

(1972) 03 MAD CK 0029
In the Madras High Court
Case No : Appeal No. 49 of 1965

E.K. Pattabirama Reddiar

APPELLANT

Vs

K. Kanniappa Naicker (Died) and Others

RESPONDENT

Date of Decision : 28-03-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 32
Land Acquisition Act, 1894 — Section 31

Citation : AIR 1973 Mad 92 : (1972) ILR (Mad) 649 : (1972) 85 LW 591

Hon'ble Judges : Palniswamy, J;Ismail, J

Bench : Division Bench

Judgement

Palaniswamy, J.—The short but important question that arises for consideration in this appeal is whether the decision of a District Munsif in a suit in respect of land would operate as res judicata between the same parties in a reference u/s 31 of the Land Acquisition Act, 1894, regarding the apportionment of the compensation for that land. The trial Court has answered this question in the affirmative, and the correctness of that decision is challenged before us in this appeal. The facts which lie on a narrow compass are briefly these. There are two claimants in this case. The controversy between them was with regard to the compensation in respect of an extent of 8,208 sq. ft. The first claimant contended that the second claimant was entitled only to an extent of 1 acre 16 cents and that the rest of the acquired area belonged to him, whereas the second claimant contended that out of the extent acquired he was entitled to 1 acre 40 cents. It was in those circumstances that the Acquisition Officer made the reference to the City Civil Court, Madras, for deciding the controversy. The Court upheld the claim of the second claimant. The first

claimant and his father had instituted O. S. No. 360 of 1939 on the file of the District Munsif, Poonamallee, against the second claimant and

another and prayed for possession of certain extent said to be in the possession of the second claimant. The second claimant contended that he

was entitled to 