

Y. B. PATIL AND ORS.

v.

Y. L. PATIL

August 23, 1976

[H. R. KHANNA, N. L. UNTWALIA AND JASWANT SINGH, JJ.]

Constitution of India, Art. 226, whether concurrent findings of facts by the Revenue Authorities, can be reopened in writ petition.

Civil Procedure Code s. 11 Res Judicata, Whether invocable in subsequent stage of same proceeding.

The respondent sought possession of some land, on the ground that the appellants who were strangers, had occupied it. The Assistant Commissioner accepted their claim and directed that the possession of the disputed land be restored to them. The appellants' appeal was dismissed by the Deputy Commissioner, but their revision petition was accepted by the Mysore Revenue Appellate Tribunal. The High Court allowed the writ petition of the respondents, directing the Tribunal not to reopen the questions of fact in revision. The matter was remanded and the Tribunal then upheld the findings of the Assistant and Deputy Commissioners, and dismissed the revision petition. The appellant filed a writ petition which was dismissed by the High Court.

Dismissing the appeal, the Court,

HELD :

(1) The concurrent findings of fact arrived at by the Assistant Commissioner, the Deputy Commissioner and the Tribunal cannot be set aside in the writ petition. [322 B-C]

(2) Principles of *res judicata* can be invoked not only in separate subsequent proceedings, they can also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceedings. [321 H, 322 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1298 of 1968.

Appeal by Special Leave from the Judgment and Order dated 22-9-67 of the Mysore High Court in Writ Petition No. 2190/67.

S. V. Gupte, S. S. Javali and B. Dutta, for the Appellant.

A. K. Verma (Mrs.) for M/s. J. B. Dadachanji and Co., for Respondents 1 and 2.

The Judgment of the Court was delivered by

KHANNA, J.—This is an appeal by special leave against the judgment of the Mysore High Court whereby the High Court dismissed petition under articles 226 and 227 filed by the appellants to challenge the order dated September 12, 1967 of the Mysore Revenue Appellate Tribunal (hereinafter referred to as the Tribunal).

The brief facts giving rise to this appeal are that the first respondent applied on April 22, 1959 to the Assistant Commissioner Bagalkot for the restoration of the Patilki/watan/lands survey Nos. 32/2, 54/2, and 49/2 under sections 11, 11A and 12 of the Bombay Hereditary Officers Act (hereinafter referred to as the Act). Possession of those lands was sought on the ground that the appellants, who were strangers, had taken possession of the lands. The Assistant

Commissioner, as per order dated August 11, 1960, accepted that application and directed that the possession of the lands be restored to the respondents. Appeal filed by the appellants against that order was dismissed by the Deputy Commissioner as per order dated January 24, 1961. The appellants then went up in revision before the Tribunal. The Tribunal as per order dated May 5, 1962 accepted the revision petition and held that the appellants were not strangers to the watan. In arriving at this conclusion, the Tribunal held disagreeing with the Assistant Commissioner and the Deputy Commissioner that the watan had been acquired by Basangouda I. The respondents challenged the order of the Tribunal by means of a writ petition. The writ petition filed by the respondents was accepted by the Mysore High Court as per judgment dated December 18, 1964, and it was held that it was not open to the Tribunal to reopen and set aside findings of fact in a revision petition. The case was accordingly remitted to the Tribunal for fresh decision in the light of the observations of the High Court.

When the matter came up before the Tribunal after the above judgment of the High Court, the Tribunal as per order dated September 12, 1967 upheld the findings of the Assistant Commissioner and the Deputy Commissioner that the watan had been acquired by Basangouda II and not by Basangouda I. It may be stated that Basangouda I was the grandfather of Basangouda II and that unless it be shown that the watan had been acquired by Basangouda I, the appellant would have to be held strangers qua the lands in dispute. The Tribunal accordingly dismissed the revision petition which had been filed by the appellants. The appellants thereafter filed petition under articles 226 and 227 before the High Court and assailed the above order of the Tribunal. The High Court dismissed the writ petition on the ground that the finding that the appellants were strangers to the watan was one of fact and it was not open to the High Court to reopen the concurrent findings of the Assistant Commissioner, the Deputy Commissioner and the Tribunal in a writ petition.

In appeal before us Mr. Gupte on behalf of the appellants has contended that the High Court was in error in not interfering with the order of the Tribunal whereby the revision petition filed by the appellants had been dismissed. It is urged that the Tribunal in affirming the findings of the Assistant Commissioner and the Deputy Commissioner regarding the question of the appellants being strangers qua the land in dispute took a very restricted view of section 79 of the Act dealing with revision. This contention, in our opinion, is not well founded. The High Court at the time of the decision of the earlier writ petition on December 13, 1964 recorded a finding and gave directions to the Tribunal not to reopen the questions of fact in revision. The Tribunal while passing the order dated September 12, 1967 complied with those directions of the High Court. The appellants are bound by the judgment of the High Court and it is not open to them to go behind that judgment in this appeal. No appeal was filed against that judgment and it has become final. It is well settled that principles of *res judicata* can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent

- A** stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding. In view of the High Court judgment dated December 18, 1964, the Tribunal while passing the order dated September 12, 1967, disposing of the revision petition filed by the appellant, could not reopen the questions of fact which had been decided by the Assistant Commissioner and the Deputy Commissioner.
- B** The High Court, in our opinion, was right in holding in the judgment under appeal that the concurrent findings of fact arrived at by the Assistant Commissioner, the Deputy Commissioner and the Tribunal cannot be set aside in the writ petition. The appeal consequently fails and is dismissed but in the circumstances with no order as to costs.

M. R.

Appeal dismissed.