

(1911) 02 MAD CK 0022
In the Madras High Court

Bammid1 Bayya Naidu

APPELLANT

Vs

Bammioi Paradesi Naidu and Another

RESPONDENT

Date of Decision : 15-02-1911

Acts Referred:

Citation : (1912) ILR (Mad) 216

Hon'ble Judges : Sankaran-Nair, J; Munro, J

Bench : Division Bench

Judgement

Munro, J.—The plaintiff, a landholder to whom the provisions of section f3 of Madras Act VIII of 1865 apply sues the defendant?, his

tenants, for rent for fasli 1316. u/s 7 of the abovementioned Act, no suit brought to enforce the barms of a tenancy, shall be sustainable unless patta

and muehilika have been exchanged, or unless it be proved that the party attempting to enforce the contract had tendered such a patta or muchilika

as the other party was bound to accept, or unless both parties shall have agreed to dispense with pattas and muchilika. u/s 4 of the Act the patta

must contain, among other things, the local description and extent of the land. The putta, in the present suit gives the extent and boundaries of the

land alleged by the plaintiff to be in the defendants' occupation. The defendants alleged-that the extent of jeroyiti land entered in the patta was

greater than the extent of such land held by them. The plaintiff contended that the matter was res judicata by reason of the decision in a similar suit

by him against the defendants for the rent of two previous faslies. The pattas in that suit were similar to the patia in the present suit. In the former

suit the plaintiff alleged tender of pattns and refusal by the defendant, but the defendants contended that the plaintiff did not tender pattas for the

suit faslies and that the pattas alleged to have been tendered were improper, one of the objections taken to the propriety of the pattas being that

the extent of the defendants' jeroyiti and was much overstated. In this state of the pleadings it was incumbent upon the plaintiff u/s 7 of Act VIII of

1865 to prove the tender of such pattas as the defendants were bound to accept. An issue was accordingly framed as to the tender and propriety

of the pastas, and was found in the affirmative. Had it boon found in the negative, the plaintiff's suit must have been dismissed. In the present suit

an issue as to the tender and propriety of patta also necessarily arises. The patta being similar to the pattas in the previous suit and no change of

circumstances being alleged, I think the plaintiff's contention should have boon upheld. The finding in the previous suit that the pattas ward proper,

i.e., that they wore such as defendants were bound to accept, was a finding that the relationship of landlord and tenant subsisted between the

plaintiff and the defendants in respect of the land entered in the pattas, and I do not think the defendants can again be allowed to put the plaintiff to

proof of his title. See Venkatachalapati v. Krishna ILR (1890) Mad. 287. I would therefore allow the appeal.

2. As my learned brother takes the contrary view, the second appeal is dismissed with costs.

Sankaran-Nair, J.

3. This suit is brought by the plaintiff to recover rent due for fasli 1316 from the defendants who are tenants in possession of certain lands which the

plaintiff says are held under him. The plaintiff states that he tendered a proper patta to the first defendant according to which the first defendant was

bound to properly cultivate and raise crops in about 14 acres of land in the village of Jayakrishnapuram and pay the landlord's share. The main

contention of the defendants is that the defendants hold about 5 acres of land under the plaintiff and that of the rest, about 10 acres are inam lands

and 3 acres are cash rent paying lands belonging to the defendants themselves Both the lower Courts have upheld the defendants' contention. In

fact the Judge states that the plaintiff did not seriously argue before him that the patta was a proper one, or that the lands which were found by the

Munsif for belong to the defendant really belonged to the plaintiff, The question that was argued before us at great length is whether the defendants

are barred from raising this plea by the decision in a previous suit:

4. The plaintiff sued in Original Suit No. 430 of 1906 on the file of the same Court for the rent of falsies 1314 and 1315. In that case he alleged

tender of a patta which both the lower Courts say was similar to the patta which is now alleged to have been tendered. The defendants alleged in

that suit that the extent of land belonging to the plaintiff had been very much overstated. On that plea, the following issue was raised in that suit:

Whether plaintiff lendeied pattas to the first defendant and whether the pattas so tendered wore proper.

