

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.2 of 2013

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Sushila Devi wife of late Prahlad Rai, resident of Mohalla-Nadipur, P.O.
Junaidganj, P.S. Mufassil, town and district-Gaya. Appellant/s

Versus

Kanhaiya Prasad son of late Shyam Bahadur, resident of Lal Bhawan, Mohalla
Chowk, K.P. Road, P.S. Kotwali, Town and District-Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.S. Dwivedi, Sr. Adv.

Mr. Sanjay Kumar, Adv.

Mr. Parth Gaurav, Adv.

For the Respondent/s : Mr. K.N. Chaubey, Sr. Adv.

Arun Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

CAV JUDGMENT

Date: 12-04-2016

Heard Mr. S.S. Dwivedi, learned senior counsel for the
appellant and Mr. K.N. Chaubey, learned senior counsel for the
respondent.

The defendant in the suit for eviction is the appellant in
this appeal against the judgment and decree of affirmance granting the
decree to the plaintiff, as prayed.

The present appeal frescoes a picture and expositis a
canvass where, after the creation of tenancy by a registered lease deed
on 22.01.1942, lessor and lessee have been fighting out litigations
with the main dispute converging on the nature of the tenancy created
by the aforesaid lease with the allied question pertaining to the
applicability of the Rent Control Act i.e. Bihar Buildings (Lease, Rent

and Eviction) Control Act (hereinafter referred to as the 'B.B.C. Act') as enacted from 1947 onwards.

The facts providing context to the dispute between the parties for the major part stand admitted to the extent that the defendant is in possession over the suit premises consisting of a cinema hall with concomitant constructions on the basis of the registered lease deed dated 22.01.1942 executed by the father of the plaintiff. It is the case of the plaintiff that the tenancy was created according to English calendar month with condition of payment of rent every month at the rate of Rs. 100/- but the nature of tenancy was permanent and tenancy at will as well. It has been further the case of the plaintiff that the defendant paid rent regularly upto the month of June 1986 but thereafter he became irregular in payment of rent and ultimately stopped paying rent from the month of July 2002. The plaintiff has further also pleaded that the defendant denied the title of the plaintiff and his co-sharers and has been asserting own title and ownership over the suit premises. It will also be apt here to take into notice the averments introduced in the plaint by amendment where the plaintiff has denied knowledge of the previous litigation between the father of the plaintiff and the defendant and has further also stated that the compromise decree in Second Appeal No. 268 of 1959 did not pass any right to the defendant as the same was not registered as

provided under the Registration Act and therefore the decision in the Title Appeal 32 of 1958 would operate as res judicata against the defendant in respect of the issues decided therein.

The defendant in the written statement, at the out set, has questioned the basic premises upon which the plaintiff's suit rests by asserting that by registered lease deed dated 22.01.1942 a permanent tenancy was created in favour of the defendant with heritable right to the heirs with annual rental of Rs. 1200/- payable in 12 monthly installment of Rs. 100/- per month. It has been further asserted that the nature of the tenancy created by the said lease has already been decided time and again by courts of competent jurisdiction and therefore the present suit is barred by res judicata and in this regard after referring to the other litigations, the particular reference in detail has been made to the Second Appeal no. 268 of 1959 disposed of on 19.01.1961 by this Court in terms of compromise between the parties. It has also been pleaded that the present plaintiff as well as his brother were minors at the date of filing of the said S.A. No. 268 of 1959 but at the time of disposal of the said appeal by compromise decree they had attained majority and had appeared before the High Court as majors. The defendant has also averred that the rent as fixed in the lease deed is not a rent under the B.B.C. Act rather it is a Mokarri Dawami Rent.



In view of the pleadings of the parties, the trial court framed altogether nine issues which included the material issues relating to the bar of the suit by estoppel, waiver, acquiescence and res judicata and further the entitlement of the plaintiff for a decree of eviction against the defendant on the ground of default in payment of rent. The trial court returned the findings on the issues in favour of the plaintiff holding that the suit was maintainable and not barred by estoppel, waiver, acquiescence and res judicata and after finding the defendant to have committed default in payment of rent, the decree for eviction was passed. In appeal by the defendant, the appellate court below formulated the points for determination which also included the point pertaining to the nature of tenancy created under the registered lease deed dated 22.01.1942 being permanent and heritable or tenancy at will. After discarding the compromise decree passed in S.A. No. 268 of 1959 from consideration as evidence for want of registration, the appellate court has reached to the conclusion that the nature of the tenancy created by the lease deed was tenancy at will. After further finding that the suit was maintainable in terms of the provisions of B.B.C. Act and holding that the defendant had committed default in payment of rent, the appeal has been dismissed by the impugned judgment and decree upholding the decree for eviction as passed by the trial court.

