Mirza Abid Kazim Husain and Others Vs Mirza Nasir Husain and Others

Court: Allahabad High Court

Date of Decision: April 1, 1976

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 11
Uttar Pradesh Tenancy Act, 1939 â€" Section 230

Citation: AIR 1977 All 201

Hon'ble Judges: Prem Prakash, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prem Prakash, J.
This First Appeal from Order is directed against an order of the Addl. District Judge Lucknow, setting aside the decree

passed by the Judicial Officer. Lucknow, dismissing the suit and remanding the case back to the revenue court for trial.

2. The relevant facts are these: the respondents (filed a suit in the year 1956 in terms of the U. P. Land Tenures (Legal Proceedings) (Removal of

Difficulties) Order, 1952, for recovery of Profits in respect of their share in Mahal Kar-bala Talkatora of village Harchandpur, Tahsil and Distt.

Lucknow, contending that the defendant Hazi Mirza Mohd. Askari Khan was their agent; it was alleged that defendant, as their agent, had been

realising profits from the Mahal which consisted also of abadi and parti land with buildings standing thereon. The defendant, inter alia, pleaded that

the suit was not within jurisdiction of the Civil Court, he being the lumberdar of the Mahal, The learned Civil Judge upon a scrutiny of the evidence

held that the plaintiffs "had no interest in the said Mahal and, therefore, they were not entitled to any profit. It was further held that the suit being a

suit filed by co-sharer in respect of the profits of the Mahal against the lumbardar, it lay within the jurisdiction of the revenue (Prem Prakash J.)

[Prs. 1-3] All. 201 court, u/s 230 of the U. P. Tenancy Act. Having reached these two principal findings the suit was dismissed. Thereafter, the

plaintiff filed another suit in the court of the Judicial Officer. Luck-now, on 19th August, 1960, taking the plea that the defendant-appellant was the

lumberdar of the Mahal and in that capacity he was realising the profits of the Mahal including those arising from the parti land over which the

buildings stand. In the written statement it was contended that the civil court having negatived the alleged title of plaintiffs and the main issue having

thus been decided against them, they were estopped from taking a contrary stand in the revenue court. In this way the bar of res judicata was

pleaded by the defendant. The learned Judicial Officer accepted the contention, but the Addl. District Judge in appeal set aside that order holding

that since a suit u/s 230 of the U. P. Tenancy Act was not cognizable by the Civil Court, any finding given by the Civil Court in the prior suit would

not constitute res judicata. Having taken that view, he sent back the case for trial to the revenue court.

3. Learned counsel for the parties have addressed me at length on the question of the applicability of the bar of res judicata contained in Sec, 11 of

the Code of Civil Procedure, to the present. Certain propositions of law are well established: (1) a Court, which declines jurisdiction, cannot bind

the parties by its reasons for declining jurisdiction: such reasons are not decisions and are certainly not decisions by a Court of competent

jurisdiction. Consequently, where the Court for deciding the main issue whether it has jurisdiction to entertain the award filed under Schedule 2,

para 20 construes the award and comes to the conclusion that it has no jurisdiction the construction of the award is not res judicata u/s 11. It is the

decision as to lack of jurisdiction which is res judicata and not the reasons for that decision (vide AIR 1940 222 (Privy Council) Unless the Court,

which decided the former suit, was competent to decide not only the issue, which arose in the subsequent suit but also the subsequent suit itself, the

decision in the former suit of the question of proprietary right will not be res judicata in the subsequent suit on the same question (vide Mst. Gulab

Bai Vs. Manphool Bai, . Having regard to the legislative background of Section 11, there can be no hesitation in holding that the word ''suit'' in the

context must be construed liberally and it denotes the whole of the suit and not a part of it or a material issue arising in it.

4. Applying these rules to the present case, it would appear from a perusal of the plaint that substantially it is a suit u/s 230 of the U.P. Tenancy

Act, brought by the co-sharers of a Mahal against the lumberdar. Obviously a suit u/s 230 on account of the bar created by Section 242 of the U.

P. Tenancy Act was not within the competence of the civil court to entertain and decide. That being so, the present suit, which was filed by the

plaintiffs against the defendant in his capacity as lumberdar was not a suit which could be tried by the civil court. Such a suit was not within the

competence of the civil court even in the year 1956. When once the court had come to the conclusion that the civil court was not competent to try

the suit, an adverse finding of the court on the rights of the plaintiffs cannot constitute a ground so as to enable the defendant to plead the bar of

Section 11 of the Code. It may be that the issue of proprietary title was decided by the civil court in that case, but since one of the important

requirements of Section 11, C.F.C. is that the court, which decided the former suit, was competent to decide the subsequently instituted suit, the

finding, if any, given by the learned Civil Judge will not attract the applicability of Section 11 of the Code. The whole of the suit as at present fell

within the ambit of Section 230 of the U. P. Tenancy Act and that being so, the learned Addl. District Judge was perfectly correct hi holding that

the finding, if any, recorded by the civil court in the earlier suit will not operate as res judicata in the subsequently instituted suit in the revenue court.

5. For the discussion in the above, I see no force in the appeal which is hereby dismissed. In the circumstances, costs shall be borne by the parties.