

A AVTAR SINGH & ORS.

v.

JAGJIT SINGH & ANR.

July 27, 1979

B [N. L. UNTWALIA AND A. P. SEN, JJ.]

Code of Civil Procedure—Res judicata—In appellants' suit issues were framed by civil court—Civil Court held it had no jurisdiction—Petition filed in revenue court—Held it had no jurisdiction—Appellants again filed suit in civil court—Issue raised and decided in the first suit if operates as res judicata.

C The appellants filed a suit in the court of a subordinate judge. At the instance of respondent no. 1 (who was the defendant in the suit) an issue as to the jurisdiction of the court to try the suit was framed. Holding that it had no jurisdiction to try the suit the civil court returned the plaint to the appellants for being presented to the proper revenue court. The revenue court, on presentation of a petition by appellants, held that it had no jurisdiction to try it. Thereupon the appellants again filed a suit in the court of subordinate judge. The suit failed on the ground of *res judicata*. On appeal the High Court upheld the view of the civil court.

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On the question whether the decision of the subordinate judge on the preliminary issue operated as *res judicata*.

Dismissing the appeal,

E HELD: If in a case, the defendant does not appear and the Court, on its own, returns the plaint on the ground of lack of jurisdiction, the order in a subsequent suit may not operate as *res judicata*; but if the defendant appears and an issue is raised and decided then the decision on the question of jurisdiction will operate as *res judicata* in a subsequent suit although the reasons for its decision may not be so. [124G]

F In the instant case, in the first suit the appellants ought to have insisted that the suit was triable by civil court, or, they should have taken the matter before a higher Court in the revenue proceeding. The appellants did neither. The revenue court had no jurisdiction to go behind the decision of the civil court. [123G]

G *Upendra Nath Bose v. Lall & Ors.*, AIR 1940 P.C. 222; held inapplicable.
Jwala Debi v. Amir Singh, AIR 1929 All. 132; not approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2021 of 1969.

H Appeal by Special Leave from the Judgment and Order dated 15th January, 1969 of the Punjab and Haryana High Court in S.A. No. 905 of 1963.

R. K. Garg for the Appellants. A

Hardev Singh for Respondent No. 1.

N. S. Bindra and T. S. Arora for Respondent No. 2.

The Judgment of the Court was delivered by

UNTWALIA J.—This appeal arises out of an unfortunate litigation where the plaintiff appellant in this appeal has got to fail in this Court too on some technical grounds. B

One Sardar Balwant Singh died on 10th March, 1955 leaving only three sons according to the case of appellants, namely, the two appellants and respondent No. 2. Respondent No. 1 claimed to be a fourth son of Balwant Singh entitled to 1/4th share in the property left by him. The appellants filed Suit No. 41 of 1958, in the Court of Sub Judge, Bassi. The Civil Court on the objection of Respondent No. 1 framed a preliminary issue whether the said Court was competent to try the suit or was it a matter which could be decided only by the Settlement Commissioner. By Order dated 7.7.1958 the learned Subordinate Judge decided that the Civil Court had no jurisdiction to try this suit and directed the return of the plaint for presentation to the proper Revenue Court. When the appellants filed their claim in the Revenue Court their petition was returned holding that the Revenue Court had no jurisdiction to try it. Thereupon the appellants instituted suit No. 13 of 1960 in the Court of Sub Judge, First Class, Bassi on 2-4-1960. This suit has failed throughout on the ground of *res judicata*. The High Court has affirmed the dismissal on the view that the decision dated 7-7-1958 given by the Civil Court in Suit No. 41 of 1958 on the point of Civil Court's jurisdiction to try the suit will operate as *res judicata*. In our opinion the High Court is right. C

The learned counsel for the appellants submitted that the appellants were driven from pillar to post for the redress of their grievances. When they instituted the suit in Civil Court, that Court held that it had no jurisdiction to try it. When the suit was filed in the Revenue Court, the said Court took a contrary view. Where could the appellants then go? We do sympathise with the appellants' dilemma but they were wrongly advised to do as they did. Either they ought to have followed the matter in the First Civil Suit and insisted up to the end that the suit was triable by a Civil Court, or, they would have taken the matter further before the higher authorities and Court from the order of the Revenue Court and persisted that the matter whether the Civil Court had jurisdiction to decide the dispute between the parties or not was *res judicata*; the Revenue Court had no jurisdiction to go behind the decision of the Civil Court. The appellants did D

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A neither. It is unfortunate that due to the wrong paths which they followed under wrong advice they have ultimately to fail on the technical ground of *res judicata* but there is no way out.

B It was pointed out by Lord Russell of Killowen, *Upendra Nath Bose v. Lall and Others*,⁽¹⁾ that there could be *res judicata* in regard to the question of lack of jurisdiction of the Civil Court to try a matter but—

“A Court which declines jurisdiction cannot bind the parties by its reasons for declining jurisdiction : such reasons are not decisions, and are certainly not decisions by a Court of competent jurisdiction.” (vide page 225).

C The above passage does not help the appellants, rather, goes against them. Mr. Garg had also placed reliance upon a Single Judge decision of the Allahabad High Court in *Jwala Debi v. Amir Singh*, ⁽²⁾ wherein the Learned Judge observed at page 132 :—

D “Looked at closely, a question of jurisdiction, along with it may be raised by the defendant, is a question that virtually arises between the plaintiff and the Court itself. The plaintiff invokes the jurisdiction of the Court. The defendant may or may not appear. If the Court finds that it has no jurisdiction to entertain the plaint, it will order the return of it for presentation to the proper Court. The defendant, if he appears, and if he so chooses, may point out to the Court that it has no jurisdiction. A decision on the question of jurisdiction does not affect in any way the status of the parties or the right of one party to obtain redress against the other. The fact that a decision as to jurisdiction is not binding on the parties in a subsequent litigation will be apparent from this.”

E We do not approve at all the views as expressed by the learned Single Judge of the Allahabad High Court. If defendant does not appear and the Court on its own returns the plaint on the ground of lack of jurisdiction the order in a subsequent suit may not operate as *res judicata* but if the defendant appears and an issue is raised and decided then the decision on the question of jurisdiction will operate as *res judicata* in a subsequent suit although the reasons for its decisions may not be so.

F For the reasons stated above we dismiss this appeal but direct the parties to bear their own costs throughout.

H P.B.R.

Appeal dismissed.

(1) A.I.R. 1940 P.C. 222.

(2) A.I.R. 1929 All 132.