

Appellate Court to commit is not circumscribed to cases exclusively triable by a court of Session and the High Court was in error in taking a contrary view.

We therefore allow this appeal, set aside the order of the High Court and restore that of the Sessions Judge.

Appeal allowed.

BALJEET SINGH & OTHERS

v.

RISAL SINGH & OTHERS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR and
RAGHUBAR DAYAL, JJ.)

Civil Procedure—Res judicata—Twelve suits against four sets of defendants—Decreed by common judgment—Twelve appeals—Appeals by one set of defendants dismissed for default—Whether other appeals barred—Appeals to Supreme Court—Consolidation Operations—If make appeals infructuous—U.P. Consolidation of Holdings Act, 1953, (U.P. V of 1954).

K, H and M filed four suits each against four sets of defendants in respect of different sets of plots under s. 175 U. P. Tenancy Act, 1939. Since similar points were involved the twelve suits were tried together and were disposed of by a common judgment decreeing them. Twelve decrees were prepared and the defendants preferred twelve appeals to the Additional Commissioner. Three appeals by one set of the defendants B were dismissed for default and the remaining nine were dismissed on merits. Against the dismissal of the nine appeals on merits the three sets of defendants preferred nine second appeals before the Board of Revenue but they were dismissed as barred by *res judicata* on May 7, 1954. In November, 1954, the appellants filed petitions for special leave before the Supreme Court and on April 18, 1955, special leave was granted. In July 1954, the villages in which the lands in suit were situate came under consolidation operations under the U. P. Consolidation of Holdings Act, 1953, and the operations were completed by the publication of a notification

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under s. 52 of the Act on October 17, 1955. The appellants did not file any objections before the consolidation authorities. The respondent contended that in view of the consolidation operations the appeals before the Supreme Court had become infructuous.

Held, that the appeals had not become infructuous. There was nothing in the U. P. Consolidation of Holdings Act, 1953, as it stood during the period the village in suit was under consolidation operations which could have in any way affected these appeals, during or after the consolidation operations. The subsequent Amending Acts did not affect the appeals as they were prospective in operation and applied only to cases where the consolidation operations were started after the Amending Acts had come into force.

Held, further that the appeals before the Board of Revenue were not barred by *res judicata*. It was essential for the bar of *res judicata* that the previous adjudication must have been between the same parties. The three suits in which judgments had become final were against one B and not against any of the appellants. The matter in issue in those three suits was different from that in the other nine suits as each of the suits related to different plots. The common judgment was really twelve judgments in the twelve suits.

Badri Narayan Singh v. Kamdeo Prasad Singh, (1962) 3. S. C. R. 759 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 67 to 75 of 1959.

Appeals by special leave from the judgment and order dated May 7, 1954 of the U.P. Board of Revenue, in Second Appeals Nos. 53 to 61 of 1945-46.

S. P. Sinha, J. P. Goyal and Sadhu Singh, for the appellants.

Bishan Narain and K. L. Mehta, for the respondents.

1962. February 15. The Judgment of the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—These nine appeals, by special leave, are against the orders of the Board of Revenue, Uttar Pradesh, dismissing nine

second appeals filed by the appellants in circumstances hereinafter mentioned, on the ground that the orders of the First Appellate Court in three other connected first appeals had become final and operated as *res judicata*.

Khub Chand had three sons Karan Singh, Hoshiar Singh and Mukhtiar Singh. Each of these brothers instituted four suits. Hoshiar Singh instituted suit No. 48 of 1944 under s. 175 of the U.P. Tenancy Act, 1939 (U.P. XVII of 1939), against one Bhartu, suit No. 49 against Har Gyan, Mukhtiar Singh and Data Ram, sons of Sis Ram, brother of Bhartu, suit No. 50 against Har Gyan and Mukhtiar Singh, sons of Sis Ram, and suit No. 51 against one Banwari. Karam Singh similarly instituted suits Nos. 63, 61, 60 and 62 against similar defendants respectively. Mukhtiar Singh's suits against those defendants, respectively, were Nos. 67, 65, 64 and 66. Each of these suits was for different sets of plots. The allegations of the plaintiffs in each suit and the contentions of the defendant in each suit were similar and therefore similar issues were framed in each suit and all the suits were tried together and were disposed of by one common judgment. Twelve decrees were, however, prepared. Against the twelve decrees the defendants-judgment debtors in each decree filed twelve first appeals in the Court of the Additional Commissioner, Meerut Division. The Additional Commissioner dismissed three appeals for default. These were the appeals which were filed against Hoshiar Singh, Karam Singh and Mukhtiar Singh by Banwari. The Additional Commissioner heard the remaining nine appeals on merits and dismissed them. The defendants-judgment debtors then filed nine second appeals before the Board of Revenue. They were dismissed as barred by *res judicata* on May 7, 1954.

