

PETITIONER:
BADRI NARAYAN SINGH

Vs.

RESPONDENT:
KAMDEO PRASAD SINGH AND ANOTHER

DATE OF JUDGMENT:
22/09/1961

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1962 AIR 338 1962 SCR (3) 759
CITATOR INFO :
1976 SC1645 (22)

ACT:
Election Dispute Res judicata-Two appeals out of one proceeding-One Judgment but two separate decrees-Subject matter different-Decision, if one-Appeal from one decree only-maintainability, -Representation of the People Act, 1951 (43 of 1951), ss. 80, 81, 7.

HEADNOTE:
The Election Tribunal on the petition of the first respondent set aside the election of the appellant holding that the appellant as a Ghatwal, was not a holder of office of profit, and that he was guilty of corrupt practices. The Election Tribunal however did not entertain the first respondent's prayer to declare him as duly elected. The appellant and the first respondent, both went up in appeal to the High Court. Appellants appeal being No. 7 was against the order setting aside his election. The first respondent's appeal being No. 8 was against the order not declaring him to be duly elected. Both the appeals were disposed of by the High Court by one judgment. The appellant's appeal No. 7 was dismissed holding that the appellant was not guilty of corrupt practices and that he, as a Ghatwal, held an office of profit. The respondent's appeal No. 8 was allowed declaring him as duly elected. Two separate decrees were prepared in the two appeals. The appellant filed this appeal by special leave from the order in Appeal No. 8 by the first respondent. All the grounds of the appeal related to the finding of the High Court that the office of Ghatwal was an office of profit. A preliminary objection was taken on behalf of the first respondent that this appeal was incompetent as barred by the principle of res judicata inasmuch as the appellant did not appeal against the order of the High Court in Appeal No. 7 whose dismissal by the High Court confirmed the order of the Election Tribunal setting aside the election of the appellant; and that it was not open to the appellant to question the correctness of the finding that he held an

office of profit, which was the basis of the dismissal of appeal No. 7.

Held, that where two appeals arose out of one proceeding, but the subject matter of each, appeal was different, the
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decision of the High Court in the appeals though stated in one judgment, really amounted to two decisions and not to one decision common to both the appeals. The subject-matter of Appeal No 7 filed by the appellant related to the question of his election being bad or good. The subject matter on appeal No. 8 did not relate to the validity or otherwise of the election of the appellant. It related to the further action to be taken in case the election of the appellant was bad, on the ground that 'a Ghatwal holds an office- of profit.

The High Court came to two decisions, one in respect of the invalidity of the appellant's election in appeal No. 7. It came to another decision in appeal No. 8 with respect to the justification of the claim of the first respondent to be declared as a duly elected candidate. That so long as the order in the appellant's appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit stands, he cannot question that finding in the present appeal, preferred against the decree in the first respondent's appeal No. 8.

Narhari v. Shankar [1950] S. C. R. 754, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 563 of 1960. Appeal by special leave from the judgment and decree dated March 20, 1959, of the Patna High Court in Election appeal No. 8 of 1958.

J. C. Sinha, D. P. Singh, M. K. Ramamurthi, R. K. Garg and S. C. Agarwala, for the appellant.

B. C. Ohosh and R. C. Datta, for respondent No. 1.

Udaipratap Singh and P. C. Agarwala, for respondent No. 2. 1961. September 22. The Judgment of the Court was delivered by

RAGHUBAR DAYAL, J. Badri Narain Singh, the appellant, and four other persons including Kam Deo Prasad, respondents, were candidates to the Bihar Legislative Assembly during the last general election held in 1957. Two of those candidates withdrew before the relevant date. The appellant secured the largest number of votes and was declared elected on March 14, 1957. Respondent No. 2 secured larger number of votes than
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Kam Deo Prasad, respondent No. 1, who filed an election petition under ss. 80 and 81 of the Representation of the People Act, 1951 (Act XLIII of 1951) challenging the election of the appellant, on the ground that the nomination of the appellant and respondent No. 2, who, as Ghatwals, held an office of profit, was against the provisions of s. 7 of the Act, and that the appellant had also committed corrupt practices. Kam Deo Prasad, by his election petition, not only prayed for the declaration that the election of the appellant was void, but also for the declaration that he himself was duly elected. The appellant denied the allegations against him. The Election Tribunal held that Badri Narain Singh, the appellant, was guilty of corrupt practices and that a Ghatwal was not a holder of an office of profit under the State of Bihar. It therefore set aside the election of the appellant, but did not grant the dec-

laration that Kam Deo Prasad was a duly elected candidate.

The appellant filed Election Appeal No. 7 of 1958 in the High Court of Judicature at Patna, against the order of the Election Tribunal setting aside his election, and prayed that the order of the Election Tribunal be set aside and that it be held that he had been duly elected. Kam Deo Prasad also filed Election Appeal No. 8 against the order of the Election Tribunal not declaring him to be the duly elected candidate and prayed for a declaration that he, had been duly elected. The grounds of appeal questioned the correctness of the finding of the Election Tribunal that Badri Narain Singh and respondent No. 2, as Ghatwals, were not the holders of offices of profit and that Kam Dec) Prasad could not be declared duly elected.

