
Before Satish Kumar Mittal, J.

KEHAR SINGH,—*Petitioner*

versus

NISHAN SINGH AND OTHERS,—*Respondents*

C.R. NO. 2998 OF 2003

10th January, 2006

Code of Civil Procedure, 1908—Constitution of India, 1950—Art. 227—Land Acquisition Act, 1894—Ss. 18, 30—Petitioner a tenant on part of the acquired land—Award of acquired land made—Petitioner filing reference u/s 30 for apportionment of the compensation—Landlord also filing reference u/s 18 for enhancement of compensation—Reference Court holding the landlord and tenant entitled to apportion the awarded compensation—First appeal filed by landlord against the award is pending in High Court and LPA filed by him against an interim order dismissed—Civil suit for declaration—Matter already decided by the Reference Court of A.D.J.—Trial Court framing issues—Application for treating the issues of jurisdiction, maintainability and the suit being barred by the principles of res-judicata as preliminary issues—Rejection of—Challenge thereto—Finding of trial Court that there was no specific issue before the Reference Court about the relationship of landlord and tenant between the parties is not sustainable—Trial Court ignoring the fact that the issue regarding the tenancy was the subject matter of adjudication before the Reference Court—Petition allowed while directing the trial Court to treat the issues of jurisdiction, maintainability and res-judicata as preliminary issues.

Held, that the trial Court has failed to exercise its jurisdiction while declining the prayer of the petitioner for treating the issues of jurisdiction, maintainability and res-judicata as preliminary issues. It has been observed that there was no specific issue before the Reference Court about the relationship of landlord and tenant between the parties. The issue was “whether the plaintiff alone was entitled to claim the whole amount of compensation or the same has to be apportioned with the tenant”. It was further observed that there was no issue before the Reference Court that whether the entire of

Khasra girdawaris and jamabandis showing the defendants as tenants in the suit property are wrong or not. The said issue is still to be decided in the instant case. For that purpose, detailed evidence is required. Therefore, on the decision of the preliminary issues, the suit cannot finally be disposed of. This reasoning recorded by the trial Court is not sustainable. It has not properly understood the scope of adjudication by the Reference Court and the scope of filing of the subsequent suit pertaining to the issues determined by the Reference Court. Section 30 of the Act contemplates two types of cases to be referred to the Court i.e. a dispute regarding apportionment of the compensation, and the person to whom the compensation is payable. The reference under the Act regarding any dispute as to the person to whom the compensation is payable is in the nature of a suit, really in the nature of interpleader suit. The procedure before the Reference Court under section 30 of the Act is also governed by the provisions contained in the Code of Civil Procedure as Section 30 does not contain any provision expressly or by necessary application that the provisions of C.P.C. are not applicable. A decision under section 30 of the Act is a decree and as such the aggrieved party has a right to appeal. A decision on a reference under Section 30 of the Act decides the question of title and interests of the parties, and the same is binding on them. Now it may be asked if a decision in a reference by the Judge as to the apportionment of compensation or title of the property will operate as res-judicata in a subsequent suit under section 11 of the Act, and such decision inter se parties will bind them in a subsequent suit. The principle of res-judicata is based on the need of giving a finality to judicial decisions. It says once a res-judicata, it shall not be adjudged again. The right of apportionment necessarily involves the determination of the right/title of the claimant or the objector. Therefore, the same question cannot be tried and determined by any other court in a subsequent suit.

(Paras 8, 9, 11 and 12)

