



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.8829 OF 2010

HAR NARAYAN TEWARI (D) THR. LRS. ...APPELLANT(S)

VERSUS

CANTONMENT BOARD, RAMGARH
CANTONMENT & ORS. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Shri Manoj Goel, learned senior counsel for the appellants and Shri Manoj Swarup, learned senior counsel for the respondents were heard.
2. The Title Suit No.9/89 of the plaintiff-appellant (Har Narayan Tewari) was decreed on 16.03.2000 by the court of first instance. In an appeal by the Cantonment Board, Ramgarh, the said decree was reversed by the First Appellate Court vide judgment and order dated 28.06.2006; basically on the ground that the suit was hit by principle of *res judicata* in view of the decision in the earlier Title Suit No.8/64 instituted by Maharani Lalita

Rajya Lakshmi¹ (wife of Raja Bahadur Kamakshya Narayan Singh²) wherein the plaintiff-appellant was defendant No.32 and the Cantonment Board, Ramgarh was the main contesting defendant. The Second Appeal preferred by the plaintiff-appellant to the High Court was dismissed on 01.04.2009 simply stating that it does not raise any substantial question of law.

3. Aggrieved by the judgment and order of the High Court dated 01.04.2009 dismissing the appeal; the plaintiff-appellant has preferred this appeal and has also assailed the judgment and order dated 28.06.2006 of the First Appellate Court alleging that his suit was not barred by *res judicata* and that he has validly acquired title and possession over the disputed land.
4. The plaintiff-appellant had filed the above referred Title Suit No.9/89 for declaration of his title over the properties mentioned in Schedule 'A' of the plaint with structures and buildings standing thereon and for confirmation of his possession over the same. In the alternative, a prayer was made that in case the plaintiff-appellant was not found in

¹ Hereinafter referred to as "Maharani"

² Hereinafter referred to as "Raja"

possession of the said property, the Cantonment Board, Ramgarh, or any person claiming through it, be evicted and he be put in possession with the further direction that they be restrained by a decree of permanent injunction from dispossessing the plaintiff-appellant from the said property in future.

- 5.** According to Schedule 'A' of the plaint, the dispute is about two pieces of land: First, land measuring 0.12 acres out of 2.04 acres of Plot No.432; and secondly land measuring 0.18 acres out of 0.66 acres of Plot No.438 both situate in village Ramgarh, within the Cantonment Board, Ramgarh with boundaries as described in the Schedule. In short, the dispute in the suit is only regarding 0.12 acres of Plot No.432 and 0.18 acres of Plot No.438 i.e. total of 0.30 acres of the above two plots and the structures existing thereon.
- 6.** The plaintiff-appellant is claiming title and possession over the suit land alleging that the Raja, the proprietor of the village, had settled the aforesaid land measuring 0.30 acres of the land comprising of Plot Nos.432 and 438 in his favour in the year 1942.

7. The case of the plaintiff-appellant was that village Ramgarh was the part of the Estate of Raja. It was under the management of the Court of Wards and was released in Raja's favour in the year 1937. During the period of its management by the Court of Wards, its manager acquired 5.38 acres of additional land comprised in various plots including Plot Nos.432 and 438 in proceedings bearing Case No.1/1926-27 and came in possession thereof.
8. The Raja in the year 1942 made a permanent *raiyyati* settlement of the suit land in favour of the plaintiff-appellant and also delivered its possession to him on payment of rent and *salami* of Rs.2,000/-. After vesting of the Estate of Ramgarh in the State of Bihar, the name of the plaintiff-appellant was mutated upon enhancement of rent @ Rs.2/- per decimal by an order dated 04.01.1963 of the Additional Collector, Ramgarh passed in Case No.115/62-63 (*Exh.13*). The plaintiff-appellant had constructed certain structures on the said land which have been let out to various persons, all of whom are defendants in the suit.

