Privy Council Appeal No. 35 *of* 1937
Allahabad Appeal No. 8 *of* 1935

Musammat Bhagwati - - - - - *Appellant*

v.

Musammat Ram Kali - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7th MARCH, 1939.

Present at the Hearing:

LORD ROMER.
LORD PORTER.
SIR GEORGE RANKIN.

[*Delivered by* LORD PORTER.]

The plaintiff and the defendant in this appeal are the widows of two brothers, the appellant of Sagar Mal and the respondent of Kirpa Ram. The brothers were the sons of Janki Kuar, who died in 1918, and the title under which the property was held by the brothers is in dispute. Kirpa Ram died on the 10th March, 1924, leaving the respondent as his widow. Sagar Mal died on the 18th March, 1924, leaving the appellant as his widow. If the property which prior to their death was admittedly enjoyed by both the brothers was held as joint family property the appellant as widow of the last survivor would be entitled to the estate. If on the other hand, as was claimed by the respondent, the property was held by the brothers as tenants in common it would pass to the two widows in equal shares.

The appellant asserted that the property was joint family property and by Hindu law the whole passed to her. The respondent on her part maintained that the property was held by the brothers as tenants in common and that half devolved upon her. She further alleged that even if this were not so, by a family arrangement made after the death of the two brothers it was agreed that the parties should enter into possession of the shares of their respective husbands. In support of these allegations she relied upon the facts which were admitted that the property was entered in the revenue records in the joint names of the appellant and respondent and that though the appellant was recorded as lambardar of the property in the town of Bulandshahr, including the property in dispute, the respondent was recorded as lambardar of other portions of the property. Whatever

may have been the arrangement between the parties they appear to have quarrelled before October, 1925, and by that date a dispute as to their rights in the property had already arisen and extended to their servants to such an extent that criminal proceedings were taken by one of the employees of the respondent against certain employees of the appellant, proceedings which ended in the conviction of the appellant's servants on the 5th February, 1926.

Meanwhile on the 18th December, 1925, certain property in the town of Bulandshahr was notified for acquisition under the Land Acquisition Act, 1894. A portion of this property formed part of the estate the ownership of which is in dispute in the present action.

During the year 1926 the dispute between the parties continued and extended and on the 13th September, 1926, the appellant instituted a suit in the Court of the First Munsif for rent against certain tenants of the disputed property. In this suit the respondent was joined as defendant and in it the appellant claimed the whole of the rent. The tenancy in question was in respect of land in the town of Bulandshahr. While this suit was proceeding and while the acquisition proceedings were still in progress, the appellant petitioned the Collector in the latter proceedings on the 19th February, 1927, that the whole compensation money should be paid to her to the exclusion of the respondent. In the same month, namely, on the 26th, the First Munsif gave judgment in the tenancy suit in which he held that neither the plaintiff nor the defendant were entitled to anything and dismissed the suit with costs.

The appellant thereupon appealed to the Subordinate Judge who on the 31st May, 1927, gave judgment awarding half the rent to the appellant and half to the respondent. From this decision the appellant appealed to the High Court. Just before the decision of the Subordinate Judge, namely, on the 6th April, 1927, some proceedings appear to have taken place in the acquisition matter towards determining the amount payable as compensation. The respondent claimed that an award had been made on that date but this was denied by the appellant. It is undoubted, however, that on the 29th September, 1927, the Collector made a formal award as to the value of the property and the apportionment of the compensation under the Land Acquisition Act. His award has not been printed in the record. There has been printed, however, the terms of an award dated the 1st November, 1927, which is said by the respondent to be an attempt of the Collector to make a fresh award after he was *functus officio*, and by the appellant to be merely a repetition of the earlier award and explanatory of the details contained therein. Under either award the parties each received in compensation one-half of the value of the land in dispute, the Collector apparently taking the view that they were entitled to the property in equal shares. Notices of each of the awards appear to have been sent to each of the parties.

On the 11th October, 1927, after the receipt of the first notice, the appellant applied under section 18 of the Land Acquisition Act, 1894, requiring that the matter be referred by the Collector for the determination of the Court and gave as the objections which she desired to be considered (*a*) what is the correct amount of compensation of the land which should be given to the zamindars? (*b*) what particular person is entitled to what compensation?

On the 31st October, 1927, the respondent also objected to the award, her objection being confined to the insufficiency of the amount of the compensation awarded. One other of the parties interested in the land appears also to have made objection but solely on the ground of the inadequacy of the compensation.

