(1880) 08 CAL CK 0008

Calcutta High Court

Case No: None

Run Bahadoor Singh	APPELLANT
Vs	
Lucho Kooer	RESPONDENT

Date of Decision: Aug. 30, 1880

Citation: (1881) ILR (Cal) 406

Hon'ble Judges: Pontifex, J; McDonell, J

Bench: Division Bench

Judgement

Pontifex, J.
(who, after going into the merits of the case at some length, and stating the facts material to the question of res judicata, continued):

2. The question we have now to determine is, whether the prior decisions affect the present suit and the title set up by the plaintiff as res judicata. It is to be observed that only a special appeal could be preferred to the High Court against the judgment of the Subordinate Judge (though, as a matter of fact, no special appeal was preferred), and that this rent-suit related to only one mouza, or part of a mouza, held under one only of the mokuraris.

3. But, on the other hand, the two mokuraris, though separate, were exactly similar titles; and it has never been part of the plaintiff''s case, that different parts of Bishen Singh''s property are governed by different circumstances. Indeed the evidence in the rent-suit applies generally to the commensality or separation of the plaintiff and Murlidhur; and that was the issue which the plaintiff Bun Bahadoor raised by his written statement in the rent-suit.

4. With respect to this, [illegible] the judgment of Lord Ellenborough in Outran v. Morewood 3 East, 346, seems significant. Recovery in any one "suit upon issue joined on matter of title is conclusive on the subject of such title; and a finding upon title in trespass not only operates as a bar to the future recovery of damages for a trespass founded on the same injury, but also operates by way of estoppel to any

action for an injury to the same supposed right of possession."

5. It is necessary, however, for us to examine a few of the Indian authorities upon this subject.

6. In a case referred to Sir Barnes Peacock, in consequence of a division of opinion in a Bench of this Court, and reported at p. 175 of the Civil Rulings of the eighth volume of the Weekly Reporter (unreported elsewhere) it was held, that the Collector''s Court, in a case under the Bent Law of 1859, and the Civil Court were not concurrent Courts; and therefore that a decision by the Collector was clearly not res judicata to effect the Civil Court. But while establishing this plain proposition, Sir Barnes Peacock, in his judgment, entered into certain ingenious, but extra-judicial, observations with respect to the doctrine of res judicata as applicable or not to Indian Courts. At page 178 he says:- It is very important also to see what would be the result if the question of concurrency of jurisdiction were put out of question. It appears to me to be of much more importance in this country than it would be in England, that, in order to render a judgment between the same parties upon the same point in one Court conclusive in another Court, the two Courts must be Courts of concurrent jurisdiction. If it were not so, the whole procedure as regards appeals might be entirely changed, meaning, I presume, that different procedure as to appeals might apply to the two cases."

7. And again (p. 179) he says: "A bond of a very large amount might be set up as an answer in a suit in the Munsif''s Court or in a Court of Small Causes for a very small amount; but it never could be held that a decision in those Courts as to the validity or invalidity of the bond as a defence to the suit would be conclusive upon the (District) Judge in a suit brought upon the bond, and upon the High Court in a regular appeal from a decree in that suit." And again: "It is quite clear that, in order to make the decision of one Court final and conclusive in another Court, it must be a decision of a Court which would have had jurisdiction over the matter in the subsequent suit in which the first decision is given in evidence as conclusive." And again (p. 180): "I should be disposed to say that the English rule of estoppel ought not to be introduced into the Courts of this country, if the question should ever arise before me. I am at present disposed to think that such a judgment is only prima facie evidence, and not conclusive."

8. The last opinion quoted has been expressly overruled by the Privy Council. The other observations, however, raised a serious question; they have not been expressly, but it seems to us they have been impliedly, overruled by the Privy Council; and they also seem opposed to other decisions.