This second appeal has been admitted for hearing on 26.08.2013 on the following substantial question of law:

“....Whether the finding recorded by the courts below on the lease deed dated 22.01.1942 and the compromise decree passed in S.A. No. 268 of 1959 is sustainable in law?”

When this appeal has been taken up for hearing Mr. Dwivedi, the learned senior counsel for the appellant has prayed, after referring to the supplementary affidavit filed on 11.12.2015 on behalf of the appellant that additional substantial questions of law pertaining to the bar of the suit by estoppel as well as res judicata, maintainability of the instant suit for eviction under B.B.C. Act and misreading and misconstruing of the documentary evidence (Exts. D, E, F, F/1, H, H/1, G, G/1, J and J/1) by the courts below may also be formulated as additional substantial questions of law. After hearing the learned senior counsel for both the sides and taking into notice the facts as well as the findings by both the courts below, the following substantial questions of law are also formulated for consideration in this appeal.

(1) Whether the suit is barred by estoppel as well as res judicata?

(2) Whether the courts below have misread

*and misconstrued the documentary evidence
(Exts. D, E, F, F/1, H, H/1, G, G/1, J and
J/1)?*

*(3) Whether the nature of tenancy created by
the registered lease deed dated 22.01.1942 in
favour of the defendant was a permanent and
heritable tenancy and whether the instant
suit for eviction under the provisions of
B.B.C. Act was maintainable?*

While Criticizing the judgments of both the courts below, Mr. Dwivedi, learned senior counsel for the appellant, has been emphatic upon the proposition that the question of bar of res judicata as well as estoppel has been wrongly decided by both the courts below even in face of the admitted facts. Delving in flashback Mr. Dwivedi has placed in detail the facts of the earlier litigations and their outcome with particular reference to the earlier suit for eviction between the parties for the suit premises culminating in a compromise decree passed by the high court. It has been propounded that the said compromise decree will clearly attract the bar of res judicata in this subsequent eviction suit raising the same issues once over again and in any view of the matter will operate as estoppel against the plaintiff in his attempt to reopen the issue of nature of the tenancy created by



the lease in question. It has been contended that the plaintiff cannot get relieved from the legal consequences of the said compromise decree by taking the specious plea that he had no knowledge of the litigations including the compromise decree between his father and the defendant in face of the fact glaring from the records that the compromise decree was passed by the high court in the second appeal in presence of the plaintiff as a major respondent in the said appeal. It has been next argued by Mr. Dwivedi that the bare perusal of the recitals made in the lease deed dated 22.01.1942 will demonstrate the intention of the parties to create a permanent and heritable tenancy over the suit premises in favour of the defendant and the amount of Malguzari stipulated therein to be paid in 12 installments can by no stretch be equated with the 'rent' payable by a tenant to his landlord for the building in his use and occupation as tenant as envisaged under the B.B.C. Act. It has also been argued that clause 11 of the lease deed explicitly supports this view where the consequence of non-payment of rent has not been contemplated to result in the liability of eviction rather in the event of non-payment of Malguzari, the landlord has been expressly conferred the right to realize the due amount along with interest as mentioned therein. Elaborating his submissions, it has been next canvassed that though the factum and validity of compromise decree in the Second Appeal No. 268 of 1959 has not



been questioned by the plaintiff in his pleading but the trial court on surmises and conjectures has refused to take judicial notice of the same and the appellate court below has discarded the same holding that the compromise decree in the second appeal cannot be looked into evidence for want of registration. It has been submitted that in view of the clear provision in Section 17 (vi) of the Registration Act the compromise decree in the second appeal was not required to be registered as it only comprised the immovable property and the rights thereto which was the subject matter of the suit. It has been lastly contended that the frivolous nature of the litigations at the instance of the plaintiff is the inevitable inference flowing from the conduct of the plaintiff in dragging the defendant consistently in litigations from 1954 upto now revolving around the issue of the nature of the tenancy as the central issue.