On the 14th December the objections were forwarded by the Collector to the District Judge at Bulandshahr in accordance with the terms of section 19 of the Act, and the information required under the provisions of that section was furnished by him. This information was supplemented in a communication from the Collector to the District Judge on the 26th April, 1928. Neither of these documents contained or indeed is required to contain the grounds of objection.

While the reference to the District Judge in the acquisition matter was still undetermined, the second appeal of the appellant from the decision of the Subordinate Judge of Bulandshahr in the tenancy action was heard on the 22nd April, 1929, and determined by the High Court in favour of the appellant. A little more than a month later the District Judge made his award in the matter of the land acquisition. Whatever he may have determined in that award he framed as his fourth issue the question whether the appellant was entitled to the entire compensation or the respondent was entitled to half. To that question he gave the answer that the appellant was entitled to the entire compensation. The learned Judge also held that the compensation awarded by the Collector was sufficient and dismissed the objections lodged by the three objectors on this ground. The effect of his answer to the fourth issue must, however, be considered more at length when the issues of the present case have to be determined.

No appeal was made against this award and on the 31st May, 1929, the learned District Judge passed two decrees, one in respect of the application of the appellant and the other in respect of the application of the respondent to his court. In each case the order is headed "Application for determination of compensation under Act 1 of 1894" and contains the words:—"It is ordered that as per judgment on the record of case No. 64 the application be struck off with costs." The judgment referred to is that given on the 31st May by the learned District Judge. No decree or formal award was filed dealing with the dispute between the parties as to their rights to receive the compensation money, but on the 12th August, 1929, the whole sum awarded

by the Collector in respect of the land in dispute was paid out to the appellant under a formal instruction of the learned Judge.

No record of the payment of this sum into court by the Collector is to be found in the record, but it is clear that it was paid in under the provisions of section 31 (2) of the Act owing to the dispute between the appellant and the respondent as to who was entitled to the money.

The compensation having been dealt with in this way, the respondent, who was not content to rest under the decision of the High Court in the rent case or of the District Judge in the acquisition case, brought the present action by plaint dated the 20th March, 1930, in the Court of the Subordinate Judge of Bulandshahr claiming that she was entitled to half the property on the grounds that have been already set out. To that petition the appellant pleaded that she was entitled under Hindu law to the succession, that there was no family arrangement, and that in any case the dispute had already been determined (1) by the High Court in the rent case, and (2) by the District Judge in the acquisition case, that it was no longer open to question, and that the matter was *res judicata*.

In adjudicating upon these pleas the learned Subordinate Judge who tried the suit now under review held (1) that the two brothers were tenants in common of the property, (2) that a family settlement had been made as alleged by the respondent and was binding upon the parties, but (3) that the matter was *res judicata*. He therefore gave judgment in favour of the appellant by formal decree dated the 27th October, 1930.

From this judgment the respondent appealed to the High Court at Allahabad which, on the 16th January, 1935, reversed the decision of the lower Court, held that the matter was not *res judicata,* found that the brothers held the land as tenants in common, and that in view of this finding it was unnecessary to determine whether a family arrangement had been entered into or not. From this decision the appellant has appealed to His Majesty in Council.

Before their Lordships the question first argued was whether the High Court was right in determining that the matter was not *res judicata* since, if their Lordships were of opinion that they were wrong in that determination their decision would be conclusive of the matter, and it would not be necessary to enter into the other difficult and complicated questions which arose.

In the argument presented to their Lordships' Board it was conceded on behalf of the appellant that the decision of the High Court in the rent case could not be relied upon as decisive of the title of the parties to the property in dispute and that a plea of *res judicata* could not be founded upon it.

Reliance was, however, placed upon the decree of the District Judge in the acquisition case as finally determining the rights of the parties.

In order successfully to establish a plea of *res judicata* or estoppel by record it is necessary to show that in a previous case a Court having jurisdiction to try the question came to a decision necessarily and substantially involving the determination of the matter in issue in the later case.

