

CASE NO.:
Appeal (civil) 7497 of 2002

PETITIONER:
Abdul Rahman

RESPONDENT:
Prasony Bai & Anr.

DATE OF JUDGMENT: 20/11/2002

BENCH:
Ruma Pal & S.B. Sinha.

JUDGMENT:
J U D G M E N T

S.B. SINHA, J:

Leave granted.

Mangal Singh (since deceased) and the 1st Respondent herein, were originally residents of Pakistan. As a displaced person in India, Mangal Singh was allotted land measuring 11 bighas 16 biswas in Village Shorba, Tehsil Kishangarhbas, District Alwar. The said Mangal Singh died, whereafter a report was made by the village Patwari on or about 31.3.1978 to the effect that he had died intestate without any heir. Pursuant thereto and in furtherance thereof, escheat proceedings were initiated by the Tehsildar, Kishangarhbas on or about 12.3.1979. The possession of the land in question was taken by the Patwari from the 1st Respondent on 28.3.1979. A part of the land in question was allotted to the appellant by the Tehsildar on 11.5.1979. The 1st Respondent herein questioned the said allotment of land made in favour of the appellant herein. The Additional Collector by his order dated 24.8.1979 set aside the order of taking possession and restored possession thereof to Prasony Bai, the 1st Respondent herein, and cancelled the allotment of land to the appellant. Against the said cancellation order dated 24.8.1979 made in favour of the 1st Respondent, an appeal was preferred by the appellant herein before the Board of Revenue. The Board of Revenue by its order dated 28.11.1985 while maintaining the said order of cancellation of allotment observed that :

"(1) the order was passed behind the back of the party i.e. Prasony Bai; (2) that Tehsildar should not have allotted the land to Abdul Rahman without giving notice to persons in whose name the land already stood; (3) that it was therefore, clear that Tehsildar, Kishangarhbas Harish Chandra had acted in most irresponsible manner while allotting the land to Abdul Rahman; and (4) that for the highhandedness the disciplinary proceedings should be initiated against the Tehsildar."

The appellant herein questioned the said order of the Board of Revenue before the High Court by way of filing a writ petition which was marked as S.B. Civil Writ Petition No.2274 of 1985 which was dismissed.

A mutation proceeding was also initiated for mutating the name of the 1st Respondent which was also contested by the appellant. The name of the 1st Respondent was ultimately directed to be mutated by order dated 31.5.1993 by the Board of Revenue. An application for review was filed

there-against by the appellant but the same was also dismissed by order dated 14.6.1999. Although it does not appear from the records, the appellant herein in his written submissions, (although not contended in oral argument) alleges that the escheat proceeding is still pending.

Some time in the year 1999, the appellant herein filed a suit in the Court of the Civil Judge (Junior Division), Kishangarhbas, which was marked as Civil Suit No.17 of 1999, praying, inter alia, for the following reliefs :

- 1) to declare that Prasony Bai is not the daughter of Mangal Singh;
- 2) that the plaintiff is in adverse possession even during the life of Mangal Singh;
- 3) permanent injunction.

In the said suit, having regard to the pleadings of the parties thereto the following three issues were framed :

- 1) Whether the dispute of the civil suit in question had already been decided and adjudicated upon by the courts and whether it is hit by the principles of res judicata ?
- 2) Whether the suit is beyond limitation ?
- 3) Whether the plaintiff had no locus standi to file the suit ?

An additional issue was framed on 10.8.1999 by the trial court, as regards the jurisdiction of the Civil Court to try the said suit. Being aggrieved by and dissatisfied therewith, the appellant filed a civil revision application before the High Court as regards the legality of the order of the trial court framing the 4th issue. By an order dated 24.10.2000, the said civil revision application was allowed by the High Court. The said order was passed, inter alia, on the ground that counsel for the 1st the Respondent stated that his clients who are ladies were being harassed on one or the other count and they had no objection if Issue No.4 in regard to jurisdiction of the civil court is deleted.

However, thereafter the 1st Respondent filed an application that suitable direction be issued to the Civil Judge, (Junior Division), Kishangarhbas, Alwar to decide Suit No.17 of 1999 as expeditiously as possible and the order dated 24.10.2000 be modified to the said extent. Although the said petition was dismissed, the High Court having noticed that the previous litigations between the parties also related to the property in suit observed in its order dated 21.12.2000, as under:

"For the reason that the judicial process be not abused by one or the other party. I deem it proper that the trial court issue required to decide the case at the earliest. Counsel for the petitioner states that the plaintiff would take at least 18 months 2 years for leading his evidence.