Further held, that Section 9 of C.P.C. provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. A suit is expressly barred if a legislation in express term says so. It is impliedly barred if a suit creates a new right and prescribes a particular special remedy. In that event, the exclusion of jurisdiction can be inferred. If a land is acquired and the tenant on the land also claim

apportionment in the compensation, on that account, he has been provided special remedy for making reference under Section 30 of the Act. On the other hand, if the land owner claims that he is exclusively entitled for the entire compensation and claims that the tenant is not entitled to any apportionment in the compensation, he has also been provided special remedy of necessary reference under Section 30 of the Act. Such disputes are being adjudicated on either of the references by the Civil Court under Section 30 of the Act. Thus, in such situation, the jurisdiction of the Civil Court is impliedly barred. The trial Court has failed to notice the aforesaid legal position. The petitioner's name was recorded as a tenant in the revenue record, therefore, he was a person interested in the acquired land. He sought a reference under Section 30 of the Act by claiming a share in the compensation of the acquired land being tenant. The trial Court has completely ignored the fact that the issue regarding the tenancy was the subject matter of adjudication before the Reference Court. Even if the plaintiff has not taken the plea before the Reference Court that the revenue entries were wrong, those pleas cannot be permitted to be taken in the subsequent suit in view of explanation IV of section 11 of the C.P.C.

(Paras 13 and 16)

C.B. Goel, Advocate, *for the petitioner.*

S.N. Saini, Advocate, *for respondent No. 1.*

JUDGMENT

SATISH KUMAR MITTAL, J.

(1) The petitioner, who is one of the defendant in the suit, has filed petition under Article 227 of the Constitution of India for setting aside the order dated 19th May, 2003 passed by the Civil Judge (Jr. Division), Panipat,—*vide* which the application filed by the petitioner for treating the issues of jurisdiction, maintainability and *res-judicata* as preliminary issues, has been dismissed.

(2) In this case, the State of Haryana,—*vide* notification dated 23rd February, 1989 acquired certain land situated within the revenue estate of village Patti Taraf Insar, Panipat, including the land of Nishan Singh, plaintiff-respondent. On part of the acquired land of the plaintiff-respondent, the petitioner and another defendant in the

suit, namely, Sampuran Singh, were the tenants. The petitioner was tenant on land measuring 3 bighas 11 biswas since 1972 on payment of rent at the rate of Rs. 92 per bigha per year. Sampuran Singh, defendant was tenant on land measuring 3 bighas 10 biswas comprising in Khasra No. 4453 on payment of rent at the rate of Rs. 92 per bigha per year since 1970 to 1992. Regarding the said acquisition, the Land Acquisition Collector made the award dated 31st March, 1994 under Section 11 of the Land Acquisition Act (hereinafter referred to as 'the Act'). Since the petitioner was a tenant on part of the acquired land, he claimed compensation being tenant, but when the plaintiff-respondent did not agree to part with the compensation, the petitioner filed reference under Section 30 of the Act for apportionment of the compensation. The plaintiff-respondent also filed a reference application under Section 18 of the Act for enhancement of the compensation. Both the reference applications were referred to for adjudication of the respective claims to the Court of Additional District Judge as provided under Section 30 of the Act. Before the Reference Court, both the parties put their respective claims. The petitioner and other tenant Sampuran Singh claimed that they are the tenants on the suit land which is owned by Sunder Singh, the father of the plaintiff, and it was claimed that they were entitled to apportionment of 3/4th share of the awarded as well as enhanced compensation under the Act.

(3) The Reference Court,—*vide* its award dated 31st March, 1994 held that both Kehar Singh and Sampuran Singh were tenants under the deceased Sunder Singh, now represented by his son Nishan Singh (plaintiff-respondent) on payment of Lagan at the rate of Rs. 92 per bigha in respect of the land measuring 3 bigha 11 biswas and 3 bighas 10 biswas comprising in Khasra Nos. 4453 and 4454. After recording the said finding, the Reference Court held that the landlord and the tenant are entitled to apportion the awarded compensation in the ratio of 2/3rd share and 1/3rd share, respectively. Against the said award, RFA No. 827 of 2000 (**Nishan Singh versus State of Haryana**) is pending and the application filed by Nishan Singh for stay for disbursing the amount of compensation to the tenant was disposed of by interim order that the compensation be paid to the tenant, subject to security to the satisfaction of the executing court. The said order was challenged by the respondent-Nishan Singh by filing L.P.A. No. 1620 of 2000 which was dismissed in limine on 16th November, 2000.