- 9.** Upon the establishment of the Cantonment Board, Ramgarh, the ex-proprietor Raja handed over 2.55 acres of land (excluding the suit land) with the dispensary building etc. to the Cantonment Board temporarily. The Cantonment Board, as such, never came in possession of more than 2.55 acres of land that too which was other than the land settled and occupied by the plaintiff-appellant.
- 10.** In 1964, Maharani, the wife of the Raja, instituted a Title Suit No.8/64, *inter alia*, for declaration of her title over 5.38 acres of the land of the village including 0.30 acres land of the plaintiff-appellant. The aforesaid claim was made on the basis of the maintenance grant allegedly made by the Raja in her favour.
- 11.** The aforesaid suit was contested by the plaintiff-appellant by filing a written statement and claiming 0.30 acres land on the basis of *raiyati* rights granted by the Raja in the year 1942. The Cantonment Board, Ramgarh, claimed distinct rights in different portions of the land to the extent of 2.55 acres only, comprising of dispensary building and quarters of the doctors on the basis of possessory rights granted by the Raja.

- 12.** In the aforesaid case, Maharani entered into a compromise with several defendants including the plaintiff-appellant (who was defendant No.32 in the said suit). According to the said compromise, Maharani admitted the possession of the plaintiff-appellant over the suit land to the extent of 0.30 acres in Plot Nos.432 and 438 and it was agreed that she will have no concern with the same and that the plaintiff-appellant will remain in exclusive possession of it. The Cantonment Board, Ramgarh did not object to it or challenge the compromise.
- 13.** In the said suit, as many as nine issues were framed including the maintainability of the suit and about the right, title and possession of Maharani. The suit of the Maharani was dismissed vide judgment and order dated 31.03.1984, primarily on the ground that it was not maintainable as the State of Bihar being a necessary party, was not made a party and that Maharani had not entered into the witness box to prove her case. She as such, was not found to be the owner in possession of the land claimed by her. The court in dismissing the suit clearly mentioned that the parties who have entered into the compromise

with Maharani will not have any right on the basis of the compromise deed as she herself has failed to prove her independent rights over the land claimed by her.

- 14.** The second appeal filed by the plaintiff-appellant was dismissed by the High Court as it failed to raise any substantial question of law, which is mandatory for entertaining an appeal under Section 100 of the Code of Civil Procedure. Therefore, the first point which arises for consideration herein is - *whether in the facts and circumstances of the case, any substantial question of law was involved in the second appeal.*
- 15.** The submission is that the plaintiff-appellant was non-suited by the First Appellate Court, on the ground that his suit was barred by *res judicata*. One of the essential conditions for the applicability of principle of *res judicata* as enshrined under Section 11 of the CPC is that the issue in the earlier suit and the subsequent suit ought to be directly and substantially the same. In the earlier Suit No. 8/64 instituted by Maharani, her claim was that she is the lawful owner of the entire 5.38 acre of land of Village Ramgarh, on the basis of the maintenance grant made in

her favour by the Raja. In the said suit, the plaintiff-appellant was defendant no. 32 and the Cantonment Board, Ramgarh was defendant No. 1. The claim set up by Maharani was not accepted and *ex-facie* there was no adjudication regarding the rights of the co-defendants over the suit land *viz* 0.30 acres of land of plot Nos. 432 and 438 as claimed by the plaintiff-appellant in the present suit. The limited issue therein was whether the Maharani had acquired any right in the above entire property on the basis of maintenance in grant alleged to be executed by the Raja in her favour. There was no issue as to whether the suit land as claimed by the plaintiff-appellant belonged to him or was settled or not settled in his favour as claimed. Thus, in the facts and circumstances of the case, a clear substantial question of law as to whether the present suit as filed by the plaintiff-appellant was barred under Section 11 CPC on principle of *res judicata* inasmuch as there was no adjudication of the rights of the co-defendants in the previous suit with regard to the suit land and the issue therein was not directly or indirectly and substantially the same as in the present suit.

