

## MISCELLANEOUS CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Bisheshwar Nath Srivastava.

MAHADEO SINGH (DEPENDANT-APPELLANT) v. PUDAI SINGH (PLAINTIFF-RESPONDENT).\*

1929  
December,  
9.

*Estoppel—Jurisdiction of civil and revenue courts—Defendant's plea that revenue courts had no jurisdiction to try a suit upheld—Subsequent suit in civil court—Defendant, whether estopped from raising a plea in civil courts that revenue courts and not civil courts had jurisdiction to try the suit.*

Where the plaintiff brought a suit for possession in the revenue court and the defence was that that court had no jurisdiction to entertain the claim for ejectment in respect of the land in suit and that defence was accepted by the revenue courts and the plaintiff then brought a suit in the civil court where the defendant raised the plea that the suit was cognizable not by the civil court but by the revenue court, *held*, that the defendant was estopped from raising that plea now and that it was too late for the defendant to deny the truth of his plea raised in the revenue court when the plea had compelled the plaintiff to put his plaint before the civil court for adjudication. *Bhagarathi Das v. Baleshar Bagerti* (1), *Umeshanand v. Mahendra Prasad* (2), *Abdul Qayum v. Fida Husain* (3), *Kali Charan v. Bho'i Baksh* (4), *Muhammad Mehdi Ali Khan v. Musammat Sharif-un-nisa* (5), *Basti Begam v. Sajjad Mirza* (6), and *Saira Bibi v. Chandrapal Singh* (7), relied on.

Mr. S. N. Roy, for the appellant.

Mr. Haider Husain, for the respondent.

HASAN and SRIVASTAVA, JJ. :—This is the defendant's appeal from the decree of the Subordinate Judge of Fyzabad, dated the 31st of August, 1929, reversing the decree of the Munsif, Havali, Fyzabad, dated the 26th of September, 1928.

\*Miscellaneous Appeal No. 49 of 1929, against the decree of Babu Gopendra Bhushan Chatterji, Subordinate Judge of Fyzabad, dated the 31st of August, 1929, setting aside the decree of Pandit Elari Shanker Chaturvedi, Munsif of Havali, Fyzabad, dated the 26th of September, 1928, dismissing the plaintiff's suit.

(1) (1918) 17 C.W.N., 877.

(3) (1911) 14 C.L.J., 337.

(2) (1915) 13 A.L.J., 854.

(4) (1927) 11 Revenue Decisions, 279.

(5) (899) 3 O.C., 32.

(6) (1918) 21 O.C., 188.

(7) (1928) I.L.R., 4 Luck., 159=5 O.W.N., 897.

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In the suit, out of which this appeal arises, the plaintiff seeks the relief of recovery of possession of certain plots of land against the defendant. One of the issues raised by the defence was that the suit was not maintainable in the civil court and in support of the plea a judgment in a previous litigation between the parties was relied upon as constituting a bar to the cognizance of the present suit by the civil court.

The court of first instance upheld the defence and dismissed the suit. The lower appellate court disagreed with the court of first instance and held that the previous suit did not constitute a bar by *res judicata* on the question of jurisdiction. In second appeal it is argued that the view taken by the court of first instance was correct and should have been maintained by the lower appellate court.

We are of opinion that the decree under appeal is correct and should be maintained though on a somewhat different line of reasoning. In the previous suit the judgment in which is relied upon as constituting *res judicata* it was decided that a claim for possession of lands now in suit was not maintainable in the civil court and that it would lie in courts of revenue under a certain clause of section 108 of the Oudh Rent Act, 1886. In pursuance of this decision the plaintiff took proceedings before the court of revenue for recovery of possession of the lands in suit. The defence by the present defendant was that the revenue court had no jurisdiction to entertain the claim for ejection in respect of the lands in suit and this defence was accepted by the Board of Revenue as the highest court of appeal on the revenue side. In consequence of this decision of the Board of Revenue the plaintiff has brought the suit, out of which this appeal has arisen, and the defendant has again raised the plea that the suit is not cognizable by the civil court but that remedy was open to the plaintiff in proceedings under the Oudh Rent Act, 1886.

The question for decision is whether the defendant is estopped from raising this plea now. We are of opinion that he is. The general rule of estoppel underlying such class of cases is stated in Bigelow on Estoppel, sixth edition, in the following words: "If parties in court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of courts of justice would, in most cases, be paralyzed; the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all. But the rights of all men, honest and dishonest, are in the keeping of the courts, and consistency of proceeding is therefore required of all those who come or are brought before them. It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of a litigation must act consistently with it; one cannot play fast and loose." At another place in the same book the learned author makes the following observation: "The principle under consideration will apply to another suit than the one in which the action was taken, where the second suit grows out of the judgment of the first. It is laid down that a defendant who obtains judgment upon an allegation that a particular obstacle exists cannot, in a subsequent suit based upon such allegation, deny its truth."

We are of opinion that the principle stated above applies to this case. The suit, out of which this appeal arises, has clearly grown out of the judgment passed by the Board of Revenue and the judgment upheld the plea of the defendant that the court of revenue had an obstacle in its way of determining the merits of the case for the reason that it had no jurisdiction to entertain the suit. It is too late, therefore, now for the defendant to deny the truth of his plea raised in the revenue court when the plea has compelled the plaintiff of the present suit to put his plaint before the civil court for adjudication.

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There are several decisions of High Courts in India in support of the view, which we are taking in the present case, and we are not aware of any to the contrary—See *Bhagarathi Das v. Baleshur Bagerti* (1), and *Umeshanand v. Mahendra Prasad* (2). In the High Court of Allahabad the view was taken in the cases of *Abdul Qayum v. Fida Husain* (3), and *Kali Charan v. Bholi Baksh* (4). In the old court of the Judicial Commissioner of Oudh Mr. SPANKIE, A. J. C., held in *Muhammad Mehdi Ali Khan v. Musanmat Sharif-un-nisa* (5), that the plea raising a question as to the jurisdiction of the court does not prevent the application of the principle. Where the question as to the jurisdiction of the court is not raised, or cannot be allowed to be raised, the court is not bound to consider *suo moto* whether it has jurisdiction. A plea of estoppel of the nature arising in this case is not a plea of a pure question of law. The jurisdiction of a court to take cognizance of a certain dispute between two parties ordinarily depends on state of facts which may be alleged by one party and denied or admitted by the other. Therefore when this estoppel is raised against the defendant it merely prevents him from denying the truth of those facts which he had alleged in the litigation before the court of revenue and which, according to him, gave jurisdiction to the civil court and not to the court of revenue. The decision of Mr. SPANKIE was followed in the case of *Basti Begam v. Sajjad Mirza* (6). A Bench of this Court in *Saira Bibi v. Chandrapal Singh* (7), of which one of us was a member, also recognized the validity of the principle of estoppel which we are applying to the present case.

We accordingly dismiss this appeal with costs.

*Appeal dismissed.*

(1) (1913) 17 C.W.N., 877.

(2) (1911) 14 C.L.J., 337.

(3) (1915) 13 A.L.J., 854.

(4) (1927) 11 Revenue Decisions, 279.

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