(4) After passing of the aforesaid orders, the respondent Nishan Singh filed the instant civil suit for declaration with the following prayer :—

“It is, therefore, prayed that this Hon’ble Court may be pleased to pass an order declaring Shri Nishan Singh, the plff. herein as the absolute owner of the land measuring 3 bighas and 11 biswas recorded in Khasra No. 4453 min south (1-0), Khasra No. 4454 (2-11) and 3 bighas and 10 Biswas comprised in Khasra No. 4453 min situated in vill. Patti Taraf Insar, Panipat, Tehsil and District Panipat and also entitled to recover the full compensation from the Land Acquisition Collector, Panipat and the State of Haryana and further declaring that the record entered in by the Patwari for the said disputed land as invalid, incorrect and of no consequence and that the name of the defendants henceforth be deleted from the aforesaid revenue enteries and no compensation should be awarded to them in lieu of the above and pass under the facts and circumstances of the case.”

(5) On notice being served, the petitioner and Sampuran Singh, another defendant, who was also tenant on part of the acquired land owned by the father of Nishan Singh, contested the aforesaid suit and raised various preliminary objections regarding jurisdiction, maintainability and the suit being barred by the principles of *res-judicata*. It has been stated that the Civil Court has no jurisdiction to entertain and decide the suit and jurisdiction of the Civil Court under Section 9 of C.P.C. stands excluded. The matter has already been decided by the Court of Additional District Judge, Panipat on 25th February, 2000. As such, the suit is liable to be dismissed on the ground of jurisdiction. It was also pleaded that the suit is not maintainable under the law inasmuch as the plaintiff has already filed reference petition under Sections 18 and 30 of the Act. In the said reference petition, the same controversy between the same parties has been decided by the Court of Additional District Judge, Panipat,— *vide* its award dated 25th February, 2000, and against the said award, the plaintiff has already filed Regular First Appeal in this Court in which the compensation was ordered to be paid to the tenants subject to security to the satisfaction of the executing court. It was further

pleaded that the finding recorded in the said award will operate as *res-judicata*. Hence, the instant suit is not maintainable.

(6) On the pleadings of the parties, the following issues were framed :—

- “1. Whether the father of plaintiff namely Sunder Singh was the owner in possession of the suit property detailed in para No. 3 of the plaint ? OPP.
2. Whether the entry of the name of deft. No. 1 Kehar Singh in Khasra No. 4453 min (1-0) and Khasra No. 4454 (2-11) measuring 3 Bigha 11 Biswa as tenant and name of deft. No. 3 in respect of land measuring 3 Bigha 10 Biswa in Khasra No. 4453 min as tenant are incorrect, erroneous and are liable to be corrected ? OPP.
3. Whether the plaintiff is entitled to recover full compensation from LAC, Panipat on the basis of this ownership ? OPP.
4. Whether the Civil Court has got no jurisdiction to try the present suit ? OPD.
5. Whether the suit is not maintainable in the present form ? OPC.
6. Whether the plaintiff has concealed true and material facts from the court ? OPD.
7. Whether the plaintiff is estopped to file the present suit by his own act and conduct ? OPD.
8. Whether the suit is barred by limitation ? OPD.
9. Whether the suit is bad for mis-joinder of parties ? OPD.
10. Whether the plaintiff has no cause of action to file the present suit ? OPD.
11. Whether the suit is bad by principles of *res judicata* ? OPD.
12. Whether the plaintiff has no *locus standi* to file the present suit ? OPD.
13. Relief.”

(7) After framing the issues, the petitioner/defendants filed an application for treating the issues of jurisdiction, maintainability and *res judicata* i.e. issues No. 4, 5 and 11 as preliminary issues. The said application has been dismissed by the trial Court,—*vide* impugned order while observing as under :—

