MATHURA PRASAD BAJOO JAISWAL & ORS. A

v.

DOSSIBAI N. B. JEEJEEBHOY

February 26, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.] B

Code of Civil Procedure (Act 5 of 1908), s. 11—Jurisdiction of Court—Erroneous decision—If res judicata.

The appellant obtained lease of an open land for construction of buildings. After the constructions, the appellant applied for determination of standard rent under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The application was rejected holding that the provisions of the Act did not apply to open land let for construction. This view was confirmed by the High Court. Sometime thereafter in another case the High Court held that the question whether the provisions of the Act applied to any particular lease must be determined on its terms and a building lease in respect of an open plot was not excluded from the provisions of the Act solely because open land may be used from residence or educational purposes only after a structure is built thereon. Relying upon this judgment, the appellant filed a fresh application for determining the standard rent. The Trial Judge rejected the application holding that question of the applicability of the Act was *res judicata* since it had been finally decided by the High Court between the same parties in respect of the same land in the earlier proceeding for fixation of standard rent. The order was confirmed by first appellate court and on further appeal by the High Court. C D

HELD : The judgment did not operate as *res judicata.* E

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the court holds that it has no jurisdiction, the decision will not, operate as *res judicata.* Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the decision will not operate as *res judicata* between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise. F

In determining the application of the rule of *res judicata* the court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in s. 11, Code of Civil Procedure means the right litigated between the parties, *i.e.,* the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of *res judicata* a party affected by the decision will not be precluded from challenging the validity of that order because of the rule of *res judicata,* for a rule of procedure cannot supersede the law of the land. G H

A If the decision in the previous proceeding be regarded as conclusive it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court, in derogation of the rule declared by the Legislature. [835G-836 F]

Parthasardhi Ayyangar v. *Chinnakrishna Ayyangar,* I.L.R. 5 Mad. 304, *Chamanlal* v. *Bapubhai,* I.L.R. 22 Bom. 669, *Kanta Devi* v. *Kalawati,* A.I.R. 1946 Lah. 419, *Tarini Charan Bhattacharjee* v. *Kedar Nath* B *Haldar,* I.L.R. 56 Cal. 723, and *Broken Hill Proprietary Company Ltd.* v. *Municipal Council of Broken Hill,* 1926 A.C. 94, approved.

Chandi Prasad v. *Maharaja Mahendra Mahendra Singh,* I.L.R. 23 All. 5, disapproved.

Bindeshwari Charan Singh v. *Bageshwari, Charan Singh,* L.R. 63 I.A. C 53, doubted.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1061 and 1627 to 1629 of 1966.

Appeals by special leave from the judgment and order dated March 9, 10, 1965 of the Bombay High Court in Revision Applications Nos. 1428, 1427, 1430 and 1676 of 1961.

D

M. C. Chagla, J. L. Hathi, K. L. Hathi and *K. N. Bhat* for the appellants (in all the appeals).

R. P. Bhat, Janendra Lal, R. A. Gagrat and *B. R. Agarwala,* for the respondent (in all the appeals).

E The Judgment of the Court was delivered by

Shah, J. Under an indenture dated August 2, 1950, Dossibai—respondent in this appeal—granted a lease of 555 sq. yards in village Pahadi, Taluka Borivli to Mathura Prasad—appellant herein—for constructing buildings for residential or business purposes. The appellant constructed buildings on the land. He then F submitted an application in the Court of the Civil Judge, Junior Division, Borivli, District Thana, that the standard rent of the land be determined under s. 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Civil Judge rejected the application holding that the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, did not apply to open land let for constructing buildings for residence, educa- G tion, business, trade or storage. This order was confirmed on September 28, 1955, by a single Judge of the Bombay High Court in a group of revision applications : *Mrs. Dossibai N. B. Jeejeebhoy* v. *Hingoo Manohar Missar* : Nos. 233 to 242 of 1955. But in *Vinayak Gopal Limaye* v. *Laxman Kashinath Athavale*(1) the High Court of Bombay held that the question whether s. 6(1) of H the Act applies to any particular lease must be determined on its terms and a building lease in respect of an open plot is not ex-

(1) I.L.R. [1956] Bom. 827.

