

PETITIONER:
AMRITSAGAR GUPTA & ORS.

Vs.

RESPONDENT:
SUDESH BEHARI LAL & ORS.

DATE OF JUDGMENT:
13/03/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SIKRI, S.M.
BACHAWAT, R.S.

CITATION:
1970 AIR 5 1969 SCR (3)1002
1969 SCC (1) 810

ACT:
Code of Civil Procedure (Act 5 of 1908), s. 11-Res Judicata-Suit against manager of Joint Hindu family-No allegation that he was being so sued-Coparceners not parties-Decree if operates as res judicata against coparceners.

HEADNOTE:

A suit between J the father of appellants and B the father of respondents, each claiming possession of the suit properties on the strength of an alleged gift deed in his favour, was decreed in favour of J and the decree was confirmed by this Court. After various attempts by B and after his death by his sons, to defeat J's rights, one of B's sons filed a suit for partition of the suit properties on the allegation that they were gifted to the joint family of which B was the karta.

On the question whether the decree in the earlier suit operated as res judicata.

HELD : It is not necessary in order that a decree against a manager may operate as res judicata against coparceners who were not parties to the earlier suit, that the plaint or written statement should state in express terms that he was suing or was being sued as a manager,. It is sufficient if the manager was in fact suing or was being sued as representing the whole family. A suit by or against the manager will be deemed to be one brought by or against him as representing the family if the circumstances show that he was the manager and the property involved in the suit was family property. [1004 H; 1005 A-B]

In the present, case, B must be deemed to have been sued in the previous suit as the karta of his family, because : (a) the alleged gift in favour of the joint family was at a time when all the sons of B were minors and if true the gift could have been accepted by B only as the karta, (b) there was no conflict of interest between B and his sons and there was no allegation that B did not safeguard the family's interest while contesting the previous suit; and (c) B did not claim in the earlier suit that the gift was to him in his individual capacity. [1004 A-C; 1005 C]

Lalchand v. Sheogovind, (1929) I.L.R. 8 Pat. 788, Ram Kishan

v. Ganga Ram, (1931) I.L.R. 12 Lah. 428, Prithipal v. Rameshwar, (1927) I.L.R. 2 Luck. 288, Surendranath v. Sambhunath, (1928) I.L.R. 55 Cal. 210, Mulgaund Co-operative Credit Society v. Shidlingappa Ishwarappa, I.L.R. [1941] Bom. 682, Venkatanarayana v. Somaraju, A.I.R. 1937 Mad. 610 (F.B) and Mani Sahoo v. Lokanath, A.I.R. 1950 Or. 140, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 349 of 1966. Appeal by special leave from the judgment and order dated December 17, 1963 of the Punjab High Court, . Circuit Bench at Delhi in R.F.A. No. 164-C of 1963.

1003

S. V. Gupte and A. N. Goyal, for the appellants.
C. B. Agarwala, H. K. Puri and B. N. Kirpal, for respondent No. 1.

The Judgment of the Court was delivered by Hegde, J. The only question that arises for decision in this appeal by special leave is whether the suit from which this appeal has arisen is barred by res judicata in view of the decision in Civil Suit No. 15 of 1943. The trial court answered that question in the affirmative but the High Court has taken a contrary view. Hence this appeal.

The facts of the case leading up to this appeal, briefly stated, are as follows :

One Krishen Gopal had lease-hold rights in the suit properties. After the death of the aforesaid Krishen Gopal dispute arose between Jawala Prashad, the father of the appellants and Banwari Lal Verma, the father of the respondents as to the title of the suit properties. Each one of them claimed that those properties had been gifted to him by Krishen Gopal. As a result of this dispute Jawala Prashad instituted on January 20, 1943, Civil Suit No. 15 of 1943 against Banwari Lal Verma claiming possession of the suit properties on the strength of the alleged gift in his favour. In defence Banwari Lal Verma pleaded that those properties had been gifted to him by Krishen Gopal. The principal issue that arose for decision in that suit was whether the suit properties had been gifted to Jawala Prashad or Banwari Lal Verma. The trial court dismissed the suit but in appeal the decree of the trial court was reversed and the suit was decreed as prayed for. That decision was confirmed by the High Court and thereafter by this Court in, Civil Appeal No. 164 of 1953. After the decision of this Court Banwari Lal Verma made various applications to this Court asking for reliefs which if they had been granted, would have practically nullified the effect of the decree but those applications were rejected by this Court. Thereafter efforts appear to have been made to obstruct the execution of the decree in diverse ways. When everyone of those efforts failed Rangil Lal Verma the eldest son of Banwari Lal Verma filed a suit praying for a declaration that the suit properties belonged to his joint family consisting of Banwari Lal Verma and his sons. This suit was dismissed for non-prosecution. It is only thereafter the present suit has, been filed by one of the sons of Banwari Lal Verma claiming partition in the suit properties on the allegation that the same had been gifted by, Krishen, Gopal to. his joint family.