5. It was decided that pattas were tendered and the Court that tried that suit also held that "" the terms of the pattas (exhibits E and F) do not

contain any objectionable matter,"" and accordingly found that issue in the affirmative. The plaintiff got a decree for the rent due for fasli 1314. His

claim for the rent for fasli 1315 was dismissed as it was found that the defendant had executed a muchilika for that year to smother person with the

consent of the plaintiff, who was therefore hold estopped from claiming that year"s rent. There was no finding on the question whether these 10

acres ware inam and the other 3 acres belonged to the defendant. In fact the question was not raised in that form, nor way there any clear decision

that the lands belonged to the plaintiff except what may be implied from what is extracted above.

6. The plaintiff"s contention is thus stated by the Munsif, "" the "" defendant did not raise this question or did not so raise the question ""as to place the

Gourd in a position to give a proper finding on all ""the matters relevant ; the defendant is) now barred u/s "" 13"" IN second appeal it is also

contended before us that this question was really raised and decided against the defendant.

7. Section 11 of the new CPC runy thus : ""No "" Court shall try any suit or issue in which the matter directly and "" substantially in issue in a former

suit between the same parties or "" between parties under whom they or any of then claim, litigating ""under the same title, in a Court competent to

try such subsequent suit or the snit in which such issue has been subsequently "" raisod, and has been heard and finally decided by such Court.

8. No question arisas in this case as to the identity of parties or to the competency of the Courts. The points for determination are whether the

question "that the properties now belong to the defendant" "has been directly and substantially in issue in the former suit," and whether it has been finally decided.

9. To be in issue, a matter must have been put forward, or must be one which ought to have been put forward in the previous suit--see;

explanations 3 and 4 to the section.

10. It is settled by the Judicial Committee that the scope of the rule of res judicata is limited by the words "directly and substantially in issue" is

not confined to the relief granted by the former suit or to the property which was the subject-matter. therein--see *Pittapur Raja v. Buchi Sitayya*

ILR (1885) Mad. 219, in which the Judicial Committee considered the words of Section. 13 of the CPC of 1877. It cannot therefore be

contended that in Original Suit No. 430 of 1906 the only matter in issue was whether the plaintiff was entitled to the rent than sued for and that the

decision, if any on this question, i.e. whether these lands belong to the plaintiff or the defendant cannot be res judicata for the sole reason that the

present suit is for the rent of another year.

11. On the other hand, the words of the section clearly imply that the decision on a matter not essential for the relief finally granted in the former

case, or which did not form one of the grounds for the decision itself, cannot be said to have been directly and substantially in issue--see *Sheosagar*

Singh v. Sitaram Singh I.L.R (1897) Calc 10

12. The rule appears to be that where the decision on a question was essential to the relief granted or the decree passed, or where it formed the

groundwork of the decision, then the matter must be deemed to have been directly and substantially in issue in the suit. If therefore the decision as

to the extent of the plaintiff's property, or that the property in question belongs to the plaintiff, was essential (or the decree that was passed in

Original Suit No. 430 of 1906, then the question must be deemed to have been directly and substantially in issue under explanation 4 to Section

11, Civil Procedure Code, even though the parties did not raise that question as they were bound to raise it, Again, whether essential or not, if the

Court, in the former suit, decided that the property belonged to the plaintiff and based the judgment in favour of the plaintiff, for the rent that alone

was sued for, on the ground that this property belonged to him, then also it was

directly and substantially in issue,

13. The section also states that not only must it have been directly and substantially in issue but it must have been heard and decided, If as a matter of fact such a question was heard and decided, then all the questions of res judicata, so far as they are material to this case, have been complied with, Even if the question was not raised it must be deemed to have been raised-- see explanation (4).

14. We shall now consider when a question is res judicata, though there was no express finding on it in the previous suit. With reference to this it must be borne in mind that the section deals with two classes of cases, viz., trials of suits and trials of issues. The difference is that in the case of trials of suits, the suits must either be-dismissed or decreed. In the case of trials of issues, the Judge records findings on the issues, In the first case the decree may render it necessary to imply a decision on a question not expressly decided. In the latter, from its very nature no implication is necessary, but we ought to have a clear decision to create the bar.

