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Court : Rajasthan

Decided On : Jul-30-2002

Reported in : RLW2003(3)Raj1853; 2003(1)WLC379

Judge : B.S. Chauhan, J.

Acts : Evidence Act - Sections 13, 41 and 43; Code of Civil Procedure (CPC) - Sections 151

Appeal No. : S.B. Civil Revision Petition No. 589/2002

Appellant : Ganesh Singh

Respondent : Hari Singh and ors.

Advocate for Pet/Ap. : Ashok Chhangani, Adv.

Disposition : Revision dismissed

Judgement :

Chauhan, J.

1. Instant revision has been filed against the order dated 14.3.2002, by which the learned trial Court has rejected the application of the petitioner under Section 151 of the Code of Civil Procedure, 1908 (for short, 'the Code'), observing that copy of the judgment and order dated 18.1.2002, in the suit between the non-petitioner

and some other tenant, wherein it had been held that the need of the non-petitioner was not bonafide, is not admissible in evidence.

2. The facts and circumstances giving rise to this case are that the non-petitioner/plaintiff filed a suit for eviction of the petitioner-defendant on various grounds including the ground of his bonafide need. Non-petitioner/plaintiff had also filed a suit against some other tenant on the same ground, including the ground of bonafide need, which stood dismissed vide judgment and decree dated 18.1.2000, holding that the non-petitioner/plaintiff failed to prove the requirement of bonafide need. Petitioner filed an application to take the copy of that judgment dated 18.11.2000 on record submitting that such a judgment, though not inter-party, was admissible in evidence, in view of the provisions of Section 13 read with Sections 41 to 43 of the Evidence Act, 1872 (for short, 'the Act'). The said application has been rejected. Hence, this revision.

3. The provisions of Sections 41 to 43 of the Act make it clear that if a judgment of the court is a judgment in rem, it is binding in subsequent proceedings on that issue though the parties may not be same. But if it is a judgment in personam, it does not have any binding effect in subsequent proceedings. This issue was considered by the Privy Council in *Mahomed Saddique Yousuf v. Official Assignee of Calcutta* (1), wherein it was held that in proceedings of insolvency, an order passed on adjudication is of a binding nature being a judgment in rem and a person, who may not be a party in the insolvency proceedings, cannot challenge the said order for the reason that the order of adjudication was conclusive in nature and cannot be disputed.

4. In *Surinder Kumar and Ors. v. Gyan Chand and Ors.* (2), the Hon'ble Supreme Court held that probate of the Will operates as a judgment in rem, therefore, the objection that the parties in any subsequent proceedings were not parties to it, is not sustainable because of the nature of the judgment.

5. In *Smt. Satya v. Teja Singh* (3), the Supreme Court observed as under:-

'Section 41 of the Indian Evidence act provides, to the extent material, that a final judgment of the competent court, in the exercise of matrimonial jurisdiction, is

conclusive proof that a legal character, which it confers or takes away, accrued or ceased at the time declared in the judgment for that purpose. But the judgment has to be of a competent Court, i.e. a court having jurisdiction over the parties and the subject matter. Even a judgment in rem is, therefore, open to attack on the ground that the Court, which gave it, had no jurisdiction to do so.'

6. While deciding the said case, the Apex Court placed reliance upon its earlier judgment in *R.Viswanathan v. Rukn-ul-Mulk Syed Abkdu Majid* (4).

7. In *Anil Behari Ghosh v. Smt. Latika Bala Dassi* (5), the Supreme Court considered a case: whether previous judgment of a criminal Court, convicting the son of the testator for murder, can have relevancy in the subsequent proceedings for revocation of grant of probate under the provisions of Section 43 of the Act, the Court held that where, in a proceeding for revocation of grant of probate under Section 263 of the Indian Succession Act, the question is: whether the son of the testator murdered him, it cannot be assumed, on the basis of a previous judgment of a criminal court convicting the son for murder of his father and sentencing him for the same that the son was the murderer of the testator, for the reason that the judgment of the criminal court is relevant only to show that there was such a trial resulting in the conviction and sentence of the son, but it cannot be the evidence of the fact that the son was the murderer of the testator and that question is to be decided on evidence in the pending proceedings.

8. In *Karam Chand Ganga Prasad and Anr. v. Union of India* (6), the Supreme Court held that the decisions of the civil court are binding on criminal courts but converse is not true, though the cases in civil and criminal courts may be between the same parties.