- 16.** In view of the above, we are of the opinion that the High Court manifestly erred in dismissing the second appeal *in limine* on the ground that there was no substantial question of law involved therein.
- 17.** As stated earlier, the substantial question of law arising in the second appeal was - *Whether the suit as setup by the plaintiff-appellant was barred by principle of res judicata in view of the decision in the earlier Suit No. 8 of 64 wherein rights of the co-defendants in respect of the suit land were never adjudicated and non-acceptance of the claim of Maharani was not sufficient so as to decide the rights of the co-defendants.*
- 18.** There are no factual disputes which may require consideration of any evidence so as to answer the above substantial question of law. Therefore, we consider it appropriate to decide the above substantial question of law ourselves instead of leaving it for the High Court to adjudicate it.
- 19.** It is an admitted position that the suit land i.e., portions of plot Nos. 432 and 438 were part of the Estate of Raja who had acquired about 5.38 acres of additional land of

village Ramgarh. Maharani had claimed title over the entire aforesaid land of village Ramgarh but her claim was not accepted by the court in her Title Suit No.8/64. It means that she was unable to establish her right, title and interest over the said land on the basis of the alleged maintenance grant made in her favour by the Raja, but it does not mean that the suit land was not settled by the Raja in favour of the plaintiff-appellant or that the suit land had come to be settled with Cantonment Board, Ramgarh in any manner.

20. The *lis* in the previous suit i.e. Suit No.8/64 was regarding ownership and entitlement of Maharani over the entire 5.38 acres of land of village Ramgarh qua the Cantonment Board, Ramgarh; the plaintiff-appellant and other defendants in the said suit; whereas the controversy in the present suit is quite distinct with regard to only 0.30 acres of the suit land *vis-à-vis* the plaintiff-appellant and the Cantonment Board, Ramgarh.

21. The judgment and order of the previous suit which is final and conclusive, in no specific terms adjudicates upon the right, title and interest of either of the plaintiff-appellant

or of the Cantonment Board, Ramgarh with regard to the suit land. In the said suit, there was no issue with regard to the right, title and possession of either the plaintiff-appellant or of the Cantonment Board, Ramgarh and no finding in this connection was returned by the court in dismissing the said suit. In simple words, the suit, as filed by Maharani claiming right, title and interest over 5.38 acres of land of village Ramgarh was dismissed simpliciter without adjudication of any rights of the plaintiff-appellant over the suit land *vis-à-vis* the Cantonment Board, Ramgarh.

- 22.** It may also be pertinent to point out that the Cantonment Board, Ramgarh throughout had claimed rights over 2.55 acres of land of village Ramgarh and not in respect of the entire 5.38 acres of land which was additionally acquired by the Raja. It is also not the case of the Cantonment Board, Ramgarh that the land which was temporarily settled in its favour by the Raja has been occupied by the plaintiff-appellant or that the plaintiff-appellant is claiming rights over the land which was settled in its favour. In other words, the land belonged to the Raja, part

of which was settled in favour of the plaintiff-appellant to the extent of 0.30 acres of plot Nos. 432 and 438, whereas, another piece of land measuring 2.55 acres with certain structures but certainly excluding the suit land was settled in favour of Cantonment Board, Ramgarh. The right of the plaintiff-appellant to claim the suit land or the right of the Cantonment Board over the 2.55 acres of land settled in its favour never came to be adjudicated in previous Title Suit No. 8 of 64.

- 23.** The general policy behind the principle of *res judicata* as enshrined under Section 11 CPC is to avoid parties to litigate on the same issue which has already been adjudicated upon and settled. This is in consonance with the public policy so as to bring to an end the conflict of interest on the same issue between the same parties. One of the basic essential ingredients for applying the principle of *res judicata*, as stated earlier also, is that the matter which is directly and substantially in issue in the previous litigation ought not to be permitted to be raised and adjudicated upon in the subsequent suit. It is a settled law that the principle of *res judicata* is applicable not only

between the plaintiff and the defendants but also between the co-defendants. In applying the principle of *res judicata* between the co-defendants, primarily three conditions are necessary to be fulfilled, namely, (i) there must be a conflict of interest between the co-defendants; (ii) there is necessity to decide the said conflict in order to give relief to plaintiff; and (iii) there is final decision adjudicating the said conflict. Once all these conditions are satisfied, the principle of *res judicata* can be applied *inter se* the co-defendants.