Both these appeals were disposed of by the High Court by one judgment. It did not accept the finding of the Election Tribunal that Badri Narain Singh had committed any corrupt practice and accepted the contention for respondent No. 1 that Badri Narain Singh and respondent No. 2 held

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offices of profit under the Bihar Government as they were Ghatwals. It was in this view of the matter that it confirmed the order of the Election Tribunal setting aside the election of the appellant and allowing the appeal of respondent No.. 1, declared him duly elected.

The concluding portion of the judgment of the High Court may be usefully quoted here :

"To conclude, the election of the returned candidate is not valid, and the order of the Tribunal is, therefore, right, though on different grounds. Further, there, was only one seat, and three persons contested it, namely, the petitioner and the two respondents. The two respondents were disqualified for being chosen as, and for being, members of Legislative Assembly or Legislative Council of the State, and, therefore, their nomination papers were not validly accepted. If their nomination papers are rejected, and it cannot but be rejected, the only person left in the field was the petitioner Kam Deo Prasad Singh, and, therefore, he must be declared to be duly elected.

In the result, Election Appeal No. 7 of 1958 is dismissed, and Election Appeal No. 8 of 1958 is allowed, and Kam Deo Prasad Singh is declared to be duly elected to Bihar Legislative Assembly from the Sarnath State Assembly Constituency in the district of Santal Parganas."

As a result of this order, separate decrees were As a result of this order, separate decrees were prepared in the two appeals. Decree in Election Appeal No. 7 said, 'It is ordered and decreed that this appeal be and the same is hereby dismissed'. The decree in appeal No. 8 said, 'It is ordered and decreed that this appeal be and the same is hereby allowed and Kam Deo Prasad Singh is declared to be duly elected to the Bihar Legislative Assembly from the Sarnath State Assembly constituency in the District of Santhal Parganas'.

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The appellant has filed this appeal by special leave against the order in Election Appeal No. 8 of 1958. All the grounds

of appeal relate to the finding of the High Court that the office of a Ghatwal is an office of profit. The petition for special leave to appeal does not mention the relief the appellant seeks from this Court. Presumably, he prays for the setting aside of the order in Appeal No. 7 confirming the order of the Election Tribunal setting 'aside his election and also the order in Appeal No. 8.

A preliminary objection has been taken on behalf of respondent Kam Deo Prasad Singh that this appeal is incompetent as barred by the principle of res judicata inasmuch as the appellant did not appeal against the order of the High Court in Appeal No. 7 whose dismissal by the High Court confirmed the order of the Election Tribunal setting aside the election of the appellant. It is urged that the order setting aside the appellant's election having become final, it cannot be set aside and that the finding arrived at in that appeal about a Ghatwal being a holder of an office of profit operates as res judicata in this appeal and therefore no appeal against the order in Appeal No. 8 declaring respondent No. 1 to be the duly elected candidate can be pressed on the ground that the view of the High Court about the appellant's holding an office of profit is wrong. If the correctness of that view cannot be challenged, the correctness of the declaration in favour of respondent No. 1 cannot be challenged in this appeal on any other ground when no other ground had been taken in the application for special leave. The contention in effect, therefore, is that it is not open to the appellant in this appeal to question the correctness of the finding that he held an office of profit under the Bihar Government, a finding which formed the basis of the dismissal of Appeal No. 7 and the confirmation of the order setting aside his election.

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The learned counsel for the appellant relied on the judgment of this Court in *Narhari v. Shankar*(1) in support of his contention that the judgment in Election Appeal No. 7 cannot operate as res judicata in this appeal. That case is distinguishable on facts and is with respect to the interpretation of s. 11 of the Code of Civil Procedure.

In the suit, in that case, the plaintiffs claimed possession over 2/3rds of the plot No. 214. They claimed 1/3rd which was in the possession of 'one set of defendants, namely, defendants Nos. 1 to 4 and the other 1/3rd was in possession of another set of defendants, namely, defendants Nos. 5 to 8. Each set of defendants claimed that they were entitled to the land in their possession as their share of the family property and denied the allegations of the plaintiffs that the senior branch was under custom entitled to exclusive possession of the plot which was Inamland. The suit was decreed by the trial Court. Each set of defendants then filed an appeal claiming 1/3rd of the plot. The first appellate Court allowed both the appeals and dismissed the plaintiffs suit by one judgment and ordered a copy of the judgment to be placed on the file of the other connected appeal. Naturally, it decided the one point of contention common to both the appeals, namely, that the senior branch was not entitled to exclusive possession of the plot. This was the finding in each of the appeals.

The plaintiffs thereafter filed two appeals to the High Court, one against the decree in the appeal filed by defendants Nos. 1 to 4 and the other against the decree in the appeal filed by defendants Nos. 5 to 8. The latter appeal was filed beyond limitation and the High Court refused to condone the delay. It was contended at the hearing of the appeal that the second appeal was filed

(1) (1950) S.C.R. 754.