15. The decision of a suit involves the determination of all the questions which are necessary and essential for that decision, and those questions will therefore be deemed to have been necessarily decided, if not expressly, by implication. Thus where a certain relief is granted to the plaintiff in a suit, it is not open to the defendant in that suit to raise any plea in a subsequent suit which would interfere with the relief given in the previous suit.

He cannot interfere with the scope of that prior decree so far as that matter is concerned. He was bound to raise every plea in the previous suit,

and if he did not raise it he is precluded from relying upon it so far as the claim which was then allowed was concerned. Thus when the plaintiff

brings a suit for possession of property against a defendant, the latter is bound to put forward every ground of defence he may have. If a decree in

passed against him, it is not open to him to say afterwards that he then resisted the suit only, for instance, on the ground of his being the heir of the

deceased admitted owner, and that he is entitled to put forward his claim as a devisee in a subsequent suit. So in Sivaganga case--Srimut Rajah

Moottoo Vijaya Ragunadha Bodha Gooroosawmy Peria Odaya Tevar v. Katama Nachiar, Zamindar of Sivaganga (1866) 11 M.I.A. 50.

Similarly if there is a mortgage-decree directing the sale of certain properties

and their distribution in satisfaction of certain mortgage claims in the order and mode mentioned in the decree, then it is not open to any of the parties to put forward any other claim or mortgage which would interfere with such distribution-see *Sri Gopal v. Pirthi Singh* ILR (1902) All. 439 whether this claim was set up in the previous suit or not. Again if a suit is brought on a bond, the decree for payment of the money is conclusive against the defendant as to its genuineness, consideration and non-payment.

Section J.I says that the matter must have been decided in the previous suit. In the cases above referred to there is a decision by necessary

implication. A finding in express term is not necessary see *Pahalwan Singh v. Maharaja Muheshur Buksh Singh Bahadur* (1872) 12 B.L.R. 391

Mahabir Pershad Singh v. Macnaghten I.L.R (1889) Calc. 692.

16. Mr. Seshagiri Aiyar contended that under the provisions of the Rent Recovery Act, VIII of 1865, no suit for rent is maintainable against a

tenant unless the patta tendered by the tenant is one he was bound to accept, and he was not bound to accept the patta unless the lands for which

the rent is payable are correctly stated therein; when therefore the Court decided in Original Suit No. 436 of 1906 that rent was payable and that

the tenant was bound to accept the patta then in question, it must be taken to have also impliedly decided, within the meaning of the above

decisions that the lands as stated in the patta belonged to the plaintiff and were held by the defendants as tenants. But it is to be noticed that though

a patta when tendered to a tenant must be one he is bound to accept, the tender of a patta is not essential to entitle a landlord to recover rent. The

parties may dispense with them. A decree for rent therefore does not necessarily involve the decision that a proper patta has been tendered *Misir*

Raghobardial v. Shoo Baksh Singh ILR (1889) Calc. 439 was a case in which a suit was first brought for a sum of Rs. 1,665 for the interest only,

the principal sum not being then due. The plaintiff alleged that it was for interest on a bond for Rs. 12,000 which the defendant denied, and an issue

was raised as to the consideration of the bond. It was decided to be only Rs. 4,790. In a suit subsequently brought to recover the principal sum of

Rs. 12,000 after it had fallen due in a Court of higher jurisdiction the question was raised whether the decision in the first suit with reference to

consideration was binding. One of the grounds for holding that it was not

binding was that the first Court was not competent to try the second suit-

. With reference to the issue as be consideration raised in the first suit, their Lordships of the Privy Council say, ""This was a collateral rather than a

direct issue in the suit, The plaintiff may have succeeded without having a finding upon it, if he had proved an admission by the defendant that the

sum claimed was due for interest or,"" etc., etc The difference between issues " collateral and "direct" as pointed out by their Lordships depends

upon this; whether it was possible to pass the decree without any finding upon the particular issue. If it was not possible then it was a direct issue.