cluded from s. 6(1) of the Act solely because open land may be used for residence or educational purposes only after a structure is built thereon. Relying upon this judgment, the appellant filed a fresh petition in the Court of the Small Causes, Bombay, for an order determining the standard rent of the premises. The application was filed in the Court of Small Causes because the area in which the land was situated had since been included within the limits of the Greater Bombay area. The Trial Judge rejected the application holding that the question whether to an open piece of land let for the purpose of constructing buildings for residence. education, business or trade s. 6(1) of the Act applied was *res judicata* since it had been finally decided by the High Court between the same parties in respect of the same land in the earlier proceeding for fixation of standard rent. The order was confirmed by a Bench of the Court of Small Causes and by the High Court of Bombay. With special leave, the appellant has appealed to this Court.

The view expressed by the High Court of Bombay in *Mrs. Dossibai N. B. Jeejeebhoy* v. *Hingoo Manohar Missar* (Civil) Revision Application No. 233 of 1955 (decided on September 28, 1955) was overruled by this Court in *Mrs. Dossibai N. B. Jeejeebhoy* v. *Khemchand Gorumal & Others*(1). In the latter case the Court affirmed the view expressed by the Bombay High Court in *Vinayak Gopal Limaye's* case(2).

But all the Courts have held that the earlier decision of the High Court of Bombay between the same parties and relating to the same land is *res judicata.* Section 11 of the Code of Civil Procedure which enacts the general rule of *res judicata,* insofar as it is relevant, provides:

> "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."

The Civil Judge, Junior Division, Borivli, was competent to try the application for determination of standard rent, and he held that s. 6(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, did not apply to open land let for construction of residential and business premises.

The rule of *res judicata* applies if "the matter directly and substantially in issue" in a suit or proceeding was directly and sub-

(1) I.L.R. [1956] Bom. 827. (2) [1962] 3 S.C.R. 928.

A stantially in issue in the previous suit between the same parties and had been heard and finally decided by a competent Court. The Civil Judge, Junior Division, Borivli, decided the application between the parties to the present proceeding for determination of standard rent in respect of the same piece of land let for construction of buildings for residential or business purposes. The B High Court has held that a decision of a competent Court may operate as *res judicata* in respect of not only an issue of fact, but mixed issues of law and fact, and even abstract questions of law. It was also assumed by the High Court that a decision relating to the jurisdiction of the Court to entertain or not to entertain a proceeding is binding and conclusive between these parties in respect of the same question in a later proceeding. C

But the doctrine of *res judicata* belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed D question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be *res judicata* in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided E by a competent court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is *res judicata*: the reasons for the decision are not *res judicata*. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law F thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is *res judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the G right and the relevant law applicable to the determination of the transaction which is the foundation of the right and the relevant law applicable to the determination of the transactions which is the source of the right is *res judicata*. A previous decision on a matter in issue is a composite decision: the decision of law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as *res judicata* H in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor

when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

The authorities on the question whether a decision on a question of law operates as *res judicata* disclose widely differing views. In some cases it was decided that a decision on a question of law can never be *res judicata* in a subsequent proceeding between the same parties : *Parthasardhi Ayyangar* v. *Chinnakrishna Ayyangar*(1); *Chamanlal* v. *Bapubhai*(2); and *Kanta Devi* v. *Kalawati*(3). On the other hand Aikman, J., in *Chandi Prasad* v. *Maharaja Mahendra Mahendra Singh*(4) held that a decision on a question of law is always *res judicata*. But as observed by Rankin, C.J., in *Tarini Charan Bhattacharjee* v. *Kedar Nath Haldar*(5) :

> "Questions of law are of all kinds and cannot be dealt with as though they were all the same. Questions of procedure, questions affecting jurisdiction, questions of limitation, may all be questions of law. In such questions the rights of parties are not the only matter for consideration."