Refuting the contentions raised on behalf of the appellant, Mr. Chaubey, learned senior counsel for the respondent, has submitted that there is no legal foundation for attracting the bar of res judicata or for that matter the bar of estoppel on the issue of the nature of the tenancy created by the lease deed (Ext. D) as the compromise decree (Ext. F) which is the pivot to support this submission was itself not admissible in evidence for want of registration. It has been propounded that the compromise decree (Ext. F) is null and void for



non-compliance of the mandatory requirement of Section 17 (i) (b) of the Registration Act and no right can flow on that basis as the said document could not have been looked into evidence in view of Section 49 of the Indian Registration Act. It has been also submitted that such compromise is also not enforceable in law as the terms contained therein are unlawful and hit by Section 23 of the Contract Act so far as taking away the right of the landlord to invoke the provisions of the B.B.C. Act for evicting the tenant. It has also been emphasized that in any view of the matter there is no stipulation in the compromise petition purporting to set aside the judgment and decree of the appellate court which has remained intact and subsisting and further the question of merger of the said judgment and decree of the appellate court is also out of consideration as there was no adjudication by the second appellate court. Mr. Chaubey, has next contended that the recitals of the lease deed (Ext. D) unerringly leads to the inference that a tenancy at will has been created on payment of rent by the tenant on monthly basis, and has explained the words used in the lease deed by reference to the glossary. It has been submitted that there is no scope for conclusion that a permanent heritable tenancy right has been created in favour of the respondents. It has also been posited that the intention of the parties to create a permanent heritable tenancy by the lease deed is also ruled out in view of the

stipulation that the tenancy was determinable at the instance of the lessee. It has been propounded that in the facts and circumstances of the case, there is no escape from the conclusion that the rights of the parties would be governed by the provision of the B.B.C. Act and the decree for eviction can be passed on the ground of default in payment of rent as stipulated in Section 11 of the said Act.

The learned senior counsel for the parties have relied upon several judgments of the Apex Court and the same shall be referred to hereinafter appropriately in this judgment and the parties shall also be referred by their position in the suit.

A maze of facts and a labyrinth of legal conundrums though confront this court during the course of determination of this appeal but the point of convergence is the pivotal issue pertaining to estoppel and res judicata around which the learned senior counsel for the parties in their adroit manner have pyramided their submissions. The factual score including the previous litigations with their outcome, therefore, requires to be adverted to in detail in this perspective.

The lease deed (Ext.D) dated 22.01.1942 is the admitted document through which the tenancy has been created by the father of the plaintiff in favour of the defendant over the suit property consisting of a cinema hall, and the defendant is in possession over



the same on that basis. Soon after the execution of the lease deed, however, the disharmony between the parties over the nature of tenancy created by the lease deed became apparent. The first note of discord arose between the parties over the payment of municipal tax for the cinema hall after the alteration, construction and addition were made by the defendant in the building as permitted by the terms of the lease. The defendant filed T.S. No. 25 of 1954 before the court of Munsif Gaya impleading the Gaya Municipality as defendant no. 1 and Shyam Bahadur, the father of the plaintiff as defendant no. 2 in the suit. The father of the plaintiff as defendant no. 2 filed his written statement and also an additional written statement which have been brought on record as Ext. J and J/1 respectively. In his written statement (Ext. J) the defendant no. 2 had stated that in terms of the lease deed dated 22.01.1942 the plaintiff had acquired a permanent heritable right in the holding and was owner of the same within the meaning of the Municipal Act. The same version was repeated by him in the additional written statement (Ext. J/1) accepting the nature of the tenancy of the plaintiff over the cinema hall to be permanent.

But soon thereafter, as the facts emanating from the judgment of T.A. No. 32 of 1958 (Ext. 3) disclose, the father of the plaintiff filed Title Suit No. 190 of 1955 under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act 1947 (Bihar



Act III of 1947) praying for a decree of eviction against the defendant from the demised property on ground of default in payment of rent and breach of various terms of the tenancy. The prayer for recovery of arrears of rent together with interest was also made. The defendant filed written statement pointedly raising the plea that the tenancy in perpetuity was created over the suit property by the registered lease deed dated 22.01.1942 on yearly rental of Rs. 1200/- which for the sake of convenience was payable at the rate of Rs. 100/- per month. The other allegations relating to breach of terms tenancy and arrears of rent were also denied.