Before parting with the order, I suo motto (sic for 'suo motu') order that the record of the trial court of suit No.17/99 be summoned immediately through special messenger on or before 4.1.2000 for passing necessary orders in the circular (sic) of the case.

At this stage Mr. Khutetia states that he has no instruction from his client.

Counsel for both the parties undertakes to inform the counsel for the plaintiff who is

conducting the case of plaintiff in the trial court of the next date."

Case be listed on 4.1.2001."

On or about 6.8.2001, the parties appeared in person before the learned Judge with their respective counsel. It is not disputed that the appellant herein did not question the jurisdiction of the High Court to withdraw the said suit on its own file. It also appears that during the pendency of the said proceedings, the 1st Respondent herein expressed her desire to sell the property in suit in favour of the appellant, whereupon the Tehsildar, Kotkasim, District Alwar, was directed by order dated 6.8.2001 to submit a report as regards the market price of the agricultural land in the said village. The relevant portion of the aforesaid order is as under :

"The parties are present in person along with their counsel.

Even though, in my opinion, there is hardly any equity in favour of respondent, but the petitioner is prepared to sell the land to respondent on market price/reasonable price. Both the parties agree that Tehsildar, Kotkasim, District Alwar, shall submit his report in regard to market price of agriculture land in village Shorba, Tehsil Kotkasim after verifying the same on spot. The report shall be submitted by the Tehsildar in person in court on 27.8.2001. The order shall be complied with literally by Tehsildar."

The Tehsildar submitted his report on 27.8.2001, on which date the following order was passed :

"As per the previous order the Tehsildar concerned is present in person and he has submitted his report.

He need not appear again.

Record of the trial court has been received.

Let the case be listed for final decision and further agreements (sic) on 12.9.2001."

The learned Single Judge thereafter by order dated 29.11.2001, upon hearing the counsel for the parties, dismissed the said suit inter alia, holding :

"After having lost in two bouts in the revenue courts and right upto the High Court, the present plaintiff Abdul Rahman is still perhaps not satisfied and has filed the present suit virtually on the same facts and for the same relief which already stood adjudicated by the courts below for which a preliminary issue has already been framed by the court.

In my opinion, it is a fit case where the inherent powers u/s 151 r/w Section 24 CPC are required to be invoked by this court. The suit record has already been received in this court. After going through the pleadings and the

admitted documents i.e. judgment and decree placed on record, I find that the matter is fully covered by the principles of res judicata. Parties have been litigating right from 1979 and it had culminated into two bouts of cases right upto High Court and again review application of the plaintiff was dismissed by the Board of Revenue in 1999. The plaintiff is definitely misusing the process of law in the said case by filing and approaching the courts repeatedly on the same issues.

The preliminary issue to the effect whether the dispute to the present civil suit in question has already been decided and adjudicated by the court and is barred by the principles of res judicata, is fully answered by various orders and judgment passed by various courts and upheld right upto the High Court and, therefore, the issue stands decided against the plaintiff. It has already been decided by the court that Parsony Bai etc. were legally entitled to retain the land in their possession being the daughter of Mangal Singh. The escheat proceedings illegally initiated against Parsony Bai in regard to property of her father Mangal Singh have been rightly dropped and land restored to her. It was also decided by the courts that the present appellant was not entitled to the part of the land out of the land allotted to him in question. The present plaintiff despite having lost two times on the same issue in regard to same property is still dropping the petitioner in the third round of litigation in the civil suit for declaration as mentioned above."

A letters patent appeal filed by the appellant herein being D.B. Civil Special Appeal (Civil) No.191 of 2001 was dismissed by a Division Bench of the High Court by order dated 4.12.2001 holding :

"We find that in the facts of the case, the learned Single Judge has rightly applied the principle of constructive res judicata. The real controversy was with regard to the same property and the same parties were litigating throughout. The present appellant having failed to establish his claim of allotment and such allotment having been cancelled by the orders of the competent courts, which was upheld by the High Court has again restored to file a suit afresh against respondent Prasony Bai, this time in the guise of showing that she was not the daughter of Mangal Singh. This issue was also substantially involved in the revision petition. Once it is found that present appellant was entitled to have allotment in his name, the allotment had been cancelled, he admittedly has no locus standi now to challenge the fact that Smt. Prasony Bai was not the daughter of Mangal Singh.

