

(1911) 02 MAD CK 0009
In the Madras High Court

Bammidi Bayya Naidu

APPELLANT

Vs

Bammidi Paradesi Naidu (died) and Others

RESPONDENT

Date of Decision : 15-02-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1911) 21 MLJ 344

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

Bench : Full Bench

Judgement

Munro, J.—The plaintiff, a land-holder to whom the provisions of Section 3 of Madras Act VIII of 1865 apply, sues the defendants, his

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

and muchilika 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 muchilikas. u/s 4 of the Act the patta

must contain, among other things, the local description and extent of the land. The patta 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 jerayiti 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 simliar suit

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

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

suit Faslis 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 defendant's jerayity land 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 patta and was found in the affirmative. Had it been 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 on the previous suit and no change of circumstances being alleged, I think the plaintiff's contention should have been upheld. The finding in the previous suit that the pattas were proper, i.e., that they were 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 Venkatachalapathi v. Krishnan ILR (1892) M. 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 1st 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 defendant is that the defendants hold about 5 acres of land under the plaintiff and of the rest, about 10 acres are inam lands and 8 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 to 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 O.S. No. 430 of 1906 on the file of the same court for the rent of Faslis 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 tendered pattas to the 1st defendant and whether the pattas so tendered were 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 mucbilika for that year to another person with the

consent of the plaintiff who was therefore held estopped from claiming that year's rent. There was no finding on the question whether these ten

acres were inam and the other three acres belonged to the defendant. In fact the question was not raised in that form, nor was there 1 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

court 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 runs 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 them claim, litigating under the same title, in a court competent to try such

subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

8. No question arises in this case as to the identity of parties or 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 as 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) M. 219 in which the Judicial Committee considered the words of Section 13 of the Code of Procedure of 1877. It cannot, therefore, be

contended that in O.S. No. 430 of 1906 the only matter in issue was whether the plaintiff was entitled to the rent then 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

Shoesagar Singh v. Sitaram Singh ILR (1897) C. 616

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

ground-work 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 for the decree that was passed in

O.S. No. 430 of 1906, then the question must be deemed to have been directly and substantially in issue under Expl. 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 conditions 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 Expl. (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 is 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 the Sivaganga case - Srimut Raja

Mootoo Vijaya Ragunadha Tevar v. Katama Nachiar, Zemindar of Sivaganga (1866) L.R. 11 Moore, 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 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) A. 429 - 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 n 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 terms is not

necessary - see Pahalwan Singh v Maharajah Muheshur, Buksh Singh Bahadur (1872) 12 B.L.R. 391 Mahabir Pershad Singh v. Macnaghten ILR

(1889) C. 682. 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 to 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 O.S. 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. Sheo Buksh Singh ILR (1883) C. 439 was a case in which a suit was first brought for a sum of Rs. 1,665 of 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. 4790. 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 to 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

Hardships 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 were bound to raise it. If they did not raise it, it will be deemed 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 was 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 muchilikas or the claim for rent had been admitted, a

decree could have been passed without any reference to the title to the land. In these 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.

16. 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 Hussain* ILR (1887) C. 800, 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 account 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 8 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 respondents' right to redemption under a mortgage-deed. It may be difficult to reconcile the position of the Talukdar as a mortgagee 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 1852 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 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.

17. 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.

18. I have already pointed out that the section deals with two classes of cases, viz., trials of suit 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 sense 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) C. 152, Stuart C.J. in *Babu Lal v. Ishri*

Prasad Narain Singh ILR (1880) A. 582, and *Muhammad Ismail v. Chattar Singh* ILR (1881) A. 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 that issue was alleged by one party and denied by the other, and that there was a

finding of the court thereon. The Expl. (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

cases. In *Govind Chunder Koondoo v. Taruck Chundur Bose* ILR (1878) C. 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 self-same right and

title was in issue, contested 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 Rabbani* ILR (1883) C. 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 shew 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 Munsiff'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 expressions 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 Ram Bahadur Singh v. Lucho Koer ILR (1885) C. 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 intended to bind the parties in another

suit.