It was at one time a matter of doubt in India whether the determination of a Court to which a matter has been referred by the Collector under section 18 of the Land Acquisition Act was such a decision. That doubt was resolved by the judgment of this Board in *Ramachandra Rao* v. *Ramachandra Rao,* (1922) 49 I.A. 129, which decided that where a dispute as to the title to receive the compensation has been referred to the Court, a decree thereon not appealed from renders the question of title *res judicata* in a suit between the parties to the dispute. In that case some question arose as to whether any appeal lay to His Majesty in Council in a case where the determination of the Judge ended in an award and not in a decree. The Board took the view that where the matter referred was not the adequacy of the amount of compensation awarded, but a dispute between the persons claiming compensation, involving, it may be, difficult questions of title, the resultant decision was not an award but a decree. This particular part of the judgment has, however, become academic, since an appeal to His Majesty in Council is now given by section 26 (2) of the Land Acquisition Act which was added by amendment in 1921 and enacts:—

> "Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), of the Code of Civil Procedure, 1908."

If then in a matter referred to him by the Collector in accordance with the provisions of the Land Acquisition Act, a Judge to whom it is referred has in a dispute as to their title to the land between two of the parties claiming compensation, determined that dispute, the matter is *res judicata* and binds the parties in any later suit involving that issue. The difficulty in the present case arises from the form by which the appellant required the Collector to submit the matter to the Judge, the wording of that reference by the Collector, the terms of the judgment and the final decrees passed by the learned Judge.

For the respondent it was first said that the question of the ownership of the land in dispute had never been put before the District Judge in due form and that he had, therefore, no jurisdiction to decide the matter.

The appellant, it was maintained, had never required that question to be referred for the determination of the Court and in any case had not as required by section 18, sub-section (2), stated the grounds on which the objection was taken.

Section 18, sub-section (1), no doubt provides that whether the objection be to (i) the measurement of the land, (ii) the amount of the compensation, (iii) the persons to whom it is payable, or (iv) the apportionment of the com-

pensation among the persons interested, written application may be made for a reference to the Court, and sub-section (2) provides that the application shall state the grounds on which objection is taken.

So far as is material to the question whether the issue of ownership is *res judicata,* the portion of the application of the 11th October, 1927, upon which the appellant relies in order to show that the dispute between the parties as to their respective titles was submitted to the court is contained in the words "What particular person is entitled to what compensation?".

The phraseology is wide enough to embrace two of the four objections mentioned in the sub-section, viz., numbers 3 and 4 and therefore *prima facie* includes a reference as to the persons to whom compensation is payable.

It was argued that there were many potential objectors amongst the zamindars affected and that the words might merely mean that the Court was called upon first to determine the total sum to be awarded and then to apportion that sum in the proper ratio between each of the persons entitled. But the appellant was primarily concerned with the apportionment to her; she had already in the previous February claimed the whole compensation of the land in question to the exclusion of the respondent, and their Lordships see no reason for giving the words the narrower construction. It was, however, suggested that the requirement was not complete unless particulars of the reasons for the objections taken were given. But the Act does not require particulars to be given—it requires only the grounds of objection to be given, and by "grounds" their Lordships think is meant such of the four grounds mentioned in section 18 (1) as are relied upon. The same view as to the meaning of the word "grounds" appears to have been entertained by their Lordships' Board in *Pramatha Nath Mullick* v. *Secretary of State for India,* (1929) 57 I.A. 100, and no further particulars are required in order to comply with the terms of the sub-section.

Secondly it is said that the question of ownership was never submitted by the Collector to the Court. It is true that neither in his letter of the 14th December, 1927, nor in the written information furnished on the 28th April, 1928, does the Collector refer to any question other than that of compensation. But there is no reason why he should do so. His duties in making the reference are set out in section 19 under the provisions of which the only information required as to the grounds of objection is that contained in sub-section (2) which requires the attachment of a schedule giving particulars of the notices served upon and of the statements in writing made or delivered by the parties interested respectively. From the information furnished on the 26th April, 1928, it appears that particulars of these notices and of the statement in writing made by the objectors were sent to the District Government Pleader on the 27th February, 1928. The Court, therefore, had before it not only

the question of the amount of compensation but also the further question as to the persons to whom compensation was payable.

But it is suggested that even if the question of ownership was submitted to the Court in due form, yet no decision upon that point was given. The judgment itself, it is said, shows that the title of the appellant and respondent never came in issue and that the only matter determined by the Court was that it had no jurisdiction to consider the objections, or at any rate it was not clear that any further decision had been come to. The learned Judge, it was argued, held (1) that the award of the 21st September, 1927, had been superseded by that of the 1st November, which had not altered but clarified the earlier document, (2) that no objection had been taken to the later award though objections had been taken to the earlier one, and (3) that as no objection had been taken, the later award must be confirmed. Indeed the respondent went further and said that it appeared from the judgment that there had been an earlier award on the 6th April, 1927, that that being the earliest was the only valid award, and that in considering any other the Judge had exceeded his jurisdiction.