The parties wore bound to raise it, If they did not raise it;, it will be doomed to have been raised, and even if there is no finding on it, as the final

decision could not have been arrived at without a finding, the decision of that question will be necessarily implied, The fact that it was based on an

admission would make no difference, In the case before us, we have a decree for rent. This does not necessarily require a decision as to the terms

of the patta or the extent of the land for which the rent has to be paid. If, therefore, as a fact that question was not decided in the previous suit, we

are not bound to imply that it was so decided. The cause of action in this suit for the rent for fasli 1316 is not the same cause of action as in the

previous suit. The property sued for is not the same. The right litigated in this suit, i.e., the claim to recover the rent for fasli 1316, is not the same

as in the previous suit. The decree dismissing this suit will not in any way interfere with the decree in the previous suit awarding to the plaintiff the

rent for fasli 1314, any more than the dismissal of the claim for rent for fasli 1315 interferes with the decree for the rent of fasli 1314, If the parties

had agreed to dispense with the exchange of pattas and mnchilikas or the claim for rent had been admitted, a decree could have been passed

without any reference to the title to the land. In those circumstances we cannot imply that there was any decision on the question now raised, i.e.,

whether the lands in dispute belong to the plaintiff or to the defendant.

17. It was contended that a determination that these lands do not belong to the plaintiff would be inconsistent with the decision in the previous case

that the patta then tendered was proper as that decision that the patta -was proper necessarily implies that the lands therein belong to the plaintiff,

but this is not enough. In the case reported in *Amanat Bibi v. Imdad Husain*

(1888) 16 I.A. 106, a suit was brought by the plaintiff to redeem certain property on a mortgage which was recognised as subsisting in the year 1854. The question was whether the plaintiff was barred by the decision in a prior case where a suit was brought by the same plaintiff to recover the same property on the ground that the defendant had paid the arrears of Government Revenue on a coo mat of the plaintiff. That suit was dismissed on the finding that the property had been transferred to the defendant Talukdar by a deed of conditional sale which was dated in 1853, under which the purchase money was to be repaid within a period of eight months and that on the expiration of that period the sale was to become absolute. Their Lordships of the Judicial Committee construing the corresponding section of the CPC of 1877 held that there was no bar. They said "Now, what was the question in issue in the former" suit? The question was whether the plaintiff was entitled to "recover property which had been transferred by the Government" to the Talukdar on repaying to the Talukdar the arrears of revenue "which he had paid to Government. The matter in issue in this suit" is the respondent's right to redemption under a mortgage-deed". "It may be, difficult to reconcile the position of the Talukdar as a mortgagor in 1854 with his position as absolute owner in 1853 under a "purchase from the mortgagor." (The italics are mine.) "But if" it be established that the respondent was mortgagor in 1854 with "the right of redemption, why should he be barred of his right "merely because at an earlier date he may have had no right to the "property at all." It will be seen that the Talukdar's position as absolute owner in 1853 under a purchase from the mortgagor is absolutely inconsistent with the existence of that mortgage at any subsequent date, yet as the question of mortgage at right set up in the second case was not necessarily involved in the previous decision though the finding on which the judgment was really based was inconsistent with the claim set up in the latter suit, their Lordships held that the claim was not res judicata.

18. If, then, the decision or the decree in the first suit does not require us to assume the determination of the question now in issue in this subsequent suit, are we bound to imply that there was a decision as to the extent of land in the previous suit for the reason that when that Court decided that the patta was a proper one it must be taken to have decided on the

extent of the land? There is no doubt that for that suit or for that year's rent the Court must be taken to have decided that question, But I am of opinion that in the absence of a finding we are not bound to imply that the matter was decided for the purpose of this suit.

19. I have already pointed out that the suction deals with two classes of oases, viz., trials of suits and trials of issues, Eminent Judges have lamented the application of the doctrine that the trial of an issue, which was not essential in the senses I have above pointed out, should be held to be a bar to the trial of the same question in a subsequent suit. That view was based on considerations arising from the conditions under which litigation is carried on in India See Garth, C.J., in *Denobundhoo Chowdhry v. Kristomonee Dossee* ILR (1877) Calc. 152 Stuart, C.J., in *Babu Lal v. Ishri Prasad Narain Singh* ILR (1878) All. 582 and *Muhammad Ismail v. Chattar Singh* ILR (1882) All. 69 but the section itself places the matter

beyond doubt, and the Judicial Committee have laid down the doctrine in decisions which we are bound to follow. However to hold that an issue has been determined it must appear that the matter raised by the issue was alleged by one party and denied by the other, and there was a finding of the Court thereon. The explanation (2) of the section states that a matter which ought to have been alleged should be taken to have been alleged.