9. Now a suit in the Munsif''s Court must be under Rs. 1,000 in value; from his decision there is a regular appeal on fact and law to the District Judge or Subordinate Judge, from whom there is only a special appeal on points of law to the High Court; and no appeal at all, except under very special circumstances, to the

Privy Council. If, then, the advantages or disadvantages with respect to appeal are to govern the question, whether a judgment can be relied on as res judicata, it would seem to follow that judgments in cases under Rs. 10,000 and, indeed (see Section 596 of the present Procedure Code), in cases over Rs. 10,000, where concurrent judgments have been given by the original Court and first Court of appeal, and no substantial question of law arises, would, in all cases of Rs. 10,000 and upwards, be incapable of being pleaded as res judicata, because in such last-mentioned cases it would be impossible to predicate that there might not be an appeal to the Privy Council. This, to say the least, would be an extremely shifty and inconvenient principle to act upon; and, as I shall presently show, has been disregarded by the Privy Council.

10. But the Advocate-General has argued, and argued with great force, that the judgment of a Court ought not to have the effect of res judicata in a case which that Court was not itself competent to try; being in fact the proposition contained in the third of the above extracts from Sir Barnes Peacock''s judgment, which seems to require identity, rather than concurrency, of jurisdiction. As for example, in the present case, the Munsif having a jurisdiction to try cases only up to the value of Rs. 1,000, was competent to try the rent-suit against Guneshi Roy, but was not competent to try the present suit; nay, would not have been competent to try a suit for possession of the mouza in respect of which rent was claimed. But this contention would in effect make the doctrine of res judicata inapplicable to suits tried by Munsifs except in Munsifs'' Court-a result which might possibly be advantageous, but for which we find no authority. The 2nd section of Act VIII of 1859 speaks of a Court of "competent jurisdiction." Did it mean competent to try the question of title, or competent to try the second suit? The words are" competent to try the cause of action."

11. The judgment of the Privy Council-Khugowlee Sing v. Hossein Bux Khan 7 B. L. R. 673-refused to consider a Collector''s decision res judicata, because it was not that of a "Court competent to adjudicate on a question of title."

12. It would seem to be refining too much to confine the doctrine of res judicata in India to exactly parallel Courts, to hold that a Munsifs judgment on a question of title should only be res judicata in a Munsifs Court. One result would be, that there would constantly be a preliminary wrangle as to the valuation of the suit. And it does not seem a satisfactory principle that a Munsifs judgment should be res judicata, and an authoritative decision on title in a suit valued at Rs. 999, and not so in a suit on the same title valued at Rs. 1,001.

13. More especially would it be a hardship in a case like the present (which is only an example of the general practice in India), where the plaintiff obtruded himself into the rent-suit, raised the very question he raises in this Court, and put the defendant, who was plaintiff in that suit, to the same expence and trouble as if the title to the entire property depended on the result.

14. In the case of Soorjomonee Dabee v. Sudddnund Mahapatur (12 B. L. R. 304), the Judicial Committee expressed their opinion that the 2nd section of Act VIII of 1859 "would by no means prevent the operation of the general law relating to res judicata founded on the principle, nemo debet bis vexari pro eadem causa."

15. This maxim was the foundation of the decision in Collier v. Walters (L. R. 17 Eq. 252), and the case of Flitters v. Allfrey (L. R. 10 C. P. 29) seems to show that the judgment of a Court not competent to try the case in which the judgment is pleaded as res judicata must, nevertheless, be held to be judgment of a Court of competent jurisdiction within the rule. For in that case the defendant having complied with the provisions of Section 39 of 19 and 20 Vict., Clause 108, the County Court thereupon became incompetent to try the case, though otherwise it might, in the absence of the defendant''s dissent, have tried it; and the present case especially falls within the wholesome principle expressed in the judgment of that case (p. 42): "It would in our judgment be against principle and authority, if a party, having tried an experiment in a County Court, could, when judgment was against him, proceed again in another Court, not by way of appeal, but by merely varying the form of procedure, or forcing the opposite party to proceed for redress in respect of the same question as had been previously litigated, again harass his antagonists for the same cause, and take his chance of success in another Court, when he has previously failed in a Court of competent jurisdiction."