Their Lordships do not so read the learned Judge's words. Both parties were before him and gave and called evidence to establish their respective titles. After hearing them he framed two issues material to the question now under consideration:—

> " (3) Has the Court jurisdiction to adjudicate the matter on the basis of the petition presented in respect of award of 21st September, 1927. (4) Whether the applicant is entitled to the entire compensation or Mussamat Ram Kali " (the respondent) " is entitled to half share."

In answer to the fourth issue he found in terms that the appellant was entitled to the entire compensation.

It is, of course, possible that he held himself to have no jurisdiction, but nevertheless determined the other issues in case, but only in case, the matter went further and an appellate Court found his decision as to jurisdiction to be wrong.

This is possible but there is no indication of such an intention in the judgment itself. The learned Judge gives his findings as to each of the issues framed in the order he framed them as if each must be determined in order to complete the reference.

The language used in the judgment in determining issue 3 might be clearer but in their Lordships' opinion it sufficiently indicates that after some preliminary discussion as to the question of compensation beginning on the 6th April, 1927, an award was made on the 21st September, 1927, showing the amount awarded to each of the parties interested but not distinguishing between the land itself and any buildings, trees, etc., on it. The award of the 1st November did so distinguish but in all other respects was

identical with the earlier award and was a mere specification of it. In both documents Rs.452.14.0 were awarded to the appellant and the same sum to the respondent.

Without seeing the exact terms of the various documents it is not very easy to follow all the reasoning. The argument of the respondent which the learned Judge rejects, viz., that Rs.759.2.6 had been awarded by the award of the 21st September, 1927, and the statement by the learned Judge that only the appellant made an application under section 18 of the Land Acquisition Act, and that the third objector and the respondent made no objections, seems to be inaccurate whether his statement refers to the award of the 21st September or that of the 1st November. The fact seems to be that all three objected to the award of the 21st September and none of them made any objection to the document of the 1st November. The respondent did not suggest that any award had been made on the 6th April. She referred to the document of the 21st September as the first award and to that of the 1st November as the second award and argued that the second having superseded the first no valid objection had been made to the final award by her and none could be entertained by the learned Judge. To this argument the learned Judge held that the second award was a mere specification of the first and, as their Lordships think, that any further objections ought to have been taken under the earlier and not the later award.

But whatever the exact meaning to be attributed to the learned Judge's words, it is clear that he did decide that the respondent had no right to the land and that there were not two awards but only one of the 21st September though it is true that that award had been made more specific on the 1st November.

This, in their Lordships' view, is a clear finding not of want of jurisdiction but that there was a valid award and that the appellant was the owner of the land. It is for the respondent to show that jurisdiction was declined and she has failed to do so.

Nor is the Court's decision vitiated by the facts that its result is expressed in two decrees, and an order for payment out of the compensation money to the appellant, instead of in an award. No doubt the matter would have been simplified if the Court had followed the provisions of section 26 (2) of the Land Acquisition Act and its decision had been expressed in the form of an award, but it is to be observed that even that section does not provide except inferentially for any determination in the award of any dispute as to the persons interested.

In these circumstances it was not unnatural that on the one hand the question of the amount of compensation alone should have been dealt with in the two decrees which though they in terms refer to the judgment, make no reference to any dispute between the appellant and respondent and are headed " Application for determination of compensation ", and that on the other hand the dispute between

the parties to the present suit should be settled by a payment out to the one entitled to receive the compensation.

It was suggested on behalf of the respondent that the order for payment out was consistent with a finding that both were entitled to an equal share. The appellant and respondent, it was said, were recorded as joint owners and the appellant had by arrangement with the respondent become lambardar of the land affected. The payment therefore might have been made to the appellant as lambardar of the property concerned or as co-owner and agent for the respondent. There is however no indication of this in the order itself. Moreover a lambardar would not be entitled to receive capital money *virtute officii,* nor would a co-owner be able to give a valid discharge for another owner interested in the land.

For the reasons given their Lordships think that the learned District Judge did determine the question of ownership, his decision is binding upon the parties to this appeal, and the matter is *res judicata.*

Their Lordships will therefore humbly advise His Majesty that the appeal be allowed, the decree of the High Court set aside and the decree of the Subordinate Judge in this suit be restored. The respondent must pay the costs of the hearing in the High Court and before their Lordships' Board.

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In the Privy Council

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DELIVERED BY LORD PORTER

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