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beyond the period of limitation and was not maintainable and that when it was dismissed as not maintainable the first appeal would be barred by the principle of res judicata. The High Court agreed with the contention, dismissed the second appeal as time-barred and the first on the ground that the judgment in the appeal by the defendants Nos. 5 to 8 operated as res judicata. The plaintiffs then filed two appeals to the Judicial Committee of the Hyderabad State and, ultimately, they were disposed of by this Court in view of Art. 374(4) of the Constitution.

The plaintiffs had impleaded all the defendants as respondents in their first appeal to the High Court. They had paid the full court-fee necessary for an appeal against the dismissal of the entire suit. Their prayer covered both the appeals. This indicated that it was sought to be an appeal against the dismissal of the entire suit. It is not clear whether the common judgment passed by the first appellate Court specifically stated that it dismissed the plaintiffs suit with respect to one-third of the plot by its order allowing one appeal and dismissed the suit with respect to the other one-third by its order allowing the second appeal. Possibly it just said that as a result of its finding the appeals are allowed and the plaintiffs' suit is dismissed and that such an order led the plaintiffs to actually file one appeal against all the defendants and against the dismissal of the entire suit. The prayer in the first appeal covered the subject matter of both the appeals. Thus the first appeal was really a consolidated appeal against the decrees in both the appeals and could have been split up for the purposes of record into two separate appeals. This Court itself felt that the circumstances of the case were such that the High Court should have allowed the benefit of s. 5 of the Limitation Act to the appellant. .

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It was in these circumstances that this Court observed, at page 757 :

"It is now well settled that where there has been one trial, one finding, and one decision, there need not be two appeals even though two decrees may have been drawn up."

This does not mean that whenever there be more than one appeal arising out of one suit, only one appeal is competent against the order in Any. of those appeals irrespective of the fact whether the issues for decision in those appeals were all common or some were common and others raised different points for determination. The existence of one finding and one decision mentioned in this observation simply contemplates the presence of common points in all the appeals and the absence of any different point in those appeals, and consequently of one decision on those common points in all the appeals.

This Court, further observed at page 758:

"The question of res judicata arises only when these are two suits. Even when there are two suits it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of res judicata does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such there is no question of

the application of the principle of res judicata. "

These observations do not apply to cases which are governed by the general principles of res judicata which rest on the principle that a judgment is conclusive regarding the points decided between the same parties and that the parties should not be vexed twice over for the same cause.

We are therefore of opinion that both in view of the facts of the case and the provision of law

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applicable to that case, that case can be no guide for determining the question before us in this appeal.

It is true that both the appeals Nos. 7 and 8 before the High Court arose out of one proceeding, before the Election Tribunal. The subject matter of each appeal was, however, different. The subject matter of appeal No. 7 filed by the appellant related to the question of his election being bad or good, in view of the pleadings raised before the Election Tribunal. It had nothing to do with the question of right of respondent No. 1 to be declared as duly elected candidate. The claim on such a right is to follow the decision of the question in appeal No. 7 in case the appeal was dismissed. If appeal No. 7 was allowed, the question in appeal No. 8 would not arise for consideration. The subject matter of appeal No. 8 simply did not relate to the validity or otherwise of the election of the appellant. It related to the further action to be taken in case the election of the appellant was bad, on the ground that a Ghatwal holds an office of profit. The decision of the High Court in the two appeals, though stated in one judgment, really amounted to two decisions and not to one decision common to both the appeals. It is true that in his appeal No. 8, the respondent No. 1 had referred to the rejection of his contention by the Election Tribunal about the appellant and respondent No. 2 being holders of an office of profit. He had to challenge the finding on this point because if he did not succeed on it, he could not have got a declaration in his favour when respondent No. 2 was also in the field and had secured a larger number of votes. He could, however, rely on the same contention in supporting the order of the Election Tribunal setting aside the election of the appellant and which was the subject matter of Appeal No. 7. This contention was considered by the High Court in Appeal No. 7 in that context and it was therefore that even though the

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High Court did not agree with the Election Tribunal about the appellant's committing a corrupt practice, it confirmed the setting aside of his election on the ground that he held an office of profit. The finding about his holding an office of profit served the purpose of both the appeals, but merely because of this the decision of the High Court in each appeal cannot be said to be one decision. The High Court came to two decisions. It came to one decision in respect of the invalidity of the appellants election in Appeal No. 7. It came to another decision in Appeal No. 8 with respect to the justification of the claim of respondent No. 1 to be declared as a duly elected candidate, a decision which had to follow the decision that the election of the appellant was invalid and also the finding that respondent No. 2, as Ghatwal, was not a properly nominated candidate. We are therefore of opinion that so long as the order in the appellant's appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not

have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that finding is incorrect.

We therefore accept the preliminary objection and dismiss the appeal with costs.

Appeal dismissed.

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JUDIS