The suit was contested on the main issue regarding the nature of the tenancy being permanent or a monthly tenancy or tenancy at will and ultimately it was dismissed with regard to the relief for eviction holding the nature of tenancy to be permanent. The plaintiff's father thereafter filed T.A. No. 32 of 1958. The appellate court formulated the points for determination as follows:-

- (1) Whether the tenancy is a monthly tenancy or tenancy at will or permanent one?*
- (2) Are the plaintiffs entitled to get rent? If so, for what period?*

By its judgment (Ext. 3) dated 31.01.1959, the appellate court determined the point no. 1 holding that the tenancy in question

was a tenancy at will and not a permanent tenancy. It was also held that the defendant had committed breach of tenancy and accordingly the appeal was allowed granting the decree for eviction to the plaintiff.

The defendant thereafter filed S.A. No. 268 of 1959 before the High Court calling in question the legal sustainability of the said decree for eviction passed by the appellate court. During the pendency of the second appeal, the parties entered into compromise and accordingly filed a compromise petition on 26.08.1960. By order dated 19.01.1961 (Ext. E/1), the S.A. No. 268 of 1959 was disposed of in terms of the compromise arrived at between the parties. From the perusal of the compromise petition forming part of the compromise decree (Ext. F), it transpires that after making elaborate statement of facts relating to the creation of the tenancy by the lease deed upto the grant of decree of eviction by the appellate court construing the lease deed to have created only a tenancy at will and not a permanent tenancy, the terms of the compromise have been mentioned in paragraph 10, out of which the relevant portions in the present context are as follows:-

“10. That at the intervention of well-wishers, the parties have arrived at an amicable settlement of the disputes on the following terms:-

(i) That the tenancy created by the deed of Mokarri dated 22.01.1942 is a permanent heritable Mokarri tenancy and the appellant is not liable to eviction therefrom under the provision of Act III of 1947 and can make and enter into sub-leases with any one.

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(ix) That subject to the clarifications of the terms as stated above, the Mokarri deed in question dated 22.01.1942 will continue to operate and bind the parties and their heirs and assigns as before.

11. That the respondent nos. 2 and 3 were minors at the date of the appeal, but they have now attained majority, and are filing fresh appearance, as majors.”

It is also evident from the statements in the compromise petition that the specific notice had also been taken to the questions involved in the second appeal as follows:-

“9. That the appellant has preferred this appeal before the Hon’ble High court and the questions involved in this appeal are whether (1) the tenancy created under the deed of Mokarri dated 22.01.1942 in suit is a permanent tenancy or only a tenancy at will, and whether the appellant is liable to be evicted on the grounds alleged under the provisions of Act III

of 1947.....
”

From the compromise decree (Ext. F) it also becomes apparent that in the second appeal the present plaintiff Kanhaiya Prasad was impleaded as respondent no. 3 as a minor respondent along with his brother Babu Jagdish Prasad who was impleaded as minor respondent no. 2. Further from the order dated 19.01.1961 (Ext. E/1) by which the second appeal was disposed of in terms of compromise, the said minor respondent no. 2 and 3 had been noticed to have attained majority which fact has also been mentioned in the compromise decree (Ext. F). This fact that the respondent no. 2 Kanhaiya Prasad (the plaintiff in the present case) had attained majority during the pendency of the second appeal before the High Court and had also appeared as major respondent by filing fresh appearance also find mention in the compromise petition in paragraph-11 as quoted above.

As the major plank of the submissions on behalf of the appellant is the compromise decree, therefore, the primary assail on behalf of the respondent to this compromise decree as null and void and not admissible for want of registration under the provisions of Section 17 of the Registration Act is to be examined at this juncture in the backdrop of above facts. The provision contained in Section 17 (i)

(b) of the Registration Act, over which the emphasis has been laid by the learned senior counsel on behalf of the respondent reads as follows:-

*“17. Documents of which registration is compulsory.-
(1) The following documents shall be registered.....namely:-*

*XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
(b) other non-testamentary instruments
which purport or operate to create,
declare, assign, limit or extinguish,
whether in present or in future, any right,
title or interest, whether vested or
contingent, of the value of one hundred
rupees and upwards, to or in immovable
property;
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX*

It would be condign to notice, however, that Sub-Section (2) of Section 17 of the Registration Act, enumerates in its various clauses the documents to which the above said clause (b) of Sub-Section (1) will not be applicable. Clause (vi) of Section 17(2) which is relevant in the present context is as follows:-

*(vi) any decree or order of a Court
[except a decree or order expressed to be
made on a compromise and comprising
immovable property other than that which*

is the subject-matter of the suit or proceeding]

From the anatomy of the aforesaid provisions, it is manifest that a decree or order made on a compromise which includes the immovable property other than that involved in the suit is only covered within the sweep of Section 17 (i) (b) of the Registration Act. This position has been succinctly noticed by their Lordships in **Bhoop Singh Vs. Ram Singh, A.I.R. 1996 SC 196** as follows:-

“12.....Sub-section (2) of Section 17 of the Act engrafts exceptions to the instruments covered only by Clauses (b) and (c) of sub-section (1). We are concerned with Clause (vi) of sub-section (2). Clause (vi) relates to any decree or order of a Court, except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding.

