courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Narhari and Others Vs Shankar and Others

Court: Supreme Court of India

Date of Decision: Oct. 13, 1950

Acts Referred: Limitation Act, 1908 â€" Section 5

Citation: AIR 1953 SC 419 : (1950) 1 SCR 754

Hon'ble Judges: R.C. Patnaik, J; Mehr Chand Mahajan, J; Khaliluzzaman, J

Bench: Full Bench

Advocate: GHULAM AHMED KHAN

Final Decision: Allowed

Judgement

Naik, J.
The suit out of which these appeals arise was one for possession of two-thirds of the land covered by survey No. 214 and for

mesne profits. The plaintiffs claim possession on the ground that survey No. 214 was an inam land and according to the family custom belonged to

them exclusively as members of the senior line as against the defendants who were of the junior lines. There are two sets of defendants : Nos. 1 to

4 belong to one branch of the family and Nos. 5 to 8 to another. Each set claim that they are in possession of one-third of the land and maintain

that they are entitled to it as their share of the family property. They deny the custom of exclusive possession by the senior branch, alleged by the

plaintiffs. The trial court decreed the suit. From this decree, two separate appeals were taken by the two sets of the defendants to the Sadar

Adalat, Gulbarga, each claiming one-third portion of the land and each paid the court fee to the extent of their share. The first appellant court, i.e.,

the Sadar Adalat, allowed both the appeals and dismissed the plaintiffs" suit by one judgment dated 30th Bahman 1338 F. and ordered a copy of

the judgment to be placed on the file of the other connected appeal. On the basis of this judgment, two decrees were prepared by the first

appellate court. The plaintiffs preferred two appeals to the High Court. The first was filed on 23rd Aban 1345 F. and with it was attached the

decree passed in the appeal of defendants. Nos. 1 to 4. Later, on 17th Azur 1346 F. another appeal was filed and with it the decree passed in the

appeal of defendants Nos. 5 to 8 was attached. This latter appeal was twenty-nine days beyond the period of limitation for appeals. It was filed on

one-rupee stamp paper and a note was made therein that the full court fee had been paid in the appeal filed earlier, which has been registered as

Appeal No. 331 of 1346 F. At the hearing of the appeals, a preliminary objection was raised by the defendants that as the other appeal i.e., No.

332 of 1346 F. was filed beyond the period of limitation, it cannot be maintained and that when the other appeal is thus dismissed, the principle of

res judicata would apply to the first appeal, i.e., No. 331 of 1346 and it should also fail. The High Court held that the plaintiffs should have filed

two separate appeals within the period of limitation and as the other appeal was admittedly time-barred, the first appeal also failed by the

application of the principle of res judicata. The High Court dismissed both the appeals. Against this judgment of the High Court two appeals were

preferred to the Judicial Committee of the State and they are now before us under article 374(4) of the Constitution.

2. The High Court in its judgment relied on the decision given in Jethmal v. Ranglal 17 D.L.R. 322. That was a case of money suit where the

plaintiff''s claim was partially decreed and from this judgment both the parties had appealed, the plaintiff to the extent of the suit dismissed and the

defendant to the extent of the suit decreed. The first appellate court dismissed the plaintiff''s suit in toto, thus allowing the defendant''s appeal and

dismissing the plaintiff''s appeal, and two separate decrees were made. The plaintiff appealed from one decree only, which was passed against him

and it was held that the principle of res judicata applied.

3. Notwithstanding, this ruling of the Judicial Committee of the State, the High Court, in several cases, i.e. Nandlal v. Mohiuddin Ali Khan 22

D.L.R. 400, Nizamuddin v. Chatur Bhuj 23 D.L.R. 457, Gayajee Pant v. Habibuddin 28 D.L.R. 1094, and Jagannath v. Sonajee 29 D.L.R. 108,

has held that when the suit is one and two appeals arise out of the same suit, it is not necessary to file two separate appeals.

4. In the judgment of the High Court, though reference is given to some of these decisions, it is merely mentioned that the appellant relies on these

decisions. The learned Judges perhaps thought that in the presence of the Hyderabad Judicial Committee decision in Jethmal v. Ranglal 17 D.L.R.

322, they need not comment on these decisions at all. There is also a later decision of the Judicial Committee of the State in Bansilal v. Mohnanlal

33 D.L.R. 603, where the well known and exhaustive authority of the Lahore High Court in Mst. Lachmi v. Mst. Bhuli AIR 1927 Lah. 289, was

followed. In the Lahore case, there were two cross suits about the same subject-matter, filed simultaneously between the same parties, whereas in

the present case, there was only one suit and one judgment was given by the trial court and even in the first appeal to the Sadar Adalat, there was

only one judgment, in spite of there being two appeals by the two sets of defendants.

5. The plaintiffs in their appeal to the High Court have impleaded all the defendants as respondents and their prayer covers both the appeals and

they have paid consolidated court-fee for the whole suit. It is now well settled that where there has been one trial, one finding, and one decision,

there need not be two appeals even though two decrees may have been drawn up. As has been observed by Tek Chand J. in his learned judgment

in Mst. Lachmi v. Mst. Bhuli AIR 1927 Lah. 289, mentioned above, the determining factor is not the decree but the matter in controversy. As he

puts it later in his judgment, the estoppel is not created by the decree but it can only be created by the judgment. The question of res judicata arises

only when there are two suits. Even when there are two suits, it has been held that a decision given simultaneously cannot be a decision in the

former suit. When there is only one suit, the question of res judicata does not arise at all and in the present case, both the decrees are in the same

case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question of the application of the

principle of res judicata. The same judgment cannot remain effective just because it was appealed against with a different number or a copy of it

was attached to a different appeal. The two decrees in substance are one. Besides, the High Court was wrong in not giving to the appellants the

benefit of section 5 of the Limitation Act because there was conflict of decisions regarding this question not only in the High Court of the State but

also among the different High Courts in India.

6. The learned counsel for the appellants cited in support of his arguments the decision given in 221133 , which is on all fours with the present

case.

We are, therefore, of the opinion that these appeals should be allowed and the case remanded to the High Court for decision on the merits of the

case. Costs of these appeals will abide the result of the case.

7. Appeals allowed.