1004

The gift put forward by the plaintiff is said to have been made in 1928. Admittedly at that time all the sons of

Banwari Lal Verma were minors (see the affidavit filed in this Court by Rangi Lal on behalf of the plaintiff, on February 26, 1969. Therefore, naturally the gift, if true could have been accepted only by Banwari Lal Verma who was the Karta of the family at that time. It was not even urged that Banwari Lal Verma did not safeguard the interest of his family while contesting the previous suit. Further it is not the case of the respondents that there was any conflict of interest between Banwari Lal Verma and his sons. The facts disclosed make it obvious that Banwari Lal Verma and after his death his sons are availing themselves of every possible loophole in our judicial system to delay, if not defeat the course of justice. The effort is one, and continuous. The suit from which this appeal has arisen is a clear abuse of judicial process. It is in this setting that we have to see whether the decision in Civil Suit No. 15 of 1943 operates as res judicata in the present case.

In the Civil Suit No. 15 of 1943, there was no room for controversy as to whether the alleged gift was in favour of Banwari Lal Verma in his individual capacity or in his favour as the Karta of his family. Therein the controversy was whether the suit properties had been gifted to Jawala Prashad or Banwari Lal Verma. As seen earlier Banwari Lal Verma pleaded that they had been gifted in his favour. He did not make it clear nor was it necessary for him to do so in that suit as to whether they were gifted to him as the Karta of the family or in his individual capacity. The properties that were in dispute in the former suit as well as in the present suit are identical properties. It cannot be disputed that Banwari Lal Verma by himself could have represented his family in that suit. That suit must be deemed to have been instituted against Banwari Lal Verma in that capacity in which he claimed title to it. If his claim in that suit is understood to have been made on behalf of his family then he must be deemed to have been sued therein as the Karta of his family. It was for Banwari Lal Verma to make clear the capacity in which he was defending the suit. That being so we fail to appreciate the conclusion of the High Court that the decision in the previous suit does not operate as res judicata in the present suit.

It is not necessary, in order that a decree against the manager may operate as res-judicata against coparceners who were not parties to the suit that the plaint or written statement should state in express terms that he is suing as manager or is being sued as a manager. It is sufficient if the manager was in fact suing or being sued as representing the whole family, see Lalchand v.

1005

Sheogovind(1); Ram Kishan v. Ganga Ram(2); Prithipal V. Rameshwar(3); Surendranath v. Sambhunath(4).

The suit by or against the manager will be deemed to be one brought by him or against him as representing the family if the circumstances of the case show that he is the manager of the family and the property involved in the suit is family property, see Mulgaund Co-operative Credit Society v. Shidlingappa Ishwarappa(5). See also Venkakanarayana v. Somaraju(6). It is not necessary, where the manager is the plaintiff, that the plaint should state in distinct terms that he is suing as manager or where he is the defendant that he is being sued as manager. A Karta can represent the family effectively in proceeding though he is not named as such, see Mani Sahoo v. Lokanath(7).

For the reasons mentioned above this appeal is allowed and the judgment and decree of the High Court is set aside and that of the trial court restored. The respondent shall pay

the costs of the appellants in all the courts.

V.P.S.

Appeal allowed.

(1) (1929) I.L.R.8, Pat. 788.

(2) (1931) I.L.R. 12, Lab. 428.

(3) (1927) I.L.R. 2, Luck. 288.

(4) (1928) I.L.R. 55, Cal. 210.

(5) [1941] I.L.R. Bom. 682.

(6) A.I.R. 1937 Mad, 610 (F.B.),

(7) A.I.R. 1950 Or. 140.

1006

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