The applications for special leave were filed in this Court in November 1954. Special leave was

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granted on April 18, 1955. By the time the appeals came up for hearing, some other events took place and as a result of them the respondents filed an application for adducing additional evidence under O.XLV, rr.1 to 5, Supreme Court Rules in November 1959, and also included in their statement of case a narration of those events and their effect.

It appears that the villages in which the lands in suit were situate, come under Consolidation Operations under the U.P. Consolidation of Holdings Act, 1953 (U.P. V of 1954), hereinafter called the Act, sometime in July 1954, when a declaration was issued by the State Government under s.4 of the Act to the effect that it had been decided to make a Scheme of consolidation for that area. In December 1954, a statement of plots and tenure holders was prepared and in May 1955 a statement of proposals under s.19 was prepared; in August 1955 final statements in chak form 25 were issued. On October 17, 1955, the State Government published a notification under s.52 of the Act.

Section 52 of the Act then read :

“As soon as may be after the tenure-holders have entered into possession of their new holding in pursuance of Section 26, the State Government shall issue a notification in the Official Gazette that the Consolidation operations have been closed in the village and the village shall then cease to be under consolidation operation.”

It is thus seen that this village remained under Consolidation operations from some time in July 1954 to October 17, 1955.

The appellants did not file any objections before the Consolidation authorities under s.12 of the Act disputing the correctness or the nature of the entries in the statement prepared under s.11 or under s.20 against the statement of proposals prepared under s.19.

Section 24 provides for the fixing of a date for the enforcement of the consolidation scheme. Section 25 provides for the issuing of the allotment order showing the new fields allotted to each tenure-holder in accordance with the said scheme. Section 26 provides for the tenure-holders to enter into possession of the fields allotted to them on or after a certain date. Section 27 provides for the preparation of new village maps, khasra and the record-of-rights, in accordance with the provisions of the U.P. Land Revenue Act, 1901. Its sub-s.(2) provides that all entries in the record-of-rights prepared under sub-s.(1) shall be final and conclusive.

Section 30 provides that the rights, title, interest and liabilities of the tenure holder in his original holding shall be extinguished and he will have the same rights, title, interest and liabilities subject to modification, if any, in the plots allotted to him under s.25 with effect from the date on which he enters into possession of the plots allotted to him.

It was contended for the respondents that in view of these consolidations operation and s.5 of the Act, as amended up to date, these appeals have become infructuous as this Court cannot pass any orders on the merits of the controversy. The Act has been amended several times since it was originally enacted. The various amending Acts are: Act XXVI of 1954 which came into force on December 13, 1954; Act XIII of 1955 which came into force on June 10, 1955; Act XX of 1955 which came into force on October 21, 1955; Act XXIV of 1956 which came into force on July 3, 1956; Act XVI of 1957 which came into force on May 25, 1957 and Act XXXVIII of 1958 which came into force on November 19, 1958.

During the period the village in suit was under Consolidation Operations, the Act applicable

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to the proceedings was the Original Act as amended by Acts XXVI of 1954 and XIII of 1955. The other Acts came into force subsequent to the issue of the notification under s.52 of the Act. It is necessary to bear this in mind in view of the contentions raised.

Section 5 of Act V of 1954 was as follows :

“(1) Upon the publication of the declaration under section 4, the district or the local area, as the case may be, shall be deemed to be under consolidation operations from the date of such publication until this publication of the Notification under section 52 in the official Gazette to the effect that the consolidation operations have been closed.

(2) Where a district or any other local area is under consolidation operations, the duty of preparing and maintaining the maps, the khasra and the annual register under Chapter III of the U.P. Land Revenue Act, 1901, shall stand transferred to the Settlement Officer (Consolidation), and thereupon all the powers conferred on the Collector, Assistant Collector and the Tahsildar under the said Chapter shall, so long as that district or the area remains under consolidation operations, be exercised respectively by the Settlement Officer (Consolidation), Consolidation Officer and the Assistant Consolidation Officer.”