19. I will now refer to the decisions that have been cited in the course of the argument. In Nil Madhab Sarkar v. Brojo Nath Singha ILR (1895) C.

236, a case very similar to this, it was pointed out, as was also laid down clearly in the decisions in Govind Chunder Koondoo v. Taruck Chundur

Bose ILR (1878) C. 145 and Gobind Chunder Addya v. Afzul Rabbani ILR (1883) C. 426, 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! n subsequent suits, but not where it

did not appear that the court decided anything more than what was necessary for that suit, the rent payable to the plaintiff. In Kailash Mondul v.

Baroda Sundari Das ILR (1898) C. 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 (1900) C. 17, Rejendranath Ghose v. Tarangini Dasse (1904) 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.

20. As to the cases eked for the appellant in Venkatachalapathi v. Krishna ILR 13 Mad. 287, Natesa Gramani v. Venkatarama Reddi (1907) 17

M.L.J. 518, the question was expressly decided in the first suit. They are therefore no authorities. In Sellappa Chettiar v. Velayuda Tevan ILR

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

that the lands referred to in the patta belonged to the plaintiff. It therefore falls within the 1st class of cases which I have already referred to. In Sri

Gopal v. Pirthi Singh ILR (1898) A. 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, 1854. It was decided by the Full Bench of the Allahabad High Court - and that decision was confirmed on appeal, see Sri Gopaul v.

Prithisingh ILR (1902) A. 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 1.3 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 if 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 case, 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 shew 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. Serazudin Ahamad Chaudhuri ILR (1908) C. 979. 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) A. 110.

21. 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 (1908) 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 -

Kameswar Pershad v. Rajkumari Rattan Koer ILR (1893) C. 79 and *Arunachellam Chetty v. Meyyappa Chetty* ILR (1898) M. 91 - are

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

there was, therefore, no decision. With reference to such cases we have to consider the effect of Section 42 of the Civil Procedure Code of 1882.

The Privy Council decision in *Kameswar Pershad v. Rajkumari Rattan Koer* ILR (1893) C. 79 was distinguished on that ground in *Ramaswamy*

Ayyar v. Vythinatha Ayyar ILR (1903) M. 761. We have also to bear in mind that the Madras High Court and certain decisions of the other High

Courts recognize distinction for this purpose between plaintiffs and defendants, though other decisions refuse to make 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, that he is not bound to sue

on all his causes of action, and that even if he fails on one title he may recover on another title - *Ramaswamy Ayyar v. Vythinatha Ayyar* (1908) 9

C.L.J. 343. 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 Rattan Koer* ILR (1893) C. 79 explained at pages 772, 773 of *Ramaswamy Ayyar v. Vythinatha Ayyar*

ILR (1903) M. 761. No other title will be deemed to have been determined.

22. 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. It is the correct view, it follows that any title which he may have will be deemed to have been

decided in the previous suit. - Gudappa v. Tirkoppa ILR (1900) B. 189. Mr. Justice Subrahmanya Aiyar in Arunachallam Chetty v. Meyappa

Chetty ILR (1898) M. 91. 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 it, either of 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 Ramasawmi Aiyar v. Vythinatha Ayyar ILR (1903) M. 761 and Mr. Justice Subrahmanya Aiyar

has receded from the position he then took up in Veeranna Pillai v. Muthukumara Asary ILR (1904) M. 102. Similarly as regards Kameswar

Pershad v. Rajkumari Rattan Koer ILR (1893) C. 79, even if the second suit was based on the same cause of action as the first suit as explained

in Ramasawmy Aiyar v. Vythinatha Ayyar ILR (1903) M. 761, the second suit is clearly barred. Or if we take the view adopted by the Bomby

High Court and in Arunachallam Chetty v. Meyappa Chetty, that the Privy Council held that all ILR (1898) M. 91 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.

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