Ramakrishna Reddi*, AIR 1948 PC 3.

4. Mr. H. M. Lodha learned counsel for respondent urged that when the point of res judicata was raised before the learned Single Judge, no objection was taken, but on the contrary the appellant joined the issue. Now that it has been decided and it is not open to the appellant to say that the respondent had waived the ground. He further submitted that in the memorandum of appeal presented before this Court in the special appeal no ground has been raised to the effect that the plea of res iudicata had been waived. 5. The precise passage from the judgment of Division Bench of the Punjab High Court dated 6-12-1961, by reference to which the first argument of the learned counsel for the appellant could be considered and decided deserves to be quoted. It reads.

'Before us it has been contended that there is no jurisdiction to partition land once it has been allotted. The Deputy Chief Settlement Commissioner has pointed out that land allotted can always be partitioned and that this is not a rehabilitation grant but an allotment of land on the basis of land claim held by the members of this family, and since that is so, there can be no objection to Partitioning allotted property. As to who carries out the actual partition is a secondary matter when a petition under Article 226 of the Constitution is being considered. What we have to see in a case of this nature is whether any manifest injustice has been caused by the impugned order. We find that there can be no grievance on this score, because (a) the final shares of the parties have not yet been determined and (b) a partition can undoubtedly be effected by a revenue authority, if not by the rehabilitation authorities, although in the present case I am not satisfied that the order was without jurisdiction because Section 9 does contemplate the payment of compensation to the various persons entitled to it in cases of dispute. It may be that this is not a case of payment of compensation in the original instance but a case of partitioning property when there is a desire to partition it after allotment, and so, strictly speaking, Section 9 would not apply but the Act does contemplate payment of compensation to different person when there is a dispute regarding their respective shares, and if that be the case, it cannot be said that the order of the Deputy Chief Settlement Commissioner has occasioned any injustice to either party. Mahajan J. was, therefore, right in dismissing the petition on this short ground.'

(Emphasis is ours).

6. Mr. Jain's contention is that while the learned Judges of the Punjab High Court correctly appreciated the contention raised on behalf of Jhuma Ram they did not decide the question of jurisdiction. In other words the ground taken was that the Settlement Authorities had no jurisdiction to partition the property once it had been allotted. It is clear that what the learned Judges of the Punjab High Court said was that the order of partition Passed by the authority was not without jurisdiction. Besides it occasioned no failure of justice. We are, therefore, of the opinion that the argument was considered and rejected. The question, therefore, which emerges for consideration is whether this is a decision regarding the question of

iurisdiction by a competent Court between the parties. The answer to this question, is plainly in the affirmative. Any argument challenging the correctness of this judgment does not lie before us, and therefore, we decline to entertain the contentions raised from that angle. Once we come to the conclusion, as we have, that the question of jurisdiction of the Settlement Authorities under the Act to partition and allot the property, was reached after a contest, it would clearly operate as *res iudicata* for the purposes of the suit before the Munsiff, Ganganagar. The plain purpose of the doctrine of the *res iudicata*, which is also known as estoppel by judgment is that let no man be vexed twice over for the same cause. Multiplicity of legal disputes is to be checked. It is a recognised public policy in all civilized systems of jurisprudence. In this very case Jhuma Ram has gone before as many as 9 courts or tribunals in the course of these 14 years taking successive action and yet the dispute does not seem to come to an end. This is precisely what the doctrine of *res iudicata* aims to prevent. Therefore, in our opinion the judgment of the Punjab High Court dated 6-12-1961 is a clear bar by way of *res iudicata* on question of jurisdiction on the part of the Settlement Officer so far as the land held by Jhuma Ram is concerned.

7. Now comes the question whether the plea of *res iudicata* has been waived. In *the State of Punjab v. Bua Das Kaushal* in Special Leave Petn. No. 2203 of 1969 Civil Appeals Nos. 344 of 1966 and 336 of 1969 decided by their Lordships of the Supreme Court on 13-10-1970 = reported in AIR 1971 SC 1676 it has been observed that plea of *res iudicata* is not waived if the necessary facts were present in the mind of the parties and gone into by the Court. The judgment at the Punjab High Court was constantly in the mind of the Parties. Muffasil pleadings are not unoften valuable because they do not correctly and concisely put forward all the pleas. In substance the plea of *res iudicata* was discovered by the learned Single Judge in the facts and circumstances of the case. No objection was taken that it could not be urged. Nor is there any complaint on this score contained in the memorandum of appeal before us. In the circumstances we cannot spell out any waiver of the Plea of the *res iudicata* on the part of the respondent.

8. The result is that this appeal fails and it is dismissed with costs.