16. We have to view the reach of Clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a Court, including a decree or order expressed to be made on a compromise,



which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs. 100/- or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

18. The legal position qua Clause (vi) of Section 17 (2) can, on the basis of the aforesaid discussion, be summarized as below:

.....
.....
.....
.....

(3) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100/- or upwards in favour of any party to the suit, the decree or order would require registration.

.....
.....

In a Bench decision of this Court in the case of **Ramdas Sah Vs. Jagarnath Prasad, A.I.R. 1960 Pat. 179** also the ambit and scope of the words ‘subject matter of the suit or proceeding’ as

occurring in Section 17 (2) (vi) has been explained as follows:-

“.....The question whether a particular term of a compromise relates to the subject matter of the suit is obviously a question to be answered on the frame of the particular suit, the relief claimed in the suit and the matter arising for decision on the pleadings of the parties. The term is comprehensive enough, and if the compromise relates to all the matters which fall to be decided in the case, it cannot be said that any part of the compromise is beyond the subject-matter of the suit.

In other words, where the compromise is really an adjustment of the rights and differences in respect of all matters in dispute between the parties and the compromise purports to be a final settlement and adjustment of these disputes on a fair and satisfactory basis acceptable to all, it must be held to relate to the suit.....” (emphasis supplied)

In the present case, the facts as aforementioned clearly demonstrate that no legal right for the first time was sought to be created in favour of the defendant-appellant by the compromise decree (Ext. F) and the material terms as contained in the compromise



petition are only in the nature of recognition and declaration of the nature of tenancy created by the lease (Ext. D). In this regard, it also cannot escape the attention that the frontal dispute between the parties was with regard to the nature of the tenancy created by lease deed (Ext.D) and the same was directly and substantially in issue between the parties in the suit, in the first appellate court and then in the second appeal, where the parties ultimately resolved their dispute on this issue by amicable final settlement, incorporated the terms of the settlement in the compromise petition and got the second appeal disposed of in terms of the said compromise. Even otherwise also it is apparent enough from the compromise petition that the adjustment of the rights and differences in respect of all the matters in dispute between the parties in the suit had been factually achieved by compromise. As such, it is incomprehensible that a new right over the suit property was created by the decree made on compromise (Ext. F) which was required to be compulsorily registered. This Court, therefore, does not find substance in the submission on behalf of the respondent that the compromise decree (Ext. F) is null and void and inadmissible in evidence for want of registration. The finding by the appellate court below in this regard is also held to be not legally sustainable.

The factual scenario after the above compromise decree,



further reveals that the parties went through another round of litigation when Mortgage Suit No. 216 of 1972 was filed by the father of the plaintiff along with the present plaintiff Kanhaiya Prasad as co-plaintiff against the defendant seeking relief for redemption of the two mortgage deeds dated 05.04.1940 upon declaration that the deed of lease dated 22.01.1942 was a clog on the equity of redemption and as such it was null and void. From the judgment passed in this suit on 17th October 1977 (Ext. G), it appears that one of the material issues in the said suit again was the nature of the tenancy as evidenced by the lease deed dated 22.01.1942 and in fact the said suit had been tried with the said issue as the main issue. After scrutiny of evidence including the compromise decree in S.A. No. 268 of 1959 the court had concluded that the tenancy created by the lease deed dated 22.01.1942 was a permanent and heritable tenancy and consequently dismissed the suit. The plaintiffs filed T.A. No. 02 of 1978 against this judgment and decree. In this appeal also the nature of the tenancy created by the lease dated 22.01.1942 was framed as one of the points for determination by the appellate court below. From the perusal of the judgment dated 21.02.1980 (Ext. G/1) by which this appeal was dismissed, it becomes evident that the appellate court after elaborate reappraisal of evidence including the compromise decree in the second appeal had reached to the conclusion that a permanent



heritable right of tenancy was created in favour of the defendant by virtue of the lease in question. It is pertinent to repeat here that in this mortgage suit and the appeal thereafter the present plaintiff Kanhaiya Prasad was one of the plaintiffs and appellants respectively. There is no pleading or evidence aliunde on behalf of the plaintiff- respondent that the concurrent findings in the mortgage suit and appeal had been reversed in further appeal before higher court.

