(1989) 02 AHC CK 0061

Allahabad High Court

Case No: Second Appeal No. 995 of 1979

Narbdeshwar Upadhyay		APPELLANT
	Vs	
Ram Bahal and Others		RESPONDENT

Date of Decision: Feb. 27, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 168A

Citation: (1989) 2 AWC 721

Hon'ble Judges: A.N. Verma, J

Bench: Single Bench

Advocate: R.P. Misra and R.S. Misra, for the Appellant; K.B.L. Gaur, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Verma, J.

This is Plaintiff''s second appeal arising out of a suit for specific performance of an agreement for sale of an agricultural plot. The trial court had decreed the suit. On appeal the decree of the trial court was reversed and the suit was dismissed. Aggrieved by the decree passed by the lower appellate court the Plaintiff has filed this second appeal.

2. The suit was initially brought against Bhagwan Mani Tripathi, who died during the pendency of this second appeal and is now represented by Satya Prasad, the Respondent No. 5. During the pendency of the suit, the Defendant No. 1 transferred the property in favour of Defendants No. 2 to 7, including his son Satya Prasad arrayed as Defendant No. 5. The disputed property comprises of four plots, viz. plot No. 1, 2, 163, 220 and 223, having an aggregate area of 5.17 acres. The plaint case was that Bhagwan Mani Tripathi had agreed to sell the aforesaid plots in favour of the Plaintiff at the rate of Rs. 4000/- per bigha for the total consideration of Rs. 34,000/- under an agreement of sale dated 3-6-1969 and received Rs. 18,300/- from the aforesaid as part consideration of

the sale. In pursuance of that possession was also delivered to the Plaintiff over the entire area of 5.17 acres. Under the agreement the sale was to be effected in three stages; first, by November 1969 for which Rs. 7,700/-was to be paid in cash, second was to be affected by April 1970 and the third was to be executed by November 1970 for a total consideration of Rs. 14,000/- out of which Rs. 10,000/- was to be adjusted against the earnest money deposited with the Defendant and Rs. 4,000/- was to be paid in cash. In pursuance of this agreement a sale deed was executed on 15-1-1969 for a total consideration of Rs. 16,000/- part of which was adjusted against the earnest money and the remaining part was paid by a cheque and some amount in cash. The second sale deed was executed in terms of the agreement on 20-4-1970 for Rs. 4,000/- which was to be paid in cash. The Defendant, however, refused to execute the third sale deed by November, 1970. Instead, he filed suit No. 1294 of 1970 for the cancellation of the first two sale deeds. That suit was contested by the Plaintiff and the same was dismissed. After the dismissal of the suit the Plaintiff sent out two insured covers of Rs. 1000/- and 1200/- to the Defendant as well as a notice dated 13-12-1972 calling upon the Defendant to execute the third sale deed. The Defendant did not comply with that notice. Thereafter, the suit was filed on 5-11-1975, i.e. nearly three years after the aforesaid notice was given to the Defendant.

3. The subsequent transferees were also impleaded as parties. The Plaintiff amended his pleadings and asserted that the transfers were hit by the doctrine of lis pendens as well as Section 168-A of the U.P. Zamindari Abolition and Land Reforms Act.

4. The suit was contested by the Defendants. The defence was that no such agreement was executed or entered into by the Defendant No. 1. The receipt of Rs. 18,300/- on 3-6-1969 was also denied and so also the delivery of possession to the Plaintiff. It was asserted that the Plaintiff had procured the signatures of the Defendant No. 1 on a blank stamped paper which has been utilised by him as an agreement for sale. The alleged agreement of sale was a piece of forgery fabricated by the Plaintiff for the purpose of this litigation.

5. The learned Civil Judge accepted the case of the Plaintiff and decreed the suit. The appellate court however, disagreed with the trial court and on an elaborate consideration of the evidence existing on the record, it has come to the conclusion that the case set up by the Plaintiff was unworthy of reliance. No such agreement was executed nor was any earnest money paid to the Defendant as alleged by the Plaintiff. The appellate court has pointed out the circumstances which in its opinion give a complete lie to the plaint case touching upon the genuineness of the agreement of sale set up by the Plaintiff. The plea that the defence of the Respondents was barred by res-judicata in view of the findings recorded in suit No. 1294 of 1971 has also been rejected by the lower appellate court relying on several decisions of the Supreme Court directly in point.

6. For the Appellant, Sri R.S. Misra pressed this appeal mainly--rather entirely--on the issue of res-judicata raised by the Plaintiff before the court below. The contention of the

Learned Counsel was that one of the issues raised in suit No. 1294 of 1971 was whether the present Defendant (who was Plaintiff in that suit) had executed the agreement in question and that issue was answered against him. It was urged that the issue was important for the decision of the suit, and, consequently, the finding given thereon would unquestionably operated as res judicata and barred the plea now being raised by the Defendant No. 1 that the agreement in question was not genuine. Learned Counsel further submitted that the decisions of the Supreme Court relied on by the lower appellate court did not support the view taken by it.

