

Suraj Devi Vs. Kewal Krishna and ors.

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Court : Rajasthan

Decided On : Jul-17-1986

Reported in : 1987(1)WLN96

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Civil Revision Petition No. 547 of 1984

Appellant : Suraj Devi

Respondent : Kewal Krishna and ors.

Disposition : Petition dismissed

Judgement :

Kishore Singh Lodha, J.

1. Smt. Suraj Devi has filed this revision against the order of the learned Addl. Civil Judge, Bikaner dated 27-8-84 by which three issues, treated as preliminary issues, have been decided against her.

2. The facts giving rise to this revision briefly stated are that the non-petitioner Kewal Krishna filed a suit for declaration and injunction against the defendant Smt. Suraj Devi and others alleging that he was originally the tenant of the defendants No. 3 to 5 in the premises described in para 1 of the plaint. He was granted the facilities of electricity and water by the original land lords and he had been paying

the charges thereof regularly to the original landlords. Later, part of the premises was purchased by defendant No. 1 Smt. Suraj Devi and the plaintiff continued to be in possession thereof as a tenant and had been enjoying the facilities of electricity and water and he also continued to pay the charges thereof to Smt. Suraj Devi. However, it was alleged that the defendant No. 1 disconnected the electric and water connections from the suit premises without any reason and without the order of any competent court, whereupon the plaintiff applied under Section 12 of the Rajasthan Premises (Control of Rent and Eviction) Act (here in after referred to as 'the Act' before the S.D.M. City, Bikaner. That application was dismissed by the learned S.D.M. holding that there was no agreement between the land lords and the tenant about the supply of water and electricity and, therefore, the tenant was not entitled to the restoration of the said facilities. Having failed in the proceedings under Sections 12(3) of the Act, the plaintiff filed the present suit claiming a decree for a declaration that there was an agreement between the original land-lords and the tenant for the supply of electricity and water to the tenant and the same continued with defendant No. 1 that the supply have wrongly been cut off by defendant No. 1 and he also prayed for a mandatory injunction directing defendant No. 1 to restore the facilities so disconnected. Defendant No. 1 and 2 contested the suit and while denying the allegations about the agreement regarding supply of electricity and water they, inter alia, pleaded that the suit was barred by res judicata as the matter had been decided by the Magistrate and the plaintiff's appeal before the District Magistrate had also failed, that the civil court had no jurisdiction to entertain the suit and that the plaintiff was estopped from filing the present suit. On these pleadings eight issues were framed by the trial court, out of which issues No. 1, 4 and 6 regarding res judicata, jurisdiction and estoppel were treated as preliminary issues and after hearing the parties, the learned Addl. Civil Judge decided all the three issues against the defendants and held that the suit was maintainable. Aggrieved of this order of the learned Addl. Civil Judge dated 27-8-84, defendant No. 1 Suraj Devi has come up in revision.

3. I have heard the learned Counsel for the parties.

4. The only contention raised before me by the learned Counsel for the petitioner is that the learned Addl. Civil Judge has committed an error of jurisdiction in holding that the suit was not barred by res judicata and was triable by him. He urged that when the competent authority under the Act had already decided the question about the agreement regarding electricity and water supply, the decision must be deemed to be final and must operate as res-judicata so far as the present suit is concerned. He further urged that the principle of res-judicata is applicable even if the former proceedings are not a suit. He also drew my attention to the explanation (8) of Section 11 CPC whereby it has been provided that an issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res-judicata in a subsequent suit, not with standing that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised. The contention of the learned Counsel before whom the application under Section 12(3) of the Act had been filed was a court of limited jurisdiction, competent to decide the question and the matter must be deemed to have been finally decided by him and, therefore, in view of the Explanation (8) of Section 11 CPC the present suit must be held to be barred by the res-judicata. Having heard the learned Counsel for the parties [do not find any substance. In order to attract the provisions of Section 11 CPC, apart from the other conditions the decision in the earlier matter must be by a court and it may at once be stated that the Magistrate to whom an application under Section 12 of the Act can be filed cannot be deemed to be a court and for that matter the District Magistrate to whom an appeal lies against the decision of the Magistrate by virtue of Section 22(3) of the Act also cannot be deemed to be a court. Therefore, the very first ingredient of Section 11 is missing and Section 11 as such cannot apply in the present case.