The plaintiff, however, did not allow the matter to rest there when he filed the House Control Case No. 06 of 2003 before the Rent Controller under Section 5 of the B.B.C. Act against the defendant praying for fixation of fair rent of the present suit premises. The House Controller by order dated 03.07.2003 (Ext. E) dismissed the case after pointedly taking into notice the compromise decree in Second Appeal No. 268 of 1959 and coming to the conclusion that the tenancy created by the lease dated 22.01.1942 was a permanent and heritable tenancy and not governed by the provisions of the B.B.C. Act. There is again no material on record to show that the order by the House Controller had been reversed by the higher forum.

Even in face of the consistent findings in all the litigations so far including the suit for eviction ending in compromise decree before the High Court determining the issue of nature of tenancy to be permanent and heritable and expressly overruling the applicability of



the provisions of the B.B.C. Act to the tenancy in question, the plaintiff again filed the present suit for eviction of the defendant from the suit premises on ground of default in payment of rent insisting that the nature of the tenancy of the defendant over the suit premises was tenancy at will. The present second appeal has arisen against the decree of the appellate court affirming the decree of eviction passed in the suit against the defendant.

The gravamen of controversy in this appeal as mentioned in the earlier part of this judgment pertains to the bar of res judicata and estoppel in the background of these facts. For reaching to a verdict on the controversy, it would be condign in the present context to consider the affect of the compromise decree (Ext. F) on the rights of the parties and in this regard it would be fruitful to reminisce a poignant passage approvingly quoted in a three judge decision of the Apex Court in the case of **Sunderabai Vs. Devaji Shankar Deshpande, A.I.R. 1954 S.C. 82** as follows:-

“.....The present section does not apply in terms to consent decrees; for it cannot be said in the cases of such decrees that the matters in issue between the parties ‘have been heard & finally decided’ within the meaning of this section. A consent decree, however, has to all intents and purposes the same effect as ‘res judicata’

as a decree passed 'in invitum'. It raises an estoppel as much as a decree passed 'in invitum.'"

Their Lordships have further observed:

"Estoppel is a rule of evidence and the general rule is enacted in section 115 of the Evidence Act, which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This is the rule of estoppel by conduct as distinguished from an estoppel by record which constitutes the bar of 'res judicata'....."

While considering an identical issue in almost similar circumstances in **Sailendra Narayan Vs. The State of Orissa, A.I.R. 1956 S.C. 346** the Constitution Bench has elaborately considered the facets of the principle of res judicata and estoppel and has opined as follows:

"8. The plea of estoppel is sought to be founded on the compromise decree, Ext. 'O' passed by the Patna High Court on 02.05.1945, in F.A. No. 15 of 1941. The

compromise decree is utilized in the first place as creating an estoppel by judgment. In- 'in re South American and Mexican Co., Ex parte Bank of England', (1895) 1 Ch 37 (C), it has been held that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case. Upholding the judgment of Vaughan Williams, J. Lord Herschell said at page 50:-

"The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end.

And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action."

To the like effect are the following observations of the Judicial Committee in- 'Kinch V. Walcott', 1929 AC 482 at p. 493 (D):-

"First of all their Lordships are clear that in relation to this plea of estoppel it is of no

advantage to the appellant that the order in the libel action which is said to raise it was a consent order. For such a purpose an order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an order of the Court made otherwise than by consent and not discharged on appeal.”

The same principle has been followed by the High Courts in India in a number of reported decisions. Reference need only be made to the cases of –‘Secy. Of State V. Ateendranath Das’, 63 Cal 550 at p. 558 (E); - ‘Bhaishanker v. Morarji’, 36 Bom 283 (F) and –‘Raja Kumara Venkata Perumal Raja Bahadur’, V. Thatha Ramasamy Chetty’, 35 Mad. 75 (G). In the Calcutta case after referring to the English decisions the High Court observed as follows:-

“ On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded.

