S.A. No. 813/2003

28.11.2014

Shri Dinesh Upadhyay, learned counsel for the appellants.

Heard on admission.

This is plaintiff's Second Appeal directed against the judgment and decree dated 28.7.2003 in Civil Appeal No. 6-A/2001 by Additional District Judge Dindori affirming the judgment and decree dated 5.7.2001 passed in Civil Suit No. 13-A/1998 by Civil Judge Class I, Dindori.

Admitted facts are that land bearing Khasra No. 159, 172, 192 and 381 with respective area being 1.23, 1.57, 0.01, 0.74 total area 3.55 acres at Mouja Ramnagar Raiyatt, Patwari Halka No. 88 R.C. Karanjiya, tahsil and district Dindori was owned by Heeralal who died intestate. Plaintiffs are the legal heirs of Sammelal, nephew of Heeralal. The defendant No. 1 is a person whose name is recorded in the Revenue records as owner; whereas defendant Nos. 2 and 3 are the transferees of part of suit land.

Plaintiffs alleging that the defendant No. 1 stealthly got his name recorded in the revenue record over the suit property brought the suit for declaration of title and permanent injunction; on the contention that the defendant No. 1 had no relationship with Heeralal; whereas, Samelal, thorugh whom they claim

the title was the nephew and Heeralal having died intestate, Sammelal and another brother Bhulavan succeeded and became owner of suit property.

The defendant No. 1 denying the plaint allegation contended inter alia that Smt. Ahiranbai widow of Bhulavan was the sole owner having inherited the same after the death of Bhulavan who in turn was given one of the share in the property of Heeralal, the other share went in favour of Sammelal. That, Ahiranbai bequeathed the suit property in the name of defendant No. 1 vide will executed on 10.8.1989. That, during the lifetime of Smt. Ahiranbai, Sammelal and Sukhlal brought a civil suit 6 A/1981 for declaration that they are the sole owner of the suit property and for permanent injunction that Smt. Ahiranbai and Mohanlal (presently defendant No. 2) be prohibited from alienating the suit property. That, suit was decreed on 13.10.1982; whereby, the plaintiffs therein were non-suited. An appeal thereagainst Civil Appeal No. 27 A/1982 was also dismissed by Judgment and decree dated 24.11.1983 and the same having attained finality a second suit for declaration and permanent injunction in respect of same property and by same set of persons suffers from res judicata.

The preliminary objection as to maintainability of suit on the principle of res judicata having found favour with the trial court, the plaintiffs were non-suited vide judgment and decree dated 5.7.2001. An appeal

preferred thereagainst was dismissed vide judgment and decree dated 28.7.2003.

Aggrieved, plaintiffs have filed present appeal contending inter alia that, the Courts grossly erred in construing that the suit is barred by principle of res judicata; conclusion, it is urged, which ought to have been on the basis of plaints, written statement, evidences cannot be tendered merely on the basis of judgment by the Trial Court. It is urged that since the process adhered to by both the Courts being contradictory to the principle of law laid down under Section 11 of the Code of Civil Procedure, 1908 is liable to be interfered with. It is accordingly claimed

Section 11 C.P.C, 1908 stipulates that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Apparently the principle of res judicata is intended not only to prevent a new decision, but also to prevent a new investigation so that the same person cannot be put to trial quite often in various proceedings under the same question of law.

In Kiran Tandon v. Allahabad Development Authority and another (AIR 2004 SC 2006), it has been held by Their Lordships:

> 8. The principle of res judicata as contained in Section 11 CPC bars any Court to try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. A finding which has attained finality operates as res-judicata. ....."

In the case at hand the facts on record reveals that the immovable property belonging to Heeralal was distributed amongst his nephews, viz., Sammelal and Bhulawan. Plaintiffs claims through Sammelal; whereas, after death of Bhulawan his widow Ahiranbai succeeded to the property and having absolute right therefrom bequeathed the same in favour of defendant No. 1 by will executed on 10.8.1989. Ahiranbai expired in the year 1992 and after her death defendant No. 1 became owner by virtue of will. The record further reveals that earlier Sammelal and plaintiff No. 1 had filed a suit for declaration in the Court of competent

jurisdiction in respect of same property against Ahiranbai and defendant No. 1 vide Civil Suit No. 6 A/1981. Relief claimed therein was for declaration that they are the sole owner of the suit property and the defendant, viz. Ahiranbai and Mohanlal be prevented from alienating the same. The suit was dismissed vide judgment and decree dated 13.10.1982 which was later on affirmed in an appeal 27 A/1982 dismissed by judgment and decree dated 24.11.1983. The copy of the judgment and decree passed by the Trial Court as well as by the Appellate Court are already on record.

The Trial Court negatived the claim by the plaintiffs who are appellants herein in the following term:

> और इसी से प्रगट है कि गोद लेने की बात पश्चात् चित्तित है अहीरिनबाई के मरने के बाद विवादित भूमि वादीगण के पास रहे अहीरिनबाई किसी अन्य को हस्तान्तरण न केज इसलिये गोद लेने क बात बढ़ा गया है । वादी कुलचू ने कथन किया है । कि ''हमें सिर्फ यह आपत्ति है कि अहीरिनबाई के मरने के बाद विवादित भूमि किसी दूसरे को न मिले ''। उक्त कथनों को देखते हुए प्रतिवादी अभिभाषक का तर्क स्वीकार योग्य पाया जाता है। और वादी साक्षी समय अकेले के कथनों पर गोद लेने की बात प्रमाणित होना नहीं पाया जाता ।
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> उपरोक्त विवेचना से यह प्रमाणित है कि ..... अहीरिनबाई मुलावन की वेद्य पत्नी थी । तथा उसकी विधवा है। पक्षकार

हिन्दू विधि से शासित होते है । .....धारा 14 हिन्दू उत्तराधिकारी अधिनियम के तहत प्रतिवादी अहीरिनबाई का स्वत्व..... विवादित भूमि के 1/2 भाग से निहित है।

The aforesaid finding has been affirmed by the Appellate Court holding

मैं वादीगण की इस बहस से सहमत हूं प्रतिवादी की स्वीकरोक्ती पर से वादी के पक्ष में यह घोषणा करना उचित समझता हूं कि वादीगण वादग्रस्त भूमि में से आधे भाग के स्वामी है तथा वादीगण के इस आधे भाग को प्रतिवादी द्वारा बेचने या दान करने या किसी भी तरह हस्तांरित करने का कोई अधिकार नहीं हैं।

अतः यह अपील अंशतः स्वीकार की जाती है तथा प्रतिवादी अहीरिनबाई की स्वीकारोक्ती पर यह ठहराया जाता है कि वादग्रस्त भूमि के आधो भाग की प्रतिवादी अहीरिनबाई स्वामी तथा अधिपत्य धारी है । तथा प्रतिवादी क्रमांक 1 को वादीगण के आधे भाग का हस्तांतरण करने का कोई अधिकार नहीं है ।

When the principle of Section 11 applies to the facts of Civil Suit No. 6 A/1981 and the present civil suit, the Trial Court as well as Appellate Court, in the considered opinion of this Court did not commit any error in holding that the subsequent suit was barred by principle of res judicata.

There being no error, no substantial question of law arises for consideration.

Consequently, appeal fails and is dismissed in limine. No costs.

(SANJAY YADAV)
JUDGE

Vivek Tripathi