

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

C. Rev. No. 46/2012
CMA No. 60/2012

Date of Decision:19.10.2012

Dhanwant Kour & ors.

Vs.

Daljit Singh.

CORAM:

Mr. JUSTICE J. P. SINGH.

Appearing Counsel:

For Petitioner(s) : Mr. Gurcharan Singh, Advocate.

For Respondent(s) : Mr. Vijay Gupta, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Optional. |
| ii) | Whether to be reported
in Digest/Journal | : | Yes. |
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Respondent-Daljit Singh's Suit for partition by *metes and bounds* of immoveable properties including Plot No. 51 (later changed to Plot No. 59) with house constructed thereon situated at New Rehari Jammu, land situated at Gho Manhasa Jammu, land situated at Tringla-Batote, And land situated at Transport Yard Narwal Jammu, was resisted by the petitioners-defendants, *inter alia*, on the grounds that it was hit by Section 11 of the Code of Civil Procedure in view of the declaratory Decree passed by City Judge Jammu in Civil Suit No. 160/Civil of 1990 and was otherwise barred by the time prescribed in the Limitation Act for filing such Suits.

The petitioners' plea that Suit was barred by time rested on the factual plea that respondent-plaintiff

stood excluded from the properties in question during the lifetime of the predecessor-in-interest of the petitioners.

To determine the controversy arising out of the pleadings of the parties, the Trial Court of Ist Additional District Judge Jammu, framed eight Issues treating Issue Nos. 1, 2 and 4 as Preliminary Issues.

All the three issues having been decided against the petitioners, they have approached this Court seeking setting aside of the trial Court's order on various grounds.

Considered the submissions made by learned counsel for the parties at the Bar.

The Preliminary Issues determined by the Trial Court vide its order dated 15.05.2012 are these:

1. *Whether suit is time barred?* OPD
2. *Whether suit is hit by Section 11 C.P.C.?* OPD
3. *Whether suit has not been properly valued?* OPD

While determining Issue No.2 against the petitioners, it was *inter alia* held by the Trial Court that the respondent's Suit, having been valued at Rs.50,000/- for the purpose of jurisdiction, the Decree passed by City Judge, Jammu, would not operate as *res judicata* because the Court of City Judge did not possess pecuniary jurisdiction to determine and try the present Suit. The petitioners' plea that the Suit was hit

by *res judicata*, was found untenable on yet another ground that the petitioners-defendants had not placed on records the Certified Copies of the pleadings of the parties in the earlier Suit and in this view of the matter, their plea of Suit being hit by *res judicata* could not be entertained.

The first finding of the Trial Court that the subsequent Suit being not within the pecuniary jurisdiction of the Trial Court that tried the earlier Suit, the provisions of Section 11 would not get attracted, is *exfacie* erroneous, in that, Explanation X appended to Section 11 of the Jammu and Kashmir Code of Civil Procedure appears to have escaped notice of the Trial Court while considering the petitioners' plea. In terms of the explanation, any issue heard and finally decided by a Court of limited jurisdiction, which, of course would include a Court of limited pecuniary jurisdiction competent to decide such issue, shall operate as *res judicata* in a subsequent Suit notwithstanding that such Court of limited jurisdiction was not competent to try such Suit in which such issue was subsequently raised.

Had the Trial Court taken note of the Explanation, it would not have erred in rejecting the petitioners' plea on the basis of its first observation.

I am fortified in taking the above view that lack of pecuniary jurisdiction of the Court that tried the first

Suit, to try subsequent Suit, would not operate as impediment in considering the plea of *res judicata* raised in the subsequent Suit, by what was held by their Lordships of the Hon'ble Supreme Court of India in *Sulohana Amma v. Narayanan Nair reported as AIR 1994 Supreme Court 152*, where while dealing with the Issue it was held as follows:

“5. The words "competent to try such subsequent suit" have been interpreted that it must refer to the pecuniary jurisdiction of the earlier court to try the subsequent suit at the time when the first suit was brought. Mere competency to try the issue raised in the subsequent suit is not enough. A decree in a previous suit will not operate as *res judicata*, unless the Judge by whom it was made, had jurisdiction to try and decide, not that particular suit, but also the subsequent suit itself in which the issue is subsequently raised. This interpretation had consistently been adopted before the introduction of Explanation VIII. So the earlier decree of the court of a limited pecuniary jurisdiction would not operate as *res judicata* when the same issue is directly and substantially in issue in a later suit filed in a court of unlimited jurisdiction, vide *P.M. Kavade v. A.B. Bokil* 6. It had, therefore, become necessary to bring in the statute Explanation VIII. To cull out its scope and ambit, it must be read along with Section 11, to find the purpose it seeks to serve. The Law Commission in its report recommended to remove the anomaly and bring within its fold the conclusiveness of an issue in a former suit decided by any court, be it either of limited pecuniary jurisdiction or of special jurisdiction, like insolvency court, probate court, land acquisition court, Rent Controller, Revenue Tribunal, etc. No doubt main body of Section 11 was not amended, yet the expression "the court of limited jurisdiction" in Explanation VIII is wide enough to include a court whose jurisdiction is subject to pecuniary limitation and other cognate expressions analogous thereto. Therefore, Section 11 is to be read in combination and harmony with Explanation VIII. The result that would flow is that an order or an issue which had arisen directly and substantially between the parties or their privies and decided finally by a competent court or tribunal, though of limited or special jurisdiction, which includes pecuniary jurisdiction, will operate as *res judicata* in a subsequent suit or proceeding, notwithstanding the fact that such court of limited or special jurisdiction was not a competent court to try the subsequent suit. The issue must directly and substantially arise in a later suit between the same parties or their privies. This question is no longer *res integra*. In *Bajrang Bahadur Singh v. Beni Madho Rakesh Singh* AIR 1938 PC 210 at p. 214 the facts were that under U.P. Land Revenue Act 3 of 1901, the consolidation and partition of the lands were effected and became final. Thereafter, one of the landowners claimed title in a civil suit for a