When we say “every step in the reasoning” we mean the findings on the essential facts on which the judgment or the ultimate

conclusion was founded. In other words the finding which it was necessary to arrive at for the purpose of sustaining the judgment in the particular case will operate as estoppel by judgment....”

“In our judgment the compromise decree precludes the plaintiff from reasserting the title which had been negated by the compromise decree although it related only to his claim to a part of the lands namely notes of the reference herein mentioned.”

(emphasis supplied)

The Apex Court in later judgments including the judgment in the case of **P. T. Thomas Vs. Thomas Job, A.I.R. 2005 SC. 3575** has approvingly taken into notice the dictums laid down in the abovementioned judgments.

It is also significantly evident from the judgments/orders passed after the compromise decree on 19.01.1961 (Ext. F) in the litigations between the parties for the suit property, that legal validity and propriety of the compromise decree was never questioned by the plaintiff's father or the plaintiff in all those subsequent litigations where the said compromise decree had been consistently relied upon by the defendant in order to assert her right over the suit property, and



those decisions have proceeded in line with the compromise decree (Ext. F) while determining the issue of the nature of the tenancy created in favour of the defendant by lease deed dated 22.01.1942 (Ext. D). It is also vivid from the decree/orders (Ext. G, G/1, H and E) that the present plaintiff was himself plaintiff/petitioner in those cases and proceedings. The plea of the plaintiff as raised in paragraph-15A and 15B of the plaint of the present suit regarding lack of knowledge of the earlier eviction suit and the compromise decree passed in S.A. No. 268 of 1959 is completely belied in view of the above said documentary evidence and this plea has demonstrably been raised with oblique motive to exterpate the legal implications on his rights flowing from the compromise decree (Ext. F) and also from the later judgments and decrees or orders. It is worthwhile also to notice that in his deposition in the present suit as P.W. 1, the plaintiff Kanhaiya Prasad has not uttered a word that the compromise entered into between the parties in S.A. No. 268 of 1959 was not fair and acceptable. This Court therefore is not inclined to align with the submission, so strenuously made by Mr. Choubey, learned senior counsel for the plaintiff-respondent, propounding the invalidity of the compromise decree (Ext. F.) with prayer for looking into the nature of tenancy of the defendant once over again and holding the same to be governed by the provisions of B.B.C. Act, a fortiori also because all



the judgments/orders including the compromise decree on these issues arising between the parties for the suit property prior to the present suit have been rendered by the courts of competent jurisdiction and have attained finalities and the well settled principle that even a wrong decision by a court having jurisdiction is as much binding between the parties as a right one as laid down by the Apex Court in the case of **State of West Bengal Vs. Hemant Kumar Bhattacharjee, 1966 S.C. 1061** is glaring on the cause of the plaintiff as set up in this suit who now stands precluded from reanimating the dispute in order to secure fresh determination once over again.

The another innovative submission made on behalf of the plaintiff-respondent is that the decree passed by the appellate court in T.A. No. 32 of 1958 (Ext. 3) in the earlier eviction suit is still subsisting as the same has not been expressly set aside by the compromise decree (Ext.F). But this submission appears to have been made more in desperation than in substance in view of the fact that in all the subsequent litigations with the defendant-appellant for the suit property after the compromise decree (Ext. F), the plaintiff-respondent had never raised such a plea, and if at all the previous eviction decree, according to the plaintiff was subsisting, there was no reason to file the present suit again seeking the relief for eviction against the defendant for the same suit property after allowing the said previous

decree for the same relief to lapse without seeking its execution. Even otherwise also, this submission is not tenable in view of the decision in Sailendra Narayan (supra) where their lordships approvingly noticed the concept of “every step in the reasoning” as introduced in the decision by the Calcutta High Court.

In the ultimate eventuate, this Court holds that the claim and the relief of the plaintiff in the suit for eviction of the tenant-defendant from the suit premises is barred by the principle of estoppel and also by res judicata. Sequentially, this court is not persuaded by the astute submission on behalf of the respondent to enter into the question of nature of tenancy of the defendant created by the lease deed (Ext. D). The findings by both the courts below against the defendant on the material issues are therefore held to be not legally sustainable and are hereby overturned accordingly. The substantial questions of law are accordingly answered in favour of the defendant-appellant.

In result, the second appeal is allowed and the impugned judgment and decree passed by both the courts below are accordingly set aside. The Eviction Suit No. 18 of 2003 is dismissed. In the facts and circumstances of the case there shall be no order as to costs.

(V. Nath, J)

Devendra/-

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