But it does not dispense with the necessity of a finding upon the issue by the Judge in the previous suit, An issue can hardly be said to be decided unless there is a finding thereon, and when there is no such finding it seems difficult to hold that in a second suit, that question cannot be tried. The principle that to plead a bar by a finding on an issue, there must be a determination by the Court is well illustrated in the following two oases. In

Gobind Chunder Koondoo v. Taruck Chunder Bose ILR (1878) Calc. 145 the Full Bench of the Calcutta High Court held that a decree for rent based on a finding that the plaintiff was entitled to the land is binding upon the defendant in that suit in a subsequent suit brought by the defendant to establish his title to the same land against the other parties to the previous suit. The ground of decision was that (the selfsame right and title was in issue, tested between them, adjudicated upon and decided against the plaintiff in the second suit. The judgment of the Full Bench was delivered by the Chief Justice Garth, C.J. In *Gobind Chunder Addya v. Afzul*

Babbani ILR (1883) Calc. 426, where the question of title as between the parties to The second suit was not decided in the prior suit which was for rent and a declaration of title against another party, the Chief Justice held that though a suit for rent would be barred, the same plaintiff's representative is not precluded from bringing any suit to try the title to the land on the ground that the question of title to the land in the previous suit was merely raised incidentally to the main question. Mr. Justice Field in the same judgment points out clearly the distinction. He states that the suit being only for rent and no cause of action arising out of the non-delivery of possession having been alleged or put forward, if the Court had tried the issue of title, the finding upon that issue would have the effect of res judicata between the parties, but inasmuch as that issue was not tried, the question raised thereby was not heard and decided and therefore the matter was not res judicata His judgment shows that, if there had been any cause of action alleged arising out of the non delivery of possession, then it is possible that a decision as to title may have been implied in the case. The learned Chief Justice has been erroneously charged with inconsistency by some text writers and Judges on account of their failure to keep the distinction which I have above pointed out clearly in view. Further the finding on the question must be clear and unambiguous, It must show that it was not merely intended to be binding between the parties only for the purpose of the suit but to be a decision finally declaring the title of the successful party. Thus their Lordships of the Privy Council decided that a suit which was brought in a Subordinate Court by a plaintiff against the widow of his deceased brother claiming his property by right of survivorship, the issue in that suit being whether, at the death of the latter, the ownership of the brothers was joint or separate was not barred by a decision of the same issue in a Munsif's Court in a prior suit brought by the widow against the same defendant. One of the grounds of decision was that a Munsif was not competent to finally decide the question. Having first so decided they added. "Having regard however to the subject matter of the suit, to the form of the issue which has been above set forth, and to some expression of the learned Judge their Lordships are further of opinion that the question of title was no more than incidental and subsidiary to the main question, viz., whether any and what rent was

due from the tenant, and that on this ground also the judgment was not conclusive." [See Run Bahadur Singh v. Lucho Koer ILR (1885) Calcutta.

301. I am unable to say in this case that there was any decision in the previous suit on the issue as to the title to the land intending to bind the parties in another suit.

20. I will now refer to the decisions that have been cited in the court of the argument. In Nil Madkub Sarkar v. Brojo Nath Singha I.L.R (1894)

Calcutta. 236 a case very similar to this, it was pointed out as was also laid down clearly in the decisions in Gobind Ghunder Koondoo v. Tarach

Chunder Bose and Gobind Ghunder Addya v. Afzul. Rahman ILR (1878) Calcutta. 145 already referred to, that if the Court in the previous suit had

determined the extent of the land and the rent annually payable, the decision would bind the parties in subsequent suits, but; not where it did not

appear that the Court decided any thing more than what was necessary for that suit, the rent payable to the plaintiff In Kailash Mondul v. Barda

Sundari Dasi ILR (1897) Calcutta. 711, the principle is laid down in terms which are capable of wider application, The decisions in Woomesh

Chandra Maitra v. Barada Das Maitra ILR (1901) Calcutta. 17, Rajendranath Ghose v. Tarangini Dasi (1905) 1 C.L.J. 248 and in the same volume,

page. 337 [Surjiram Marwari v. Barhamdeo Persad (1905) 1 C.L.J. 337, support the view taken by me.

