

1958

In the Matter of the Disconnection of Part of Territory Of the Town of West Jordan, Inc. : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

FILED

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Clerk, Supreme Court, Utah

IN THE MATTER OF THE
DISCONNECTION OF PART OF
TERRITORY OF THE TOWN
OF WEST JORDAN, INC.

Case
No. 8811

UNIVERSITY UTAH

MAY 3 1958

BRIEF OF APPELLANTS

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BRIEF OF APPELLANTS

STATEMENT OF FACTS

Some of the petitioners in the instant case, appellants in this proceeding, were also petitioners in a prior suit in the District Court of Salt Lake County, Civil No. 112,503, in which a decree of severance, the same relief sought by petitioners in this action, was granted and filed on October 7, 1957. On October 21, 1957, the Town Board of West Jordan, the respondent here, passed an ordinance annexing certain property into that town which had been disconnected by the severance decree referred to above and part of the annexed area included land of appellants. On November 5, 1957, the present action was

commenced to obtain disconnection of approximately half of one of three tracts so annexed to the town.

At the pretrial of this cause on November 25, 1957, Judge A. H. Ellett on his own motion dismissed this petition in so far as the petition relates to land involved in the previous disconnection proceeding (other areas than that previously severed joined in the petition but are not involved in this appeal) on the grounds of res judicata (R. 10, line 2 and 3). Appellants' Motion to Alter Judgment was denied on December 23, 1957. This appeal is for the purpose of reviewing those orders.

STATEMENT OF POINTS

POINT I.

NEITHER RES JUDICATA NOR ANY OTHER AFFIRMATIVE DEFENSE WAS PLEADED BY THE TOWN OF WEST JORDAN, INC.

POINT II.

THE EVIDENCE, PLEADINGS, AND STIPULATIONS, IF ANY, ARE INSUFFICIENT TO SUPPORT THE FINDING OF THE COURT THAT THE MATTER IN ISSUE IS RES JUDICATA.

POINT III.

THE ORDER OF NOVEMBER 25, 1957, IS CONTRARY TO LAW.

POINT IV.

PETITIONERS' MOTION TO ALTER JUDGMENT SHOULD HAVE BEEN GRANTED.

ARGUMENT

POINT I.

NEITHER RES JUDICATA NOR ANY OTHER AFFIRMATIVE DEFENSE WAS PLEADED BY THE TOWN OF WEST JORDAN, INC.

Rule 8(c) of the Utah Rules of Civil Procedure requires that the defendant plead res judicata as an affirmative defense if he intends to rely thereon. Obviously, it was not so pleaded by the Town of West Jordan (R. 5). No amendment to the Town's Answer was sought or granted. Therefore, petitioners were entitled to have the correctness of the allegations of their petition, which were put in issue by the general denial, determined and have judgment rendered accordingly. To deny such right was error and should be reversed by this Honorable Court.

POINT II.

THE EVIDENCE, PLEADINGS, AND STIPULATIONS, IF ANY, ARE INSUFFICIENT TO SUPPORT THE FINDING OF THE COURT THAT THE MATTER IN ISSUE IS RES JUDICATA.

A disconnection proceeding is legislative, not judicial, in nature. *Plutus Mining Company v. Orme*, 76 Utah 286, 289 P 132, *Kimball v. Grantsville City*, 19 Utah 365, 57 P., 1 McQuillon, Municipal Corporation, Sec. 121, Page 294, 1 Dillon, Municipal Corp. (5th Ed.), Sec. 353, Page 613. The doctrine of res judicata is not a barrier to legislative action. Therefore, even if the facts might

otherwise make such a defense applicable, it should not be applied to this proceeding.

Even if disconnection proceedings were judicial in nature or the doctrine of *res judicata* were otherwise applicable notwithstanding its legislative nature, such would not be a defense to this action because the cause of action or transaction on which it is based is entirely distinct and different from the one on which the prior severance decree was based. The Restatement of the Law of Judgments in Section 61 states:

“Where a judgment is rendered in favor of the plaintiff or where a judgment on the merits is rendered in favor of the defendant, the plaintiff is precluded from subsequently maintaining a second action based upon the same transaction if the evidence needed to sustain the second action would have sustained the first action.”

Comment (c) thereon, which is very much in point as far as appellants are concerned, reads as follows:

“The rule stated in this section is not applicable where the actions are not based upon the same transaction. Thus, if on two separate occasions the defendant beat the plaintiff, and the plaintiff brings an action for one of the batteries, the judgment in that action, whether for the plaintiff or for the defendant, does not preclude the plaintiff from subsequently maintaining an action for the other battery, even though under the pleadings in the first action evidence of the second battery would have been admissible and would have sustained the action.”

Clearly the petitioners owning land involved in the prior disconnection proceedings (Civil No. 112,503) are not suing upon the same transaction which was the basis for that action. On October 20, 1957, they were not a part of the Town of West Jordan so obviously they could have no right to petition for severance from that town. On October 21, 1957, some fourteen days after the prior disconnection proceedings were concluded, action of the Town Board of West Jordan made these petitioners' property a part of said town. The prior suit was based on the original incorporation, the subsequent one on an annexation ordinance so far as the land involved is concerned. Of course, both were based on facts which petitioners allege give rise to the justice and equity of granting severance and which the Court so found in the first action. Such identity of facts may be analogous to stare decisis and in petitioners' favor but hardly to res judicata to deny petitioners the relief granted in the former action.

POINT III.

THE ORDER OF NOVEMBER 25, 1957, IS CONTRARY TO LAW.

The points discussed above indicate that res judicata does not support the order in question. Perhaps the lower court was influenced in its decision to find some way to stop this litigation (R. 10, line 8) by the remarks of the counsel for the Town which were not recorded (R. 9, line 30) as to other lawsuits involving the respondent (R. 10, line 30). The fact that the courts are requested to determine several applications for redress certainly ought not to be the basis of denying relief where

a right to the same exists and no good defense thereto is pleaded or proved.

POINT IV.

PETITIONERS' MOTION TO ALTER JUDGMENT SHOULD HAVE BEEN GRANTED.

The foregoing argument is applicable to this point and will not be repeated inasmuch as both orders were based on the same grounds.

Counsel has endeavored to find reported cases of similar facts but has been unsuccessful in this effort. The facts are quite novel, and it is not unlikely that this is a case of first impression not only in this jurisdiction but in any other.

CONCLUSION

The order of court dismissing this petition as to respondents was not based on a proper application of the doctrine of res judicata and the Motion to Alter Judgment should have been granted to correct this error.

To deny parties litigant their day in court to test the merits of their cause is a very drastic action and ought not to be upheld without very good legal reasons for so doing. Appellants respectfully contend that no such legal reason justified the orders here appealed from.

Respectfully submitted,

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