We may analyse the illustrative cases retating to questions of law, decisions on which may be deemed *res judicata* in subsequent proceeding. In *Bindeshwari Charan Singh* v. *Bageshwari Charan Singh*(6) the Judicial Committee held that a decision of a court in a previous suit between the same parties that s. 12A of the Chota Nagpur Encumbered Estates Act 6 of 1876 which renders void a transaction to which it applies was inapplicable, was *res judicata*. In that case the owner of an impartible estate, after his estate was released from management, executed a maintenance grant in favour of his minor son B, but without the sanction of the Commissioner as required by s. 12A of the Act. B on attaining majority sued his father and brothers for a maintenance grant at the rate of Rs. 4,000 per annum. The claim was decreed, and the plaintiff was awarded a decree for a grant of Rs. 4,000 inclusive of the previous grant of 1909, and the Court held that the grant of 1909 was valid in law. The father implemented the decree and made an additional maintenance grant upto the value of the decreed sum. In an action by the sons of B's brothers challenging the two grants on the plea that the grants were illegal and not binding upon them, the Judicial Committee held that the plea was barred as *res judicata* in respect of both the grants—in respect of the first because there was an express decision on the validity of the first grant in the earlier suit, and in respect of the second the

(1) I.L.R. 5 Mad. 304.
(2) I.L.R. 22 Bom. 669.
(3) A.I.R. [1946] Lah. 419.
(4) I.L.R. 23 All. 5.
(5) I.L.R. 56 Cal. 723.
(6) L.R. 63 I.A. 53.

A decision in the first suit was *res judicata* as to the validity of the second grant which was made in fulfilment of the obligation under the Court's decision. The Judicial Committee held that in respect of the first grant, the decision that s. 12A did not apply to the grant, was *res judicata,* and in respect of the second grant the construction between the same parties of s. 12A was *res judicata.* B Validity of the second grant was never adjudicated upon in any previous suit; the second grant was held valid because between the parties it was decided that to the grant of maintenance of an impartible zamindari s. 12A of the Chota Nagpur Encumbered Estates Act had no application. This part of the judgment of the Judicial Committee is open to doubt.

C Where the law is altered since the earlier decision, the earlier decision will not operate as *res judicata* between the same parties : *Tarini Charan Bhattacharjee's* case(1). It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different.

D In a case relating to levy of tax a decision valuing property or determining liability to tax in a different taxable period or event is binding only in that period or event, and is not binding in the subsequent years, and therefore the rule of *res judicata* has no application; see *Broken Hill Proprietary Company Ltd.* v. *Municipal Council of Broken Hill*(2).

E A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not *res judicata* in the subsequent suit. Rankin, C.J., observed in *Tarini Charan Bhattacharjee's* case(1) :

> "The object of the doctrine of *res judicata* is not to F fasten upon parties special principles of law as applicable to them *inter se,* but to ascertain their rights and the facts upon which these rights directly and substantially depend; and to prevent this ascertainment from becoming nugatory by precluding the parties from reopening or recontesting that which has been finally decided."

G

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as *res judicata.* Similarly by an erroneous de- H cision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as *res judicata* bet-

(1) I.L.R. 56 Cal. 723. (2) [1926] A.C. 94.

ween the same parties, whether the cause of action in the subsequent litigation is the same or otherwise. A

It is true that in determining the application of the rule of *res judicata* the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent B court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question law, *i.e.* the interpretation of a statute, C it will be *res judicata* in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in s. 11 Code of Civil Procedure means the right litigated between the parties, *i.e.* the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the D Court sanctioning something which is illegal, by resort to the rule of *res judicata* a party affected by the decision will not be precluded from challenging the validity of that order under the rule of *res judicata,* for a rule of procedure cannot supersede the law of the land.

E

In the present case the decision of the Civil Judge, Junior Division, Borivli, that he had no jurisdiction to entertain the application for determination of standard rent, is, in view of the judgment of this Court, plainly erroneous : see *Mrs. Dossibai N. B. Jeejeebhoy* v. *Khemchand Gorumal & Others*(1). If the decision in the previous proceeding be regarded as conclusive it will assume the status of a special rule of law applicable to the F parties relating to the jurisdiction of the Court in derogation of the rule declared by the Legislature.

The appeals are allowed, and the orders passed by the High Court and the Court of Small Causes are set aside and the proceedings are remanded to the Court of First Instance to deal G with and dispose them of in accordance with law. There will be no order as to costs throughout.

Y.P. *Appeals allowed.*

H

(1) [1962] 3 S.C.R. 928.