24. In context with the above settled principle, though reference can be made to several decisions starting from that of Privy Council, but we consider it appropriate to refer to only one of the latest decisions on the point rendered by this Court in the case of ***Govindammal (Dead) by Legal Representatives and Ors. vs. Vaidyanathan and Ors.***³, wherein after considering all previous decisions regarding application of principle of *res judicata* between co-defendants, this Court culled out the above three conditions for applying the same.

³ (2019) 17 SCC 433

25. In the light of the above legal position, we find that there was no conflict of interest between the co-defendants in the earlier Suit No. 8 of 64 inasmuch as the plaintiff-appellant was independently claiming rights over 0.30 acres of suit land whereas the Cantonment Board, Ramgarh was claiming rights over 2.55 acres of the land which formed part of the Estate of Raja without asserting that the land settled in its favour is the same as claimed by plaintiff-appellant or that there was any encroachment upon the land settled in its favour. Even assuming that there was some *inter se* conflicts between the co-defendants with regard to the suit land, the adjudication of the said conflict was not necessary for granting any relief to Maharani who was the plaintiff in the suit. Since she was claiming the entire Estate of 5.38 acres of land and her claim was defeated as she was unable to prove the grant of the said land in her favour with no specific finding by the court regarding the claims set up by the co-defendants, the *inter se* dispute of the co-defendants as raised in the present suit never came to be adjudicated. Thus, none of the conditions as laid down in *Govindammal*

(*supra*) between co-defendants stood fulfilled for applying *res judicata*. In view of the aforesaid facts and circumstances, we are of the opinion that the principle of *res judicata* would not be attracted as the issue in the present suit was neither directly or indirectly in issue in the previous suit and there was no conflict of interest between the co-defendants in the said previous suit which if any never came to be adjudicated upon. Accordingly, the suit as filed by the plaintiff-appellant claiming title over the suit land against the Cantonment Board, Ramgarh is not barred under Section 11 CPC.

- 26.** Having said so, we proceed to examine the respective claims of the parties on merits, treating the suit as maintainable and not barred by *res judicata*.
- 27.** The plaintiff-appellant has set up his claim over the suit land as described in Schedule 'A' to the plaint. The said schedule mentions 0.12 acres of land of plot No.432 and 0.18 acres of land of plot No.438 totaling 0.30 acres of land situate in village Ramgarh. There is no dispute that during the said period the Estate of the Raja was under the management of Court of Wards, its manager had acquired

5.38 acres of additional land including the suit land and the same was added to the Estate of the Raja. In the year 1942, the Raja had settled the aforesaid land in favour of the plaintiff-appellant on 18.10.1942. It was followed by *Hukumnama* dated 07.04.1943 (*Exh.9*) which confirmed the above settlement.

- 28.** The above settlement was confirmed by the Additional Collector, Hazaribagh on enhancement of rent @ Rs.2/- per decimal some time in the year 1963 and had started realizing rent from the plaintiff-appellant accordingly.
- 29.** There is no dispute by any person claiming rights under the Raja that the aforesaid land was not so settled in favour of the plaintiff-appellant. The Maharani had claimed the entire 5.38 acres of land on the basis of the maintenance grant executed by Raja in her favour but her aforesaid claim was not accepted. The Cantonment Board, Ramgarh on the other hand had staked its claim only in respect of 2.55 acres of land forming part of 5.38 acres of the land but has nowhere claimed any right, title and interest over the suit land as claimed by the plaintiff-appellant. The Cantonment Board only on the basis of the

judgment and order dated 16.03.2000 passed in Title Suit No.8/64 alleges that it has been recognized to be the owner of the entire 5.38 acres of land by adverse possession and, therefore, the plaintiff-appellant has no subsisting right in the suit land. The Cantonment Board further contends that the entire 5.38 acres of land was leased out by the Raja on 02.06.1931 for a period of 15 years to the Dublin University Mission and, therefore, no part of it could have been settled by him in favour of the plaintiff-appellant in the year 1942.