16. The 13th section of Act X of 1877 seems to support this view; for it enacts, that no Court shall try any " issue, &c." (reads Section 13). And this section being in a Procedure Act, must, we think, be taken to be declaratory of the existing law. We think it clear that the issue of separation was "directly and substantially" in issue in the rent-suit; and though the Munsif was not competent to try the present suit, we think he was competent to try, and at the instance of the present plaintiff did try, in the rent-suit, the issue on which the present suit depends.

17. Moreover, if the question of advantage or disadvantage in respect to ultimate appeals is to be disregarded, as we think the Privy Council case hereafter referred to shows, then it is important to remember that the rent-suit was also tried and decided on regular appeal, both as to law and fact, by the Subordinate Judge, whose Court was a Court competent to try the present suit.

18. We do not refer to the Full Bench decision in the case of Gobind Chunder Koondoo v. Taruck Chunder Bose (I. L. R. 3 Cal. 145), because there, as we have been informed, both decisions were in the Munsif''s Court, otherwise that case would be conclusive on the question.

19. There are, however, two decisions of this Court in which, being cases instituted in the Court of the Subordinate Judge, judgments of the Munsif''s Court were regarded as having the effect of res judicata. These cases are: Bemola Soondury Chowdrain v. Punchanun Chowdhry (I. L. R. 3 Cal. 705) and Nand Kishore Singh v.

Huree Pershad Mundul (13 W. R. 64). It is true, as pointed out by Mr. Justice White in the case of Toponidhei Dhirj Gir Gosain v. Sreeputty Sahanee (I. L. R. 5 Cal. 832) that in both these cases the Judges were prepared to arrive at the same conclusion on other grounds. But in effect the question seems to have been substantially settled by the Judicial Committee in the case of Krishna Behari Roy v. Brojeswori Chowdranee L. R. 2 I. A. 283; S.C. I. L. R. 1 Cal. 144.

20. In one sense, no doubt, the two Courts in that case had identical jurisdiction, for any suit which the District Judge was competent to try, the Principal Sudder Ameen (now called the Subordinate Judge) was also competent to try, if the District Judge appropriated the case to his Court for hearing. But practically (and this in effect meets the objections of Sir BARNES PEACOCK as to the advantages or disadvantages with respect to appeals) and as the matter actually stood, the jurisdictions were not identical; for when a Principal Sudder Ameen tried cases valued at over Rs. 5,000, the appeal lay direct to the High Court both on fact and law; but when he tried cases under Rs. 5,000, the appeal lay on law and fact to the District Judge, from whom only a special appeal on point of law lay to the High Court. The fact that the District Judge might have tried the case as an original case, does not prevent the Court of the Principal Sudder Ameen being a subordinate Court to that of the District Judge in cases under Rs. 5,000, heard by the Principal Sudder Ameen.

21. In the case before the Privy Council, the judgement of the Principal Sudder Ameen in the first suit, as the suit was valued under Rs. 5,000, went on regular appeal to the District Judge, and from him, only on special appeal, to the High Court. The judgement of the Principal Sudder Ameen having been affirmed by both Courts, was held to have the effect of res judicata upon the second suit heard primarily by the District Judge, which went up to the High Court on regular appeal, and thence to the Privy Council.

22. We think that the rule of res judicata ought to be held to apply to judgments in rent-suits, at least until interventions in such suits are authoritatively prohibited; otherwise all the incovenience and hardships which the rule is intended to obviate must continue to exist.

23. Upon the whole, therefore, though with regret, we feel we are bound to hold that the judgment in the rent-suit on the substantial issue of separation must be regarded as res judicata governing the present suit, and we must, therefore, affirm the decision of the Court below; though we differ from its judgment both on the merits and on the question of estoppel, but as the plea of res judicata was not raised until after all the evidence had been taken and great expense incurred, we think each party should bear his and her own costs both in this Court and in the Court below, and we direct accordingly. We dismiss the appeal of the plaintiff, and allow the cross-appeal of the defendant.