Act XXVI of 1954 deleted the last portion of sub-s.(2) commencing from the words ‘and thereupon’. No change in this section was made by the Amending Act XIII of 1955. There was therefore nothing in this section which in any way would have affected the hearing of these appeals, during or after the consolidation operations.

Section 12 of Act V of 1954 provided for the publication of the statement of plots and tenure holders prepared under s.11 and for filing objections disputing the correctness or nature of entries in it. Its sub-sections (4), (5) and (6) were :

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“(4) Where the objection filed under sub-section (1) involves a question of title and such question has not already been determined by a competent court, the Consolidation Officer shall refer the question for determination to the Arbitrator.

(5) All suits or proceedings in the court of first instance or appeal in which a question of title in relation to same land has been raised, shall be stayed.

(6) The decision of the Arbitrator under sub-section (4) shall be final.”

There was nothing in these sub-sections which provided as to how the suits or proceedings stayed been under sub-section (5) would be decided or how matters in connection of which no objection had raised under s.12 would be dealt with. These provisions too did not affect the pending Appeals as no objection had been filed under s.12.

Act XXVI of 1954 amended sub-s.(4) to the effect that the objection coming under sub-s.(4) would be referred to the Civil Judge, who will then refer it to the Arbitrator, and substituted another sub-section in the place of original sub-s.(5). The substituted sub-s.(5) read :

“(5) Upon the making of reference under sub-section (4) all suits or proceedings in the Court of first instance, appeal, reference or revision, in which the question of title in relation to the same land has been raised, shall be stayed.”

This amendment in sub-s.(5) stayed the suits and

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proceedings not only in the Courts of the first instance and appeal but also in the Courts of reference and revision, but did not affect these appeals.

Sub-s.(2) of s.27 as originally enacted, was not amended up to the 17th October, 1955. Its sub-s.(2) made the entries in the record of rights prepared under sub-s.(1) final and conclusive. We are not concerned with its effect in these appeals.

Section 49 of the Act bars the jurisdiction of Civil Courts. This section, before its amendment by Act XIII of 1955, which came into force on June 10, 1955, did not bar the institution of a suit or proceedings in the revenue court. It did so after the amendment. These appeals had been filed long before the amendment.

We may state that no objection was raised on behalf of the respondent to the effect that these appeals could not have been instituted, but we have discussed that matter, in view of the fact that the appeals were filed after the State Government had made a declaration under s.4 of the Act.

We have not been referred to any provision in these Acts, viz., Act V of 1954, Act XXVI of 1954 and Act XIII of 1955 which would lead to the conclusion that these appeals have become infructuous.

Act XX of 1955 made an amendment in s.27 of the Act. The amendment however does not affect the question before us.

Act XXIV of 1956 which came into force on July 3, 1956, substituted a new section 5 in the place of the old. The substituted section 5 read :

"5. When the declaration under section 4 has been published in the Gazette, the consequences as hereinafter set forth shall,

from the date specified thereunder till the publication of the notification under section 52 in the Official Gazette to the effect that the consolidation operations have been closed, ensue in the area to which the declaration relates, namely ;

- (a) the district or the local area, as the case may be, shall be deemed to be under consolidation operations from the specified date, and the duty of preparing and maintaining the khasra and the annual Register under Chapter III of the U.P. Land Revenue Act, 1901, shall stand transferred to the Settlement Officer (Consolidation), and
- (b) all proceedings for the correction of any such records pending before any court or authority shall be stayed but without prejudice to the right of the persons affected to agitate the question before the Assistant Consolidation Officer under sub-section (3) of Section 8, or in proceedings commenced under and in accordance with section 10."

Clearly, cl. (b) does not apply to these appeals as they have not arisen out of proceedings for the correction of village records.

Act XXIV of 1956 made certain amendments in s. 11 with which we are not concerned. We are not also concerned with the amendments this Act made in sub-s. (1) of s. 12. It substituted a new sub-section (5) and added sub-s. (7). These new sub-sections (5) and (7) are :

"(5) Upon the publication of the statement under section 11, all suits or proceedings in the Court of first instance, appeal, reference or revision, in which the question of title in respect of any plot mentioned in the statement with reference to clause (c) of sub-section (1) of section 11 has been raised, shall be

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stayed to the extent it relates to such plot and shall thereafter be disposed of in the manner prescribed.

(7) A question of title in respect of any plot mentioned in the statement in clause (c) of sub-section 1 of section 11, which might and ought to have been raised under sub-section (1) but had not been raised, shall not be raised in any objection filed under sub-section (2) of section 20, or under sub-section (1) of section 34."