- 30.** In respect to the second aspect as raised on behalf of the Cantonment Board, it is necessary to note that no material or evidence was adduced by the Cantonment Board to establish that the entire 5.38 acres of land was transferred by way of lease to Dublin University Mission; not even any oral evidence was adduced to prove such a transfer restricting the right of the Raja to settle the land in favour of the plaintiff-appellant. Even otherwise assuming there was such a lease, it would have expired in June 1946 on completion of 15 year period in which case the settlement of 1942 and the *Hukumnama* of 1943 being valid would

revive and continue in favour of the plaintiff-appellant, more particularly with its confirmation by the Additional Collector and mutation in 1963.

- 31.** In context with the first contention that in Title Suit No.8/64, possession of the Cantonment Board over the entire 5.38 acres was accepted by adverse possession, it would be pertinent to note that on perusal of the said judgment and order and decree would reveal that the court of first instance in the said suit has not given any finding with regard to the claim to the plaintiff-appellant (who was defendant No.32 in the said suit) nor with regard to the claim set up by the Cantonment Board. It is misconceived to contend that the said judgment and order accepts the title of the Cantonment Board by adverse possession on the entire 5.38 acres of land. In the said suit, the Cantonment Board had claimed rights only in respect of the part of the aforesaid 5.38 acres of land to the extent of 2.55 acres and, therefore, any observation of the trial court regarding adverse possession of the Cantonment Board would be deemed to be in respect of the claim as set up by the Cantonment Board and would not be construed to be

in connection with the entire 5.38 acres of land so as to include the land of the plaintiff-appellant.

32. The written statement of the Cantonment Board itself as filed in Title Suit No.8/64 (*Exh.12*) makes it abundantly clear that upon the establishment of the Cantonment Board as a temporary measure in the year 1941, the Raja on being approached permitted it on 06.11.1941 to use 2.55 acres of land consisting of the dispensary building and other structures along with adjoining land to be used by the Cantonment Board for a period of six months which was extended up to 31.12.1943. There was no other settlement of any land in favour of the Cantonment Board and the Cantonment Board was in permissive possession of only 2.55 acres of land out of the 5.38 acres of the entire land of village Ramgarh. The land settled in favour of the plaintiff-appellant and that in favour of the Cantonment Board by the Raja were distinct and as such there was no apparent conflict between them.

33. The plaintiff-appellant by sufficient evidence has proved the settlement of the suit land by the Raja in his favour. It stands proved by the *Amin* report (*Exh.8*) dated 15.04.1942

and the *Hukumnama* (*Exh.9*) dated 07.04.1943 as well as the Rent receipt (*Exh.6, 6/A and 7*). The order of the Additional Collector, Hazaribagh dated 07.01.1963 (*Exh.16*) directing realization of rent from the plaintiff-appellant also confirms the above settlement and its subsequent approval by the State on enhancement of rent. All these documents have not been confronted by the other side. The fact that the name of the plaintiff-appellant was also mutated in the revenue records proves it beyond doubt, in the absence of any contrary evidence that he is in possession of the suit land. It may also be worth noting that in the earlier suit, the Cantonment Board has accepted that the plaintiff-appellant has been realizing rent of the shops existing over the suit land from the tenants.

- 34.** In view of the aforesaid overwhelming unopposed evidence, the First Appellate Court manifestly erred in reversing the finding of the court of first instance that the plaintiff-appellant is in settled possession of the suit land and he has successfully proved his ownership rights over the same.

35. Accordingly, the judgment and order of the High Court dated 01.04.2009 and that of the First Appellate Court dated 28.06.2006 are hereby set aside and the judgment and order dated 16.03.2000 passed by the trial court is restored decreeing the title suit of the plaintiff-appellant but with no order as to costs.

36. The appeal is allowed.

..... **J.**
(ABHAY S. OKA)

..... **J.**
(PANKAJ MITHAL)

NEW DELHI;
JULY 08, 2024.