“No doubt the issue on which the matter can be completely and finally disposed of and the issues which involve only question of law can be treated as preliminary issue, but if the said issue require detailed evidence to be led, those issues should not be treated as preliminary issues. Although the matter in the present suit was also matter before Learned ADJ, Panipat in a reference *u/s* 18 and 30 of L.A. Act, but a perusal of the judgment of Learned ADJ, Panipat shows that there was no specific issues about the relationship of landlord and tenant between the parties before him. The issue framed by Learned ADJ, Panipat was “whether the petitioners alone are entitled to claim the whole amount of compensation or the same is to be apportioned between them and respondent No. 3 to 5.” The question whether the entries of Khasra-Girdawari and jamabandies showing defendants as tenants in the suit property are wrong still remains to be decided. Merely by perusing the judgment of Learned ADJ, Panipat, the matter cannot be finally disposed of. The plaintiff has sought the relief regarding alleged wrong entries of the name of defendants No. 1 to 3 in the revenue record and that relief cannot be granted or declined merely on giving findings on the issue of jurisdiction, maintainability and *res judicata*. The suit can be found to be barred by the principles of *res judicata* on the point of relationship of landlord and tenant, but merely because of the same, the suit cannot be said to be barred with regard to the relief of correction in the entries in revenue record. Further more, the judgment passed by Learned ADJ, Panipat has also been challenged by the plaintiff in the present suit. Although this is yet to be decided as to whether this Court can go into the question whether the judgment of Learned ADJ, Panipat is liable to be decided, but, at this stage, it cannot be said on the basis of said judgment, plaintiff

should be non-suited. Thus in my opinion, merely by treating these three issues as preliminary issues, the suit of the plaintiff cannot be disposed of finally as these issues do not merely involve the question of law, but they involve mixed question of facts and law. Thus in my opinion these issues cannot be treated as preliminary issues.”

(8) I have heard the counsel for the parties at some length and have perused the impugned order as well as the award dated 25th January, 2000 passed by the Additional District Judge, Panipat. In my opinion, in this case the trial Court has failed to exercise its jurisdiction while declining the prayer of the petitioner for treating the aforesaid three issues as preliminary issues. It has been observed that there was no specific issue before the Reference Court about the relationship of landlord and tenant between the parties. The issue was “whether the plaintiff alone was entitled to claim the whole amount of compensation or the same has to be apportioned with the tenants.” It was further observed that there was no issue before the Reference Court that whether the entries of Khasra girdawaris and jamabandis showing the defendants as tenants in the suit property are wrong or not. The said issue is still to be decided in the instant case. For that purpose, detailed evidence is required. Therefore, on the decision of the preliminary issues, the suit cannot finally be disposed of.

(9) In my opinion, the aforesaid reasoning recorded by the trial Court is not sustainable. It has not properly understood the scope of adjudication by the Reference Court and the scope of filing of the subsequent suit pertaining to the issues determined by the Reference Court. Section 30 of the Act reads as under :—

“30 Dispute as to apportionment.—When the amount of compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.”

(10) The word “Court” has also been defined under Section 3(d) of the Act, which reads as under :—

“the expression “Court” means a Principal Civil Court of original jurisdiction, unless the [appropriate Government] has

appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the court under this Act.”

(11) Section 30 of the Act contemplates two types of cases to be referred to the Court i.e. a dispute regarding apportionment of the compensation, and the person to whom the compensation is payable. The reference under the Act regarding any dispute as to the person to whom the compensation is payable is in the nature of suit, really in the nature of interpleader suit. The procedure before the Reference Court under Section 30 of the Act is also governed by the provisions contained in the Code of Civil Procedure as Section 30 does not contain any provision expressly or by necessary application that the provisions of CPC are not applicable. A decision under Section 30 of the Act is a decree under Section 30 of the Act decides the question of title and interests of the parties, and the same is binding on them. Now, it may be asked if a decision in a reference by the Judge as to the apportionment of compensation or title of the property, will operate as *res judicata* in a subsequent suit under Section 11 of the Act, and such decision inter se parties will bind them in a subsequent suit.