21. As to the cases cited for the appellant, in Venkatachalapathi v. Krishna ILR (1890) Madras. 287, Natesa Gramani v. Vankatarama Reddi ILR

(1907) Madras. 510 the question was expressly decided in the first suit. They are therefore no authorities. In Sellappa Chettyar v. Velayutha Tevan

ILR (1907) Madras. 498, both the suits were to enforce pattas and not for rent, and a decision that the pratta is proper would necessarily involve a

finding that the land referred to in the patta belong to the plaintiff. It therefore falls within the first class of cases which I have already referred to.

In Sri Gopal v. Pirthi Singh ILR (1898) All India 110 the facts are these: On the 18th August 1888 one Sri Ram, a mortgagee, brought a suit for sale on

a mortgage, of the 18th August 1876 and made the holder, the prior mortgagee, party to the suit. That prior mortgagee pleaded his rights under a

mortgage of the 21st July 1871 but he was the holder also of another mortgage of the 7th February 1874. He made no mention of this latter

mortgage nor did he raise any question as to his rights under that mortgage. Sri Ram obtained a decree for sale subject to his redeeming the

mortgage of the 21st July 1871. Subsequently a suit was, brought by the defendant mortgagee to enforce his claim on his mortgage of the 7th

February 1874. It was decided by the Full Bench of the Allahabad High Court--and that decision was confirmed on appeal, see Sri Gopal v. Pirthi

Singh ILR (1902) All 429, that he was barred from enforcing this mortgage--as he ought to have pleaded it in the previous suit. No possible

objection can be taken to that decision as any decree enforcing the mortgage of February 1874 would have been absolutely inconsistent; with the

decree in the first suit. The decree in the first suit enabling Sri Ram to sell the property subject only to the mortgage of 1871 negatives, as

absolutely inconsistent with it the existence of any other mortgage right in that defendant which" may be set up as against the plaintiff. But in so

holding the learned Judges of the Allahabad High Court make certain observations to which with all respect to them exception can be justly taken.

Their Lordships say It is quite certain that in order to make ""Section 13 applicable it is not necessary that the matter of the"" subsequent suit should

have been heard or have been finally ""decided by a Court of competent jurisdiction in the first suit when ""the case is one to which explanation II

applies. Indeed explanation II to Section 13 of the Code would be meaningless it were"" necessary in a case which was covered by it that the

matter should ""have been heard and finally decided in the previous suit."" It was pointed out by my learned colleague in the course of the argument

that where the parties themselves do not raise a question but the Judge decides the suit on that question not raised by the parties, the matter would

not be res judicata without that explanation II, which is explanation IV in the present Code, as under explanation I of the old Code (explanation III

of the new Code) the matter must have been alleged and denied or admitted, It may also be pointed out that the learned Judges do not recognise

the distinction between the two classes of cases, as in the first class of cases where the decision of the suit itself, must be taken to imply a decision

of the necessary issue, the explanation is necessary in order to show that the matter must be deemed to have been raised. I am unable therefore to

accept that argument. The next case is Jamadar Singh v. Serazuddin. .Ahamad Chaudhuri ILR (1908) Cal. 970. In that case the plaintiff brought a

suit for the recovery of money which he said ought to have been taken in part-payment of rent which was due by him and for which a decree had been obtained against him. This case also obviously falls within the class of cases where the decision of the suit itself is a bar, as it directly involves the decision of this question, because, as I pointed out already, a decree for rent implies the non-payment of any amount towards the payment of rent. The learned Judges make similar observations here as in *Sri Gopal v. Pirthi Singh* ILR (1898) All 110.