9. In *S.M. Jakati and Anr. v. S.M. Borkar and Ors.* (7), the Supreme Court held that any opinion given in the order by the Authority as to the nature of the liability of 'A', could not be used as evidence in the other proceedings to determine whether the debt was falling within a particular category or 'Avyavaharik' or otherwise, for the reason that the order was not admissible to prove the truth of facts therein stated and except that it may be relevant to prove the existence of the judgment itself, it would not be admissible in evidence.

10. In *Gurdit Singh v. State of Punjab* (8), the Supreme Court explained as under:-

'A judgment of a court is an affirmation, by the authorised societal agent of the State, speaking by the warrant of law and in the name of the State, of the legal consequences attending of proved or admitted state of facts. Its declaratory, determinative and adjudicatory function is its distinctive characteristic. Its recording gives an official certification to a pre-existing relation or establishes a new one on pre-existing grounds.

11. In *State of Bihar and Ors. v. Sri Radha Krishna Singh and Ors.* (9), the Hon'ble Supreme Court, while considering the scope of provisions of Sections 13 and 41 to 43 of the Act, to prove the admissibility of the earlier judgment, observed as under:-

'Some courts have used Section 13 to prove the admissibility of a judgment as coming under the provisions of Section 43.... We are, however, of the opinion that where there is a specific provision covering the admissibility of a document, it is not open to the Court to call into aid other general provisions in order to make a particular document admissible. In other words, if a judgment is not admissible as not falling within the ambit of Sections 40 to 42, it must fulfil the conditions of Section 43 otherwise it cannot be relevant under Section 13 of the Evidence Act. The words 'other provisions of this Act' cannot cover Section 13 because this section does not deal with judgments at all.

It is also well settled that a judgment in rem like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings, is admissible in all cases whether such judgments are inter parties or not. In the instant case, however, all the documents consisting of judgments filed are not judgments in rem and, therefore, the question of their admissibility on that basis does not arise. As mentioned earlier, the judgments filed as Exhibits in the instant case, are judgments in personam and, therefore, they do not fulfil the conditions mentioned in Section 41 of the Evidence Act.

12. The court further summarised the law as under:-

(1) A judgment in rem e.g. judgments or orders passed in admiralty, probate proceedings, etc., would always be admissible irrespective of whether they are inter parties or not.

(2) Judgments in personam not inter parties are not at all admissible in evidence except for the three purposes mentioned above.

(3) On a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.

(4) The probative value of documents which, however, ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.

(5) Statement, declarations or depositions, etc., would not be admissible if they are post litem motam.'

13. While deciding the said case, the Court took into consideration the judgments in *Kesho Prasad Singh Bahadur v. Bhagjogna Kuer* (10); and *Coca-cola Company of Canada Ltd. v. Pepsi-Cola Company of Canada Ltd.* (11).

14. In *Gadadhar Chowdhury v. Sarat Chandra Chakravarty* (12), the Division Bench of the Calcutta High Court held that findings in judgment, not inter-parties, are not admissible in evidence.

15. In *Raja Anandrao v. Shyamrao and Ors.* (13), the Supreme court held that suit under Section 92 of the Code is of public nature and unless the scheme of administration or modification thereof regarding administration of the temple not affecting the private rights of Pujaris who are not parties to the suit, is binding on them. Similar view has been reiterated in *Ahmed Adam Sait and Ors. v. M.G. Makhari and Ors.* (14), observing that when a representative suit is brought and decree is passed in such a suit, law assumes that all persons, who have the same interest as the plaintiffs in the representative suit, were represented by the said plaintiffs and, therefore, are constructively barred, by the res-judicata, from re-

agitating the matters directly or substantively in issue in the said suit. A similar rule follows if the suit is either filed or defended under Order 1 Rule 8 of the Code. In that case, persons either suing or defending an action, are doing so in a representative capacity and, so, the decree passed in such a suit binds all those whose interests were represented either by the plaintiffs or by the defendant.

16. In *Sunni Central Board of Waqf, U.P. v. Sirajul Haq Khan and Ors.* (15), the Division Bench of Allahabad High Court held that a suit under Section 92 of the Code can be maintained only in respect of public trust of a permanent character and the judgment in such a suit would be a judgment in rem and not a judgment in personam. Therefore, such a judgment is admissible in any other subsequent suit and it is not open to any party to challenge the permanent public nature of the trust.

17. In *Vempa Sunanda v. Vempa Venkata Subbarao* (16), the Division Bench of Andhra Pradesh High Court held that a decree dissolving a marriage determines the status of the parties and is equivalent to a judgment in rem.