5. In the second place, even if it is to be assumed that although Section 11 as such may not apply, the principle underlying it may apply. It is further to be noted that the decision given by the court or the authority must be final between the parties but neither Section 12 nor Section 22(3) of the Act make the orders passed by the Magistrate or the District Magistrate as the case may be final. It may also be stated here that the jurisdiction of the Magistrate Under Section 12(3) is not exclusive jurisdiction and it only enjoins a summary jurisdiction to restore the

amenity to the tenant if the tenant has wrongfully been deprived of them by the landlord. In this connection instead of dwelling further on the matter, I will only refer to a Division Bench decision of our Court reported in Hanuman Prasad v. Board of Revenue and Ors. in which relying on Bhagwan Din v. Gir Har Swaroop AIR 1940 PC 7(A), their Lordships held that a decision in a summary proceedings which is not a court of exclusive jurisdiction and which is not made final under the law in summary proceedings cannot operate as res-judicata in a subsequent suit. A reference to Section 12 would clearly go to show that under Sub-section (5) thereof the Magistrate has to conduct the proceedings in a summary manner and dispose of the application presented under Sub-section (1) by the landlord or under Sub-section (3) by the tenant within three months from the date of first hearing and as already stated above, the decision of the Magistrate arrived at in these circumstances summary proceedings had not been made final nor the order passed by the District Magistrate in appeal against such order under Section 22(3) of the Act is made final and in these circumstances the aforesaid Hanuman Prasad's case applies with full force to the present one.

6. Faced with this situation, the learned Counsel again placed reliance upon Explanation (8) to Section 11 and has urged that this explanation has been added in 1976 and, therefore, the decision of our Court in Hanuman Prasad's case (supra) should not now be applied. I am unable to agree with it. According to explanation (8) to Section 11 also it is an issue heard and finally decided by a Court of limited jurisdiction which may operate as res-judicata in a subsequent suit but as already stated the decision of the Magistrate or the District Magistrate for the matter of that is not a final decision as the proceedings are only summary before them and no finality has been attached to the decision of the Magistrate or the District Magistrate. It is also not a decision by a Court as stated above. It is well settled by now that unless the bar has been accorded by any statute the jurisdiction of a civil court under Section 11 CPC is not excluded and, therefore, even after the summary proceedings before the authorities under the Act, the parties can approach the civil court for a final adjudication of their rights. If that is so the summary decision of the authorities under the Act cannot naturally have the force of res-judicata before the civil court. I am, therefore, clearly of the opinion that the learned Addl. Civil Judge was perfectly justified in holding that the suit was

not barred by res-judicata, that the civil court had jurisdiction to entertain it and the plaintiff was not estopped from bringing such a suit.

7. The learned Counsel for the petitioner had brought to my notice the decisions reported in *The Workmen of Cochin Port Trust v. The Board of Trustees of the Cochin Port Trust and Anr.* : (1978)IILLJ161SC , *Smt. Krishnabai and Ors. v. Baburao and Ors.* : AIR1978 Bom290 , *Commissioner, Trichur Municipality v. Krishnan Menon and Ors.* : AIR1980 Ker162 . *The Premier Automobiles Ltd. v. K.S. Vadke and Ors.* : (1975)IILLJ445SC , and *Munshi and Ors. v. Chairanji Singh and Anr.* AIR 1959 All. 237). I have carefully gone through them but in my opinion none of them applies to the facts of the present case, in as much as in none of these authorities it has been laid down that the order of an authority having only summary jurisdiction and whose decisions are not final would operate as res judicata in a suit before a civil court. I, therefore, do not propose to deal with these authorities in detail.

8. The result, therefore, is that the revision fails and is hereby dismissed, however, looking to the circumstances of the case I shall make no order as to costs.

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