7. Having heard the Learned Counsel for the parties at some length and given the matter an anxious consideration I am unable to accept the contention of the Learned Counsel for the Appellant. The lower appellate court has placed reliance on two decisions of the Supreme Court, namely 1963 SC 385 Vithal Yeshwant Jathar v. Shikandarkhan Makhtumkhan Sardesai and 1971 S C 442 Gongappa Gurupadappa Gurward v. Rachawwa. In these decisions the question that arose, for consideration was whether where the decision of suit is based on two or more issues, the findings recorded on all the issues would operate as res-judicata in a subsequent suit between the same parties. On an examination of the various authorities of different High Courts, their Lordships rules that where the ultimate decision in a suit is based on its decision on more than one point each of which by itself would have been sufficient for the ultimate result of the suit, the finding recorded on each of these points would operate as res-judicata between the parties. What was stressed in these decisions was that for the application of the principle of res-judicata in such cases, it is necessary that the decision on that issue must be sufficient by itself for the ultimate result of the suit. This is how their Lordships summed the law in Vithal Yeshwant Jathar"s case (Supra), in para-graph 10 of the judgment at page 388:

It is well settled that if the final decision in any matter at issue between the parties is based by a court on its decision on more than one point each of which by itself would be sufficient by the ultimate decision--the decision on each of these points operates as res-judicata between the parties. (Vide Kishori Lal Potdar Vs. Debi Prasad Kejriwal and Another, , Annammalai v. Lakshmanan AIR 1939 Mad 433);

(Emphasis supplied).

8. The above dictum was reiterated in Gurward"s case (Supra) in which this aspect of the case was dealt with more elaborately in paragraphs 10, 12 and 13 of the decision. In this case the position was that the court trying the suit had dismissed it both on the ground that the suit was premature as well as on the finding that the Defendant had acquired absolute right in the property in suit bequeathed to him under a will. The question was whether in a sub-sequent suit between the same party the finding given by the Court in the previous suit that the Defendant had acquired absolute right under the will would operate as res-judicata. The contention urged was that the latter finding was unnecessary in view of the decision reached by the court in the previous suit that the suit was

premature. Consequently, the decision on merits in favour of the Defendant would not operate as res-judicata. The argument was repelled by the Supreme Court. Their Lordships stated the law thus (vide paragraph 13 page 447):

In our view the High Court rightly relied on the observations of This Court in Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai, that if the final decision in any matter at issue between the parties is based by a court on its decision on more than one point--each of which by itself would be sufficient for the ultimate decision--the decision on each of these points operates as res-judicata" between the parties The question as to the nature of the estate taken by Lochanappa under the will and the document called codicil to the will of the testator, Rudrappa having been in issue in the suit of 1935 and it having been decided that Lochanappa had obtained an absolute estate to the property, the decision would bind the Appellant in any subsequent litigation to which the claim is based on the will and codicil.

(Emphasis supplied).

9. It will thus be seen that in both these decisions their Lordships of the Supreme Court have very categorically stressed one aspect, namely, that in order that the decision in one of the several issues arising in a suit may operate as res judicata, it should be such as may by itself be sufficient for the ultimate decision of the suit. It follows by necessary implication from this statement of law that the decision on every issue may not necessarily operate as res-judicata between the parties in a subsequent litigation. It is only when the decision on the issue is such which may by itself sustain the ultimate result of the litigation that Section 11 of the CPC would be attracted. In the trial of a suit a number of issues may arise out of the pleadings of the parties, some of which may be sufficient by themselves for the disposal of the suit, one way or other, while the others though relevant may not have that potential, i.e. they may not standing by themselves have the effect of sealing the fate of the case one way or the other.

10. The latter category of findings, in my opinion, would not operate as res judicata in a subsequent litigation between the same parties. I am fortified here by a decision of the Bombay High Court in the case of Laxman Shiva-shankar v. Saraswati reported in 1961 Bom 218 in which it has been said that a finding cannot operate as res-judicata if it has not gone into the making of a decree or order. It has been further stressed that it cannot be laid down as a general proposition that where the previous decision is supported on two or more findings, all the findings shall necessarily operate as res-judicata. With respect, I entirely agree with the decision of the Bombay High Court supported as it is by the two Supreme Court decisions cited above.

11. Sri R.S. Misra, Learned Counsel for the Appellant submitted that the two Supreme Court decisions cited above have not laid down as a matter of law that a decision on an issue would not operate as res-judicata unless by itself it would be sufficient for the ultimate decision of the suit. It was urged that the observations in the two decisions

(underlined by me) ought to be confined to the facts of that case in which the decision on each of the issue decided by the court was by itself sufficient for the ultimate result of the suit.

12. I am unable to agree. The statement of law propounded by their Lordships of the Supreme Court in the two decisions cited above and relied on by the lower appellate court is clear, categorical and unambiguous. It is difficult to dismiss those observations as not incorporating a binding statement of law. Further, apart from those decisions the language of Section 11 CPC itself fully supports the view that in order that the decision on an issue may operate as res-judicata, it must have been substantially in issue in the previous litigation between the same parties. The matter cannot be said to be directly and substantially in issue unless the decision thereon by itself has the effect of sealing the fate of the suit either way. The requirement of law is that the matter must be directly and substantially in issue. It is for this reason that their Lordships of the Supreme Court stressed that the decision on the point should be sufficient by itself for the ultimate result of the suit.

