

CARMEL PROPERTIES Ltd. v HASSAN

Supreme Court
Unsworth, C.J.
3 April 1970

Estoppel — judgment of Court of First Instance — whether acts as estoppel in Supreme Court.

A final decision of the Court of First Instance between the same parties on the same issue acts as an estoppel in the Supreme Court.

Cases referred to in the judgment.

Cooke v Rickman, [1911] 2 K.B. 1125.
Humphries v Humphries, [1910] 2 K.B. 531.
Greenhalgh v Mallard, [1947] 2 All E.R. 255.
Razelos v Razelos (No. 2), [1970] 1 All E.R. 386.
Flitters v Allfrey, (1874) L.R. 10 C.P. 29.
Whittaker v Whittaker, [1939] 3 All E.R. 833.

¹ (1889) 42 Ch. D. 312.

² [1899] 2 Ch. 149.

Preliminary question of law

This was a preliminary question of law directed by the trial judge to be argued before the hearing of the action.

J.E. Triay for the plaintiff.
P.J. Isola for the defendant.

14 April 1970: The following decision was read—

In the first of these consolidated actions the plaintiffs claim rent from the defendant in respect of furnished premises at 2/4 King's Yard Lane, Gibraltar and in the second action rent and possession of the premises. The substance of the defence is that it is not the defendant but her former husband who is the contractual tenant of the premises and the person liable for the rent.

The plaintiffs in their reply plead estoppel and allege that the issue raised in the defence has already been decided by the Court of First Instance in *Plaint 7J* when the plaintiffs obtained judgment for rent of the same premises after the defendant had pleaded as follows:—

1. The Defendant denies that she is indebted to the Plaintiffs in the sum alleged or at all.
2. The flat at No. 2, King's Yard Lane was taken by her husband, Sir Joshua Hassan, for her use.
3. The said flat has been occupied by the Defendant since the 4th day of March, 1964, and since that date she has never herself paid any rent.
4. At all times the rent of the said flat has been paid by the Defendant's husband.
5. The Defendant's husband is responsible for the rent."

I directed that this preliminary point of law should be set down for argument before the hearing of the action.

It was submitted by counsel for the plaintiffs that an estoppel has been created in accordance with the principles set out in *Odgers on Pleading and Practice* at p. 198. Counsel also referred to the cases of *Cooke v Rickman*¹; *Humphries v Humphries*²; *Greenhalgh v Mallard*³ and also *Razelos v Razelos (No. 2)*⁴ where it was held that a decision of a county court in England creates an estoppel between the same parties on the same issue or issues in the High Court.

¹ [1911] 2 K.B. 1125.

² [1910] 2 K.B. 531.

³ [1947] 3 All E.R. 255.

⁴ [1970] 1 All E.R. 386.

In reply counsel for the defence argued first that a decision of the Court of First Instance in Gibraltar does not create an estoppel in subsequent proceedings in the Supreme Court on the ground that the Court of First Instance Ordinance establishes a subordinate court which is not stated to be a court of record and the Ordinance contains no provision similar to s. 95 of the English County Court Act, 1934, to the effect that the decision of the court shall, except as expressly provided, be final and conclusive between the parties. In support of this argument counsel referred to the case of *Flitters v Allfrey*¹ which was referred to in *Razelos* case and submitted that the estoppel in England is based on the fact that the judgments of county courts are expressly declared to be final and conclusive. In my view the decision in *Flitters v Allfrey* does not go as far as this. The point raised in that case was that the previous judgment was for the defendant and this might merely be in the nature of a non suit which is not a bar to a subsequent action by the plaintiff. The court rejected this submission on the ground that the County Courts Act expressly declared a judgment of the kind given in that case to be final and conclusive. This point does not arise in the present case where the judgment was for the plaintiffs. In the present case there has, in my view, clearly been a final decision by the Court of First Instance and not merely a non suit and I consider that such a decision by a court of competent jurisdiction is conclusive between the parties on the same issue in another court.

Counsel also referred to the case of *Whittaker v Whittaker*² where the court said,

“However binding the estoppel may be elsewhere, it is not binding on this court when this court has to satisfy itself that the facts are proved.”

These comments relate to decisions in matrimonial causes where the court has a statutory duty to inquire into the truth of the facts alleged in the petition irrespective of any previous decision on the same facts and do not apply in the present claim for rent and possession.

The next submission of counsel for the defence was that it is not clear from the pleadings and judgment in the Court of First Instance that the issue is the same as that which is now in dispute. I have carefully examined the pleadings and judgment in the Court of First Instance and the pleadings in the present case and I am satisfied that the issue in the present case is the same as that which was decided in the Court of First Instance.

In the circumstances mentioned above I have reached the conclusion that the defendant is estopped from raising the defence which is set out in her pleadings in the cases now before the court.

¹ (1874) L.R. 10 C.P. 29.

² [1939] 3 All E.R. 833 at p. 838.