(12) The principle of *res judicata* is based on the need of giving a finality to judicial decisions. It says once a *res judicata*, it shall not be adjudged again. The right of apportionment necessarily involves the determination of the right/title of the claimant or the objector. Therefore, the same question cannot be tried and determined by any other Court in a subsequent suit. The Reference Court adjudicating the matter under Section 30 of the Act, though a Principal Civil Court of original jurisdiction, but is a Court of limited jurisdiction. The explanation VIII to Section 11 CPC, which has been added by the CPC Amendment Act, 1976, clearly states that an issue heard and finally decided by a Court of limited jurisdiction competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised. This amendment in the CPC put the questions beyond any controversy and doubt that any finding as to title by a Land Acquisition Judge sitting in reference under Section 30 of the Act would operate as *res judicata* in a subsequent proceedings between the same rival parties or between the persons under whom they or any of them claim.

(13) Section 9 of CPC provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suit of which their cognizance is either expressly or impliedly barred. A suit is expressly barred if a legislation in express terms says so. It is impliedly barred if a suit creates a new right and prescribes a particular special remedy. In that event, the exclusion of jurisdiction can be inferred. If a land is acquired and the tenant on the land also claim apportionment in the compensation, on that account, he has been provided special remedy for making reference under Section 30 of the Act. On the other hand, if the land owner claims that he is exclusively entitled for the entire compensation and claims that the tenant is not entitled to any apportionment in the compensation, he has also been provided special remedy of necessary reference under Section 30 of the Act. Such disputes are being adjudicated on either of the references by the Civil Court under Section 30 of the Act. Thus, in such situation, the jurisdiction of the Civil Court is impliedly barred.

(14) The trial Court, in my opinion, has failed to notice the aforesaid legal position. In this case, the petitioner's name was recorded as a tenant in the revenue record, therefore, he was a person interested in the acquired land. He sought a reference under Section 30 of the Act by claiming a share in the compensation of the acquired land being tenant. Before the Reference Court, the plaintiff-respondent was claiming that the petitioner and another tenant were not entitled for any apportionment in the compensation, as they were not his tenants. In this regard, the Reference Court framed issue No. 2 "Whether the land owner alone was entitled to claim whole of the amount of compensation or the same is to be apportioned between him and the tenants?" While deciding this issue, the Reference Court has observed that the decision to this issue depends upon the answer to the question "Whether the respondents Kehar Singh and Sampuran Singh were the tenants under the deceased petitioner Sunder Singh at the time of acquisition of land and if it is so then the petitioner along with the said respondents are entitled to the apportionment of the compensation." On this issue, the following finding was recorded :—

“...The revenue record namely khasra Girdawaris with effect from Rabi, 1983 to Rabi 1990 Ex.R3 and Ex.R5 and further from Rabi, 1992 onwards Ex. R4 as also khasra Girdawaris with effect from Kharif, 1972 to Rabi, 1994 Exs.R7, R8,

R9, R10 and R11 and Jamabandis for the years 1978-79 and 1983-84 Exs.R1 and R2 also so proves that both the said respondents were Gair Marusi of Sunder Singh on payment of Lagan @ Rs.92/- per bigha. There is no dispute that some of the revenue entries were in favour of respondent Balbir Singh as finds mention in Ex.R3 and Ex.R4. But of my mind, it is of no consequence as it stands corrected in the name of the respondent Sampuran Singh,—*vide* order and decree dated 17th January, 1983 Exs.R12, R13, and Ex.14 respectively.”

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“Apart from the respondents evidence, the petitioners’ evidence, the also support respondents Kehar Singh and Sampuran Singh about their tenancy under the deceased petitioner Sunder Singh Ex.P4,Ex.P5 and Ex.P7 are the copies of khasra Girdawaris with effect from Kharif, 1963 to Rabi, 1963. We are mainly concerned with the years 1970 and 1972 onwards as the respondents Sampuran Singh and Kehar Singh have claimed their tenancy rights since then. So, the most important Khasra Girdawari is Ex.P7 wherein the respondents Balbir Singh and Kehar Singh are shown in cultivatory possession of the land in question under the petitioner Sunder Singh as Gair Marusi on payment of Lagan @ Rs.92/- per Bigha. Before that, the part of the land measuring 2B-11B was in possession of the respondent Balbir Singh’s brother Pouja Singh as Gair Marusi. It is so manifest from the entries in Khasra Girdawari Ex.P8 and Ex.P8. Here, I would like to add that Pouja Singh is the brother of Balbir Singh who act the entries changed in favour of his an other brother Sampuran Singh , the respondent No.5,—*vide* order Ex.R12 and Ex.R13.”