13. For the Appellant, reliance was placed on the decision reported in 1965 S C 948 Ishar Singh Sarwan Singh and others which lends no support to the Appellant''s contention. In paragrah 8 of the decision at page 950, their Lordships have observed that the question whether a matter is directly and substantially in issue would depend on whether a decision on such an issue would materially affect the decision of the suit. This decision is clearly in line with the two Supreme Court decisions cited above and relied on by the lower appellate court.

14. The position which emerges from foregoing discussions, therefore is that the decision on an issue would operate as res judicata in a subsequent suit between the same parties only if by itself it was sufficient for the ultimate decision of the suit. It is from this legal perspective that 1 shall examine the question whether the decision in suit No. 1294 of 1971 filed by the present Defendant against the Appellant on the issue pertaining to the agreement for sale of the disputed land would operate as res judicata against the Defendant No. 1. A certified copy of the judgment of that suit is on the record. A perusal of the judgment shows that that suit was brought for the cancellation of two sale deeds. The case of the Plaintiff Bhagwan Mani Tripathi (defendent No. 1 in the present suit) was that Narbdeshwar Upadhyay the Plaintiff of the present suit was approached by him for loan. Narbdeshwar Upadhyay assured Bhagwan Mani Tripathi that he would help the latter in obtaining the loan from the Government for the purchase of a tractor provided that the land belonging to Bhagwan Mani Tripathi shall have to be mortgaged as a security for the repayment of the loan and for that purpose Narbdeshwar Upadhyay asked Bhagwan Mani Tripathi to sign certain blank stamped papers. Bhagwan Mani Tripathi did as he was asked to do by Narbdeshwar Upadhyay who was a man of his trust. These papers were subsequently utilised by Narbdeshwar Upadhyay by fabricating them into sale deeds.

15. The defence of Narbdeshwar Upadhyay in that suit was that Bhagwan Mani Tripathi had executed the two sale deeds knowingly and consciously and that the two sale deeds were executed in pursuance of the agreement of sale.

16. On these pleadings various issues were struck. Issue No. 3 was whether Bhagwan Mani Tripathi had executed the agreement for sale. The issue was answered in favour of Narbdeshwer Upadhyay. The first issue however, was whether the sale deeds challenged in that suit were liable to be cancelled on the ground of fraud alleged by the Plaintiff. This issue was also answered in favour of Narbdeshwar Upadhyay and against Bhagwan Mani Tripathi. As a resnlt, the suit was dismissed

17. The question that, therefore, immediately arises is whether the decision on issue No. 3 was by itself sufficient for the ultimate result of the suit. The answer, in my considered view, must be in the negative. The finding that the agreement set up by Narbdeshwar was executed as alleged by him would not have been sufficient for the ultimate result of the suit. For, even if, it was held that Bhagwan Mani Tripathi did execute the agreement as alleged by Narbdeshwar Upadhyaya, the suit could still be decreed if the first issue was answered in favour of the Plaintiff, that is, if it was found that the Plaintiff had not executed the two sale deeds. The decision on the third issue was not therefore of that conclusive character or quality so as to operate as res judicata in the present suit.

18. Having regard to the pleadings of the parties and the scope of the previous suit as well as the effect which the decision on issue No. 3 was to have on the ultimate decision of that suit, I have no manner of doubt that the finding on the third issue would not operate as res judicata in the present suit. The issue in the present suit regarding the genuineness of the agreement for sale cannot for the reasons stated above be said to have been directly and substantially in issue in the previous suit. As mentioned above the decision on every issue need not necessarily operate as res judicata in a subsequent suit. It will so operate only if it materially affected the result of the suit. It will be said to materially affect the result of the suit if the decision on that issue standing by itself would be sufficient for the ultimate result of the suit. Judged by these tests the decision on issue No. 3 in the previous suit cannot operate as res judicata in the present suit.

19. That being so, it was open to the lower appellate court to examine for itself the issue whether the Defendant had executed the agreement of sale of which specific performance was claimed by the Plaintiff Appellant. The finding on the issue has been recorded by the lower appellate court after a very careful exhaustive consideration of the evidence on the record. The facts and circumstances relied on by the lower appellate court in support of its ultimate conclusion that no such agreement was executed by the Defendant No. 1 and that the document purporting to be an agreement for sale set up by the Plaintiff was not genuine were all relevant and proper. In fact, Learned Counsel for the Appellant did not make any serious attempt to demonstrate that the assessment of the evidence by the lower appellate court was either perverse and vitiated by any error of law. On the contrary Learned Counsel for the Respondent pointed out circumstances

which rendered the genuineness of this deed open to grave doubt as has been found by the lower appellate court.

20. On the finding recorded by the lower appellate court as to the genuineness of the deed of agreement set up by the Plaintiff, which finding not having been demonstrated to be vitiated by any error of law, the decision of the lower appellate court must be affirmed.

21. In the result, the appeal fails and is dismissed with costs.