18. In *Land Acquisition Officer v. H. Narayanaiah etc.* (17), the Hon'ble Supreme Court considered the issue: whether the market value of the land assessed in a case under the same notifications issued under the Land Acquisition Act can be taken to be admissible in another case, and held that it is not admissible as not being inter-parties. Though the case was remanded to consider as to whether that was an appropriate case to allow an application under Order 41 Rule 27 of the Code.

19. Therefore, it depends upon the nature of the proceedings and Where the matters are of public nature, the judicial decision may be evidence though not conclusive of what they say, but where the matters are not of public nature, such evidence is not admissible as having binding effect. Therefore, decree like nullity of marriage or in probate or insolvency proceedings, determination of customary rights, being the matters of public nature, the judgments are in rem and, therefore, may be admissible but where the question of status of joint family or a suit for restitution of conjugal right, order in lunacy, judgment under Section 42 of the Specific Relief act or declaration of a person to be a partner in a firm or

proceedings of partition suit or in case of adoption, as the judgments are not of a public nature, the same are in personam though judgments are not admissible if the parties are not the same.

20. A declaration by a court affecting the status of a person domicile within its territory is treated by the committee of nations as being analogous to a judgment in rem and governs succession to movable property. The same principle applies in the matter of succession to immovable property where the law requires the personal law to be followed.

21. Status of a person means his personal legal conditions, that is to say a man's legal condition only so far as his personal rights and burden are concerned, to the exclusion of his proprietary relation. An adjudication of adoption will, in law, amounts to declaration of his status and is decided according to law of domicile of the party making the adoption. The claim of succession is not a matter of status in this sense but could relate to proprietary relations of the claimants with reference to the deceased's estate-holder. (Vide Duggamma and Anr. v. Ganeshayya and Ors. (18). Shiv Narain v. Mst. Raji (19).

22. A judgment in rem means an adjudication pronounced upon the status of a person or thing, by a competent court to the word generally. But it is not conclusive proof of the facts constituting the reasons for the decision. In such circumstances, the order is conclusive only as regards the status but not as regards the grounds on which it is based.

23. Section 41 of the Act deals with the judgment in rem. Section 42 deals with the matters relating to public nature and forms. The exception in the general principle of res-judicata is partially embodied in Section 11 of the Code.

24. Section 13 of the Act provides only for facts relevant when rite or custom is in question only. In Tirumala Tirupati Devasthanams v. K.M. Krishnaiah (20), the Hon'ble Supreme considered a large number of its earlier judgments along with the judgment of the Privy Council in Srinivas Krishna Rao Kango v. Narayan Deoji Kango (21); and Sital Das v. Sant Ram (22), and held that a judgment, not inter-parties, is admissible in evidence under Section 13 of the Act as evidence of an

assertion of a right to property in question. Therefore, in such a case, the judgment in an earlier suit may be admissible in evidence only to the extent that a party had made an assertion of a right to the property in dispute. The finding in that judgment or evidence thereof or findings of facts recorded therein, are not admissible at all.

25. It leads to the conclusion that in case 'A' files a suit for eviction of 'B' from the land in dispute and 'B' takes the plea that he had got the possession from 'C' who had acquired the title by adverse possession, in that situation, the judgment in a case between A and C may be admissible only to the extent to show that in the earlier suit, A had asserted the right to property in dispute and nothing beyond it.

26. If the instant case is examined in view of the aforesaid legal proposition, the judgment between the non-petitioner and some other person, wherein it has been held that the non-petitioner's need was not bonafide, can be admissible only to the extent that a suit for eviction had been filed. A finding of fact recorded therein, or the order passed therein, cannot be accepted as conclusive or admissible under Section 13 of the Act unless the suit has been filed that two adjacent shops have to be converted into one big shop removing the partition wall and eviction suits have been filed against the respective tenants therein. Whether an earlier suit for eviction had been filed or not, can be proved by asking such a question in cross-examination to the non-petitioner when his evidence is recorded. But so far as the earlier judgment, which is not inter-party, is concerned, is not admissible beyond the point to prove that there had been a litigation between A and C for eviction from the other premises.

27. In view of the above, I am of the considered opinion that by rejection the application under Section 151 of the Code, not allowing the petitioner to file the copy of the judgment dated 18.1.2000 as admissible evidence, the court below has not committed any material irregularity in exercise of its jurisdiction.

28. The revision is devoid of any merit and accordingly dismissed.