In the facts and circumstances of the case, we find that the learned Single Judge has rightly exercised the powers under Section 151 read with Section 24 of Code of Civil Procedure so as to put an end to the abuse of process of the court and to bring end of the frivolous litigation. In our

opinion, such an approach was necessary in the facts and circumstances of the present case. Facts of the present case depict a very dismal state of affairs in which party having litigious perseverance has already been able to prolong the matter had to keep the controversy alive for more than 24 years by move and is still desirous to continue third round of litigation. Litigious perseverance is not to be rewarded rather it is to be discouraged. In our opinion learned Single Judge has rightly exercised the power under Section 151 read with Section 24 of Code of Civil Procedure. In the facts and circumstances such an approach is the need of the hour. There is no merit in this special appeal. The same is hereby dismissed."

Hence, this petition for grant of special leave to appeal to this Court has been filed questioning the said order.

Mr. Amarendra Sharan, learned senior counsel appearing on behalf of the appellant, had raised the following contentions in support of this appeal :

- 1) The High Court had no jurisdiction to withdraw the suit and dispose of civil revision application purported to be in exercise of its power under Section 24 of the Code of Civil Procedure;
- 2) In any event, the procedure for determining the issues in the suit having not been followed by the High Court, the impugned order must be held to be without jurisdiction;
- 3) As the revenue court had no jurisdiction to adjudicate upon the question of status, the principles of res judicata cannot be said to have any application whatsoever.

Mr. Sharan submitted that the appellant herein was a tenant of Mangal Singh. According to the learned counsel, although it is not disputed that the said Mangal Singh was the original allottee, as the appellant had been cultivating the land in question, he acquired title by adverse possession. According to the learned counsel, the proceedings for cancellation of allotment could not have been initiated by the 1st Respondent as she was an imposter.

In the aforementioned situation, it was urged that the Board of Revenue could not have determined the said question as regards the status of the 1st Respondent vis--vis the original allottee, Mangal Singh, and thus the impugned judgment cannot be sustained.

It may be true that normally the High Court does not pass an order under Section 24 of the Code of Civil Procedure in a disposed of proceeding. However, in terms of Section 24 of the Code of Civil Procedure, indisputably the High Court had the requisite jurisdiction to withdraw any suit pending in any court subordinate to it and try or dispose of the same inter alia on its own motion; wherefor even no notice is required to be issued.

Section 24 of the Code of Civil Procedure reads as under :

"24, General power of transfer and withdrawal. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court

subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

A bare perusal of the said provision leaves no manner of doubt that the High Court had the requisite jurisdiction to suo moto withdraw a suit to its file and adjudicate itself all or any of the issues involved therein.

The records of the case furthermore clearly demonstrate that the appellant did not raise any question as regards the lack of jurisdiction of the High Court to pass such an order in terms of Section 24 of the Code of Civil Procedure. In fact, the appellant not only without any demur submitted himself to the jurisdiction of the High Court by taking part in the proceedings, but as noticed hereinbefore, he even made an offer to purchase the property in question. Eventually, despite a report as regards the market value of the land in question has been submitted by the Tehsildar, the appellant appears to have backtracked therefrom.

We, therefore, in the aforementioned premise, do not find any substance in the contention of Mr. Saran that the High Court had no jurisdiction to withdraw the suit on its own file for its disposal.

For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order XIV Rule 1 of the Code of Civil Procedure, a Civil Court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary

issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues.

As noticed hereinbefore, the parties did not deny or dispute two earlier proceedings, namely, (1) the proceedings for cancellation of allotment in favour of the appellant and (2) the mutation proceedings, were initiated and adjudicated upon by the revenue authorities.

A proceeding to grant settlement of a land can be initiated by the revenue department of the State. Similarly, the mutation proceedings can also be subject-matter of revenue proceedings before the revenue authorities of the State.

The question as to whether the property in question could have been the subject-matter of a grant depended on the jurisdictional question, namely, whether Mangal Singh died intestate without leaving any heir. If Mangal Singh died leaving his heir or legal representative, the question to treat a property as 'escheat' would not arise. Such a jurisdictional question, therefore, could have been raised only before the revenue authorities in the said proceedings. Once it is held that the revenue authorities had the requisite jurisdiction to determine the said question subject, of course, to adjudication of the legality or validity thereof in an appropriate civil suit, the issues which could and ought to have been raised in the said proceedings but not raised would be barred by the principles of constructive res judicata; particularly when the validity or legality of the said proceedings had not been questioned in the civil suit, as a result whereof, the same attained finality.

A matter may not strictly speaking be the subject-matter of the suit itself as brought out, yet it may relate thereto. A question as to whether the First Respondent was the daughter of Mangal Singh, thus, is a matter relating to both the cancellation of allotment proceedings as also mutation proceedings in the matter heard and adjudicated upon by the Board of Revenue.