declaration that he was the superior landholder. In view of Section 233(k) of the Land Revenue Act, on a divergence of opinion among Oudh Chief Court and Allahabad High Court, the judicial committee held at p. 214 that if a question of title affecting the partition, which might have been raised in the partition proceedings, was not raised and the partition was completed, Section 233(k) debars parties to the partition from raising the question of title subsequently in a civil court. The revenue court is a court of special jurisdiction. In *Daryao v. State of U.P.* (1962) 1 SCR 574 (AIR 1961 SC 1457) this Court held at p. 582 that the doctrine of *res judicata* is in the interest of public at large and a finality should be attached to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. In *Gulam Abbas v. State of U.P.* (1982) 1 SCC 71 at p. 92; (AIR 1981 SC 2198 at p. 2213) this Court held that the principle of *res judicata* though technical in nature, is founded on considerations of public policy. The technical aspect, for instance, pecuniary or subject-wise competence of the earlier forum to adjudicate the subject-matter or to grant reliefs sought in the subsequent litigation, should be immaterial when the general doctrine of *res judicata* is to be invoked. Explanation VIII, inserted by the Amending Act of 1976, was intended to serve this purpose and to clarify this position. It, therefore, has to be held that the decree of the District Munsif, though of limited pecuniary jurisdiction, would operate as *res judicata* in the subsequent suit between the same parties.”

The second observation on which the Trial Court rejected the petitioners’ plea to consider the application or otherwise of Section 11 of the Code of Civil Procedure to the Suit in question, is that the petitioners-defendants had failed to place on Records the pleadings of the parties in the earlier Suit.

The course adopted by the Trial Court in deciding the Issue against the petitioners merely on the ground that they had not placed on records the Certified Copies of the pleadings of the parties in the earlier Suit is too technical to warrant justification, for, it was likely to result in failure of justice and avoidance of consideration of the plea that could well be considered

by the Court by either requiring the petitioners-defendants to place on records the Certified Copies of the pleadings in the earlier Suit or itself summoning the records of the earlier Suit before considering the Issue of applicability or otherwise of Section 11 to the Suit in question.

This was necessary in the present case additionally because the petitioners were deprived of their Right to project their plea without affording them opportunity of leading evidence on the Preliminary Issue, which the Court, on its own, had treated as Preliminary Issue, probably proceeding on the premise that it may not require leading of evidence thereon.

The plea raised by the petitioners has been decided against them without affording them opportunity of leading evidence in support thereof thereby violating the principles of Natural Justice.

The findings of the Trial Court on Issue No. 2 cannot, therefore, be sustained. The Issue needs to be re-addressed keeping in view the observations made hereinabove.

Coming to the findings of the Trial Court on Issue No.1 it is found that the petitioners-defendants' plea on the basis whereof the respondent's Suit was opposed as barred by time, was a mixed plea of fact and law which could not be determined without affording opportunity

to the parties to lead evidence in support or thereagainst.

The petitioners-defendants' plea has been negatived by the Trial Court relying only on what was contained in the respondent's Complaint without taking into consideration the pleas projected by petitioners-defendants in Response thereto in the Written Statement.

The Trial Court has, therefore, faulted in deciding Issue No.1 without allowing opportunity to the parties to lead evidence thereon.

Issue No.1 was not required to be treated as Preliminary Issue, for, it needed determination only after the parties had been allowed opportunity to lead evidence for and against it. The findings of the Trial Court on Issue No.1 too cannot, therefore, be sustained.

The findings of the Trial Court on Issue No.4, being well merited, do not warrant interference.

For all what has been said above, the findings of the Trial Court on Issue No.1, therefore, need to be *set aside* requiring the Trial Court to consider the Issue along with other Issues after the parties were allowed opportunity to lead evidence thereon.

In view of the discussion made while dealing with Issue No.2, the findings returned thereon by the Trial

Court needs to be *set aside* requiring it to reconsider the Issue after affording opportunity to the petitioners-defendants to place on records the Certified Copies of the pleadings in the earlier Suit.

This Civil Revision, accordingly, succeeds and is, therefore, allowed setting aside the findings of the Trial Court on Issue Nos. 1 and 2. Order dated 15.05.2012 passed by the learned Additional District Judge, Jammu shall stand **modified** accordingly.

(J. P. Singh)
Judge

JAMMU
Sunita.
19.10.2012