State of U.P. and Another Vs Jagdish Saran Agrawal and Others

Court: Supreme Court of India

Date of Decision: Nov. 25, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 8, Order 9 Rule 9
Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 â€" Section 3(1)
Uttar Pradesh Roads and Lands (Control) Act, 1943 â€" Section 7(1)

Citation: (2010) 1 ALT 3 : (2009) 1 AWC 1010 Supp : (2008) 13 JT 270 : (2009) MPLJ 31 : (2008) 15 SCALE 565 : (2009) 1 SCC 689

Hon'ble Judges: Mukundakam Sharma, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: Pramod Swarup, T.N. Singh, Manoj Dwivedi and G. Venkateswara Rao, for the Appellant; H.L. Aggarwal, S.R. Singh, G.S. Bhatt, P.K. Bhatt, Rameshwar Prasad Goyal and Debasis Misra, for the Respondent

Final Decision: Allowed

Judgement

Arijit Pasayat, J.
Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court dismissing the writ petitions filed by the State

of Uttar Pradesh and the Municipal Board Nagar Palika Lalitpur (hereinafter referred to as the `Board''). Both the writ petitions were directed

against the order dated 11th February, 1994 passed by the District Judge, Lalitpur. By the said order learned District Judge allowed appeal No.

23 of 1992 filed by the respondent No. 1 Jagdish Sharan Agrawal and two others. State of U.P. and 27 others were parties. It was held in that

order that the proceedings initiated by the State against Jagdish Sharan Agrawal and others under the Uttar Pradesh Public Premises (Eviction of

Unauthorized Occupants) Act, 1971 (in short the `Act'') were barred by the principle of resjudicata, in view of the decision of the proceedings,

which were initiated earlier by the Nagar Palika, Lalitpur, being suit No. 25 of 1960 as also in view of the dismissal of the proceedings which were

initiated by the State of Uttar Pradesh being case No. 521-353 u/s 3(1) of the Uttar Pradesh Public Land (Eviction and Recovery of Rent and

Damages) Act, 1959 (in short the `Eviction Act'').

3. The stand of the State before the High Court was that the disputed land which is a Nazul property is owned by the State and is under the

management of the Board. Nagar Palika has filed the Original Suit No. 25 of 1960 in the court of Munsif for permanent injunction against Savai

Mahendra Maharaja Sri Devendra Singh Joodev for restraining him from auctioning the land being the property of the State. The said suit filed by

the Nagar Palika was dismissed. The High Court noted that the judgment of the Trial Court was not brought on record and it was also not stated

as to whether any appeal against the said judgment was filed or not. Thereafter, State of Uttar Pradesh initiated proceedings against the Maharaja

under the Eviction Act which was numbered as DES Case No. 521 of 1970 before the prescribed authority.

4. During the pendency of the proceedings, the aforesaid Act was declared ultra vires by this Court and as a result thereof the State of Uttar

Pradesh made necessary amendments and proceeded with the case after taking steps under the provisions of the Act and the case was re-

numbered as Case No. 521-353. Proceedings were dismissed for default by the Prescribed Authority by order dated 26th November, 1976. An

application to recall the said order was filed which was dismissed for default on 3rd January, 1977 by the Prescribed Authority. Thereafter the

State initiated proceedings under the Act which was numbered as Case No. 1/1988-89. Before the Prescribed Authority preliminary objection

was raised on behalf of the alleged occupants contending that the proceedings were barred by the principles of resjudicata as well as on the

principles of Order IX Rule 9 of the Code of Civil Procedure, 1908 (in short the `CPC") and consequently the case cannot be proceeded with.

The Prescribed Authority by Order dated 14th January, 1992 rejected the aforesaid objections and held that the orders passed in the Case No.

521 of 1970 and 25 of 1960 do not operate as resjudicata.