There cannot further be any doubt or dispute whatsoever that the appellant in the first proceedings was entitled to question the locus of the 1st Respondent herein on the ground that she was not the daughter of the aforementioned Mangal Singh. Admittedly, no such contention was raised by the appellant. In the aforementioned situation, the application for cancellation of allotment made in favour of the appellant herein was entertained by the revenue authorities at the instance of the 1st Respondent as it was found that she was interested in the subject-matter of the land in question and she had a right of hearing before an order of allotment could be passed in favour of the appellant. Furthermore, the right of the 1st Respondent to get back the possession of the land as also to get her name mutated in relation thereto, has been upheld by the Board of Revenue on two occasions. Even the appellant's prayer for review of the order of the Board of Revenue was dismissed.

It may be true that only because the property in dispute had been mutated in the name of one of the parties to the suit, the same would not be conclusive and binding between the parties. But although by reason of entry in the record of right one does not derive any title in relation to the property in dispute, as has been held in State of U.P. v. Amar Singh & Ors. [(1997) 1 SCC 977] and [(1997) 7 SCC] & Balwant Singh & Anr. v. Daulat Singh (Dead) by L.Rs. (1997) 7 SCC 137] whereupon Mr. Sharan placed strong reliance, but in the instant case, as noticed hereinbefore, the title of Mangal Singh vis--vis the First Respondent herein had never been in dispute. The question which has been raised in the suit is as to whether the appellant herein had acquired any right, title or interest in the property by adverse possession. As the appellant claims acquisition of title by prescription, it would necessarily lead to the conclusion that Mangal Singh had title in respect of the property in dispute.

In the peculiar facts and circumstances of the case, therefore, if the learned Single Judge of the High Court had withdrawn the suit and disposed of the same on the admitted facts; we do not find any illegality therein. The learned Single Judge as also the Division Bench have held that the suit was not maintainable, inter alia, on the ground that the appellant herein had no locus standi to question the relationship of the 1st Respondent with the admitted owner of the property, namely, Mangal Singh.

Mr. Sharan has strongly relied upon a decision of this Court in *Khushro S. Gandhi & Ors. v. N.A. Guzder (dead) by L.Rs. & Ors.* [AIR 1970 SC 1468] but the said decision is not applicable to the facts of the case inasmuch as therein no order in terms of Section 24 of the Code of Civil Procedure was passed. The question which arose for consideration in the said case was as to whether an interim order could be passed in a pending civil revision application which had nothing to do with the issue involved therein.

The contention of the appellant that the revenue court could not have determined the question of status of the 1st Respondent herein may be viewed from another angle. The issue as regards the status of the 1st Respondent has never been raised before the revenue authorities. As the appellant herein claimed himself to be a tenant of Mangal Singh, there was no reason as to why he could not be said to be aware of the relationship between the 1st Respondent and the said Mangal Singh. He allowed the proceedings of the Board of Revenue to be determined against him. The decision of the Board of Revenue attained finality. His writ petition was also dismissed. Be it also noted that the civil suit was filed three years after the adjudication of the rights of the parties in the mutation proceedings.

In the aforementioned situation, in our opinion, the appellant must be held to have taken recourse to abuse of process of court underlying the principle that the litigation should be allowed to attain finality in public interest. Although the concept of issues estoppel or estoppel by records are distinct and separate from the concept of abuse of process in public interest, the court may refuse the plaintiff from pursuing his remedy in a court of law. See *Johnson v. Gore Wood & Co.* [(2002) 2 AC 1].

In this case, we are also satisfied that having regard to the fact that the appellant himself was the tenant of Mangal Singh, he could not have raised the plea of adverse possession. As a tenant he could not have questioned the title of Mangal Singh. The very fact that escheat proceedings were initiated at the instance of the State also points out that the State proceeded on the premise that Mangal Singh had the right title in relation to the land in question and as he died intestate without leaving behind him any legal heir/representative, the same vested in the State. The appellant, as noticed hereinbefore, was allotted the land in question admittedly on the aforementioned premise, namely, Mangal Singh at the time of his death had title to the land in question or the suit property, but he died intestate. He, therefore, cannot be permitted to prevaricate from his stand at this stage.

We are, further, of the opinion that no case has been made out for interference with the impugned judgment in exercise of jurisdiction of this Court under Article 136 of the Constitution of India, even it be held that the High Court had committed some irregularities in withdrawing the suit and disposing the same.

We do not find any merit in this appeal. The appeal is accordingly dismissed with costs.