It is for the first time that such suits and proceedings in the various Courts had to be stayed in which a question of title in respect of any plot mentioned in the statement with reference to cl. (c) of sub-s. (1) of s. 11 had been raised and that these stayed suits or proceedings were to be decided subsequently in the manner prescribed, i. e., in the manner laid down under rules framed under the Act. These provisions of sub-s. (5) do not affect the appeals as they were prospective in operation and could apply to those cases only in which statements under s. 11 were filed after the amendment had been made.

The amendments made by the other sections of this Act and Act XVI of 1957, do not affect the hearing of the appeals in any way.

Thereafter case Act XXXVIII of 1958. This Act again substituted a new s. 5, and the relevant portion of the substituted section reads:

5. Upon the publication of the notification under section 4 in the Official Gazette, the consequences, as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified thereunder till the publication of notification under section 52 or sub-section (1) of section 6, as the case may

be, ensue in the area to which the declaration relates; namely—

x x x x x

(b) (1) all proceedings for correction of the records and all suits for declaration of rights and interest over land, or for possession of land, or for partition, pending before any authority or court, whether of first instance, appeal or reference or revision, shall stand stayed, but without prejudice to the right of the persons affected to agitate the right or interests in dispute in the said proceedings or suits before the consolidation authorities under and in accordance with the provisions of this Act and the Rules made thereunder:

(ii) the findings of consolidation authorities in proceedings under this Act in respect of such right or interest in the land, shall be acceptable to the authority or court before whom the proceeding or suit was pending which may, on communication thereof by the parties concerned, proceed with the proceeding or suit, as the case may be;"

These provisions operate prospectively. The consequences mentioned in s. 5 ensue upon the publication of the notification under s. 4 in the Gazette and continue up to the publication of the notification under s. 52. They do not continue thereafter and could not operate on these cases in which the notification under s. 52 was issued on the 17th October 1955. They do not therefore bar the hearing of these appeals. These appeals have not therefore become infructuous.

Sections 7, 8, 9, 10, 11, 11-A, 11-B, 12, 12-A, 12-B, 12-C and 12-D have been substituted by new section which apply to proceedings taken in consolidation operations subsequent to the coming into force of the Amending Act XXXVIII of 1858. Sub-s. (1) of

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s. 12 makes it clear that the matters mentioned in that sub-section cannot be raised subsequent to the date of notification under s. 52.

There has been no material change made in ss. 27 and 30, but s. 49 now reads:

"49. Notwithstanding anything contained in any other law for the time being in force the declaration and adjudication of rights of tenure holders in respect of land lying in an area, for which a declaration has been issued under section 4, or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no civil or revenue court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act."

This now provides that the adjudication of rights of tenure holders in respect of land lying in an area under consolidation operations shall be done in accordance with the provisions of the Act. This leads practically to the same result to which cl. (ii) of sub-s. (b) of s. 5 leads to. The provisions of this section are not expressly limited to the period between the declaration under s. 4 and the notification under s. 52, but can be so construed as they relate back to s. 5 (b) (ii) of the Act as the declaration and adjudication of rights have to be done in accordance with the provisions of the Act. Further the amended provision would apply to the proceedings regarding rights in land in the area for which a declaration under s. 4 has been issued after the amendment.

We are therefore of opinion that these appeals have not become infructuous.

On the merits, we are of opinion that the Board of Revenue erred in holding that the appeals before it were barred by *res judicata*. It is essential for any previous adjudication of a point to bar its consideration second time that the previous adjudication must have been between the same parties and that it be with respect to the same matter. The three suits in which judgments became final were against one Banwari and not against any of the present appellants. The matter in issue in those three suits were also different from that in the suits which have given rise to these appeals. Each of the twelve suits related to different plots. A common judgment on account of similar questions being raised for decision in the different suits, does not always make that judgment amount to one judgment in those suits. Such a judgment will ordinarily be deemed to be really so many judgments as the suits disposed of by it. This Court expressed a similar view in *Badri Narayan Singh v. Kamdeo Prasad Singh*⁽¹⁾.

We therefore allow the appeals, set aside the order of the Court below and remand the appeals to it for further hearing and decision according to law. We may make it clear that it can take into consideration the effect of the Consolidation Act and proceedings thereunder, after giving an opportunity to the parties to submit what they like in regard to them costs to abide the result.

Appeals allowed.

(1) [1962] 3 S. C. R. 759.

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