22. That the learned Judges recognize this distinction appears to be clear from another judgment of the same Bench delivered about the same time

[*Maharaja Manindra Chandra Nandy v. Upendra Chandra Hazra* (1909) 9 C.L.J. 343, where the claim was held not to be *res judicata* as the

decision in the previous suit did not decide the rate of rent but only decreed the amount claimed for a certain period. The next two cases

Kamenwar Pershad v. Rajkumari Ruttan Koer ILR (1893) Calc. 79 and *Arunachalam Chetty v. Meyyappa Chetty* ILR (1898) Mad. 91 are

instances where a plaintiff- was held to be barred from putting forward a claim which he ought to have advanced in a previous suit and on which

there was therefore no decision. With reference to such case we have to consider the effect of Section 42 of the CPC of 1882, The Privy Council

decision in *Kames-war Pershad v. Rajkumari Ruttan Koer* ILR (1893) Calc. 79 was distinguished on that ground in *Ramaswami Ayyar v.*

Vythinatha Ayyar ILR (1903) Mad. 760. We have also to bear in mind that the Madras High Court and carbon decisions of the other High Courts

recognize a distinction for this purpose between plaintiffs and defendants, though other decisions refuse to tnuke any such recognition. It is now

well settled that " a defendant in possession of an estate is bound to put forward all his pleas to resist the plaintiff's suit to recover possession. But

in the case of a plaintiff this Court has, in a course of decisions, held that this principle is not applicable to a plaintiff, and he is not bound to sue on

all his causes of action, that even if he fails on one title he may recover on another title ILR 26 Mad. 761. From this it follows that he is bound to

put forward his whole case only with reference to his cause of action or title, on which he sues. See *Kameswar Pershad v. Rajkumari Ruttan Koer*

ILR (1893) Calc.79 explained at pages 772 and 773 of *Ramaswami Ayyar v. Vythinatha Ayyar* ILR (1903) Mad. 760. No other title will be

deemed to have been determined,

23. In other Courts, on the other hand, it has been held that he is bound to put forward all his titles, if possible; otherwise he will be precluded from

relying upon any of his titles in a subsequent suit, If this is the correct view, it follows that any title which he may have will be deemed to have been

decided in the previous suit [Guddappa v. Tirkappa ILR (1901) Bom. 189 Mr. Justice Subramania Ayyar in Armiachalam Chettu v. Meyyappa

Chetty (3) took the view adopted by the Bombay High Court, that a plaintiff is bound to unite all the causes of action he may have against a

defendant in respect of the relief or property for which he sues. From this it necessarily follows, that, if he omits to sue on any cause of action, he is

barred from again relying on its, either by Section 42 of the Act of 1882 or by Section 13. The dismissal of his suit implies therefore a rejection of

any title he may have to the land. This also falls therefore within the first class of cases to which I have already referred, It may be pointed out that

this case has been overruled by Ramaswami Ayyar v. Vythinatha Ayyar ILR (1903) Mad. 760 and Mr. Justice SubbAmania Ayyar has receded

from the position he then took up in Veer-xna Pillai v. Muthukurnara Asary ILR (1904) Mad. 102, Similarly as regards Hameswar Peshad v.

Rajhumari Ruttan Koer ILR (1893) Calc 79 even if the second suit was based on the same cause of action as the first suit as" explained in

Ramaswami Ayyar v. Vythinatha Ayyar ILR (1903) Mad. 760 the second suit is clearly barred. Or if we take the view adopted by the Bombay

High Court and in Arunaehalam Chetty v. Meyyappn Chetty ILR (1898) Mad. 91 that the Privy Council held that all causes of action must be

united in the same suit if possible, then also there would be a bar, as there would be an estoppel by the decision in the suit not by a finding. There

may be a difference of opinion therefore between the High Courts in deciding whether a question must be deemed to have been decided against a

plaintiff, on account of his failure to make it a ground of attack. But where a question need not be deemed to have been decided on the ground that

the decree in the previous suit requires such assumption to make it a decree rightly passed, I am not aware that the cases show that without a clear

and express finding a party is precluded from raising any question in a subsequent suit.

24. For these reasons I would dismiss the second appeal with costs.