(15) Before the Reference Court, a contention was raised by the counsel for the plaintiff-respondent that mere recording of the petitioner Kehar Singh and Sampuran Singh as Gair Marusi in the revenue record does not *ipso facto* prove their tenancy rights under the plaintiff until and unless the payment of rent is proved. There is no material on the record which could suggest that the aforesaid

persons ever paid any rent to the plaintiff, therefore, the question of their holding tenant under him does not arise. The said contention was specifically rejected by the Reference Court while observing as under :—

“It is well settled that actual payment of rent by the tenant is not necessary. What it is necessary is that there should have been an agreement by the tenant to pay rent. Entries in the record of rights and Khasra Girdawari are evidence of such contract of tenancy which cannot be ignored. If the revenue official committed some mistake in making of fictitious entries in the name of the respondents Kehar Singh and Sampuran Singh, the same can be got rectified and if there was a failure to obtain rectify action, the petitioner must suffer by the presumption of truth attached to entries in the Jamabandi. Moreover, entries in favour of the said respondents are appearing in the long string of Jamabandis and Khasra Girdawaris which are evidence of contract of tenancy between the petitioner and the said respondents. Reliance may be placed on Joginder Singh and another *versus* Jaswant Singh, (2000-1) PLR 247 (P&H).”

(16) In the instant suit, the prayer made by the plaintiff-respondent is that the plaintiff is the absolute owner of the land measuring 3 bigha 11 biswas and 3 bigha 10 biswas, and is entitled to recover the full compensation from the Land Acquisition Collector, and further entries made in favour of the defendants regarding this tenancy on the suit land are incorrect, and on the basis of the same, no compensation could be awarded to the defendants. In the impugned order, the trial Court has observed that in this case the plaintiff has sought the relief regarding the wrong entries in the revenue record in the name of defendants, and that relief cannot be granted or declined merely by giving findings on issues of jurisdiction and *res judicata* as the aforesaid controversy was not in issue before the Reference Court. Therefore, the preliminary issues could not have been decided without detailed evidence. In my opinion, the trial Court has completely ignored the fact that the issue regarding the tenancy was the subject matter of adjudication before the Reference Court. Even if the plaintiff has not taken the plea before the Reference Court that the revenue entries were wrong, those pleas cannot be permitted to

be taken in the subsequent suit in view of explanation IV of Section 11 of the CPC, which is reproduced as under :—

“Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

(17) In **P.K. Vijayan versus Kamalakshi Amma and others**, (1) it was held as under :—

“Suffice it to say that Explanation IV to Section 11 of the Civil Procedure Code, 1908 postulates that any matter which might and ought to have been made a ground of defence or attack in a former suit shall be deemed to have been a matter directly and substantially in issue in suit ; and no court shall try any such suit or issue in which the matter directly and substantially in issue in former suit between the same parties or between the parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”

(18) The Hon'ble Apex Court in **Konda Lakshmana Bapuji versus Government of A.P.** (2), has held that a conjoint reading of Section 11 and explanation IV shows that a plea which might and ought to have been taken in the earlier suit, shall deem to have been taken and decided against the person raising the plea in the subsequent suit. A party cannot be allowed to raise at each successive stage different pleas to protract the proceedings or lead to multiplicity of proceedings. Thus, the rule of constructive *res judicata* is also applicable in this case.

(19) In view of the above, this revision petition is allowed and the impugned order dated 19th May, 2003 passed by the Civil Judge (Jr. Division), Panipat is set aside, and the trial Court is directed to treat the issues of jurisdiction, maintainability and *res judicata* i.e. issues No. 4, 5 and 11 as preliminary issues and decide them in accordance with law without being influenced by any observation made in this order.

R.N.R.

(1) (1994) 4 S.C.C. 53

(2) (2002) 3 S.C.C. 258