5. Against the said order, Jagdish Sharan Agrawal and others approached the High Court by a Writ Petition which was dismissed by order Dated

18th February, 1992 on the ground that the alternative remedy was available. Appeal No. 23 of 1992 before the District Judge, Lalitpur, was filed

u/s 9 of the Act. District Judge held that the proceedings initiated by the State under Case No. 1 of 1988-89 was barred by the principles of res

judicata in view of the earlier orders passed in Suit No. 25 of 1960 and 521 of 1970. The present appellants took the stand that the judgment in

question does not operate as resjudicata between the parties in as much as in the said suit filed by the Nagar Palika, State of Uttar Pradesh was

not a party. The State being the owner of the land and the land being only under the management of Nagar Palika, in view of paragraph 47 of the

Nazool Manual, any proceeding initiated by the Nagar Palika to which the State of Uttar Pradesh is not a party cannot be said to be binding on the

State.

6. The High Court found that admittedly in suit No. 25 of 1960, the State was not a party and therefore if any finding was recorded therein the

same was not binding on the State. But so far as proceeding in Case No. 521 of 1970 is concerned, the Eviction Act itself was held to be ultra

vires by this Court and consequently all proceedings taken therein are null and void and cannot be said to be binding on any person whatsoever,

including the parties which were litigating there under.

7. The High Court found that there was substance in the aforesaid plea raised by Jagdish Sharan Agrawal and others. However after going through

the records, it was established that although initially a notice under the provisions of the Eviction Act was issued and proceedings were initiated

against the alleged unauthorized occupants, yet the Act itself having been declared ultra vires by this Court, the State chose to proceed with the

matter after making necessary amendments and taking necessary steps under the Eviction Act. It is thus established that the original proceedings

were converted to proceedings under the Act. The proceedings were dismissed for default by the Prescribed Authority on 26.11.1976. An

application for recall of the orders was also dismissed for non-prosecution. The High Court was of the view that proceedings initiated by issuance

of notice under the provisions of the Eviction Act having been converted into proceedings under the Act, the order of dismissal has become final

between the parties and was not challenged further. It was held that if proceedings were permitted to be initiated and proceedings are decided

directing eviction, it would amount to conflicting orders between the same parties in respect of same premises which is not justified. It was held that

to take care of such situations, the requisite principles are enshrined under Order IX Rule 9, CPC. Though the provisions do not directly apply to

proceedings under the Eviction Act, they will apply with full force to the facts of the present case and the State cannot be permitted to file such an

application against some person after its earlier application is dismissed for whatever reasons may be. Therefore, the Writ Petition was dismissed.

8. Learned Counsel for the appellant submitted that dismissal for default does not operate as resjudicata. It is pointed out that there is a recurring

cause of action. Since 1959 Act was declared to be ultra vires, the proceedings were initiated, State was not a party in the suit by Nagar Palika

and the High Court was wrong in holding that the principles of resjudicata apply so far as State is concerned. It is submitted that the principles of

resjudicata do not apply to the facts of the case as there was no decision on merit. One remedy was restoration and other remedy was the second

suit because of continuing cause of action. There is no finding that the non official respondents were authorized occupants.

9. Learned Counsel for the respondents on the other hand supported the judgment, taking the stand that the proceedings are summary in nature.

The effect of the order dated 10.10.1959 by the Government of India, Uttar Pradesh in appeal u/s 7(1) of the Uttar Pradesh Roads and Lands

(Control) Act, 1943 (in short the `Road Act'') clearly applies to the facts of the case and the order in question has become final.

10. In Ram Gobinda Dawan v. Bhaktabala [1971 (1) SCC 387] it was held as follows:

21. It is interesting to note that though it was urged that the decision of the Privy Council was given in default of appearance of B and his

mortgagee C and therefore the said decision will not operate as res judicata, this Court did not hold that a decision given even in the first instance in

default of appearance of a party will operate as res judicata. On the other hand, this Court categorically held that C, the mortgagee had fought out

the title of mortgagor B, both before the Land Acquisition Court and the High Court and had obtained a judgment in his favour after a full contest.

22. It is the view of this Court that the mere fact that the mortgagee did not choose to appear before the Privy Council and the decision of the

Privy Council was given in the absence of the mortgagee, is of no consequence as the decisions of the High Court and the District Court have been

given after contest. Therefore it will be seen that the decision of this Court relied on by Mr Mukherjee is no authority for the wide proposition that

even if there has been no hearing and final decision by any court, at any stage, after contest, the decision will operate as res judicata.

23. For an earlier decision to operate as resjudicata it has been held by this Court in Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao [

AIR 1967 SC 591] that the same must have been on a matter which was ""heard and finally decided"".

24. In Sheodan Singh v. Daryan Kunwar [AIR 1966 SC 1332] the question whether a decision given by the High Court dismissing certain appeal

on the ground of limitation or on the ground that the party had not taken steps to prosecute the appeal operates as res judicata, was considered by

this Court. In that case A had instituted against B two suits asserting title to certain property. B contested those claims and also instituted two other

suits to establish his title to the same property as against A. A''s suits were decreed and B''s suits were dismissed. B filed four appeals, two appeals

against the decision given in A''s suits and two appeals against the dismissal of his two suits. It is seen that all the appeals were taken on the file of

the High Court but the two appeals filed by B against the decision in the suits instituted by him were dismissed by the High Court on the grounds

that one was filed beyond the period of limitation and the other for non-prosecution. At the final hearing the High Court took the view that the

dismissal of B''s two appeals, referred to above, operated as res judicata in the two appeals filed by B against the decision in A''s suits on the

question of title to the property. It was urged before this Court on behalf of B that the dismissal of his appeals on the ground of limitation and non-

prosecution by the High Court does not operate as res judicata as the High Court cannot be considered to have ""heard and finally decided"" the

question of title. This contention was not accepted. This Court referred to instances where a former suit was dismissed by a trial court for want of

jurisdiction or for default of plaintiff''s appearance etc. and pointed out that in respect of such class of cases, the decision not being on merits,

would not be res judicata in a subsequent suit. It was further pointed out that none of those considerations apply to a case where a decision is

given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or

default in printing. It was held that such dismissal by an appellate court has the effect of confirming the decision of the trial court on merits, and that

it ""amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.

11. The position was reiterated in State of U.P. v. Civil Judge [1986(4) SCC 558] .

12. So far as the recurring cause of action is concerned this Court in State of U.P. v. Rup Lal Sharma [1997(2) SCC 1962] held as follows:

Public premises"" is defined in Section 2(e) of the Act as meaning any premises ""belonging to or taken on lease or requisitioned by or on behalf of

the State Government.... The first respondent never disputed that the building belongs to the Government and all he has said was that it belongs to

the Government Estate. It does not matter. The definition of public premises is so wide as to hedge in all such buildings whether it actually belongs

to Government as such or only to a government department or even a building belonging to a private individual if the Government have

requisitioned it or some person on behalf of the Government has requisitioned it. Hence there is no escape from concluding that the building in

question is public premises.

7. ""Unauthorised occupation"" is defined in Section 2(g). The definition comprises within its contours occupation of the public premises by any

person without authority for such occupation, and also the continuance in occupation of such premises by any person after the authority (under

which or the capacity in which he was allowed to hold or occupy the premises) has expired or has been determined for any reason whatsoever.

Thus continuance in occupation after the determination of such authority would also make the occupation unauthorised for the purpose of the said

Act.

13. In the present case, the suit filed by Nagar Palika was dismissed on technical ground and in any case the State was not a party. So far the suit

where the state was a party and amendments were made, the same was dismissed for non- prosecution. But the same was not dismissed under

Order IX Rule 8.

14. Order IX Rule 8 and Order IX Rule 9 of CPC read as follows:

Rule 8. Procedure where defendant only appears

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be

dismissed, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such

admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Rule 9. Decree against plaintiff by default bars fresh suit

(1) Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of

action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance

when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it

thinks fit, and shall appoint a day for proceeding with suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

15. Therefore Order IX Rule 9 can not be said to be applicable. The dismissal of the suit for non-prosecution was not a decision on merit.

Consequently, the said order cannot operate as Resjudicata.

16. Above being the position the High Court''s order is clearly unsustainable and is set aside. The matter is remitted to the District Judge, Lalitpur

to decide the proceeding on merit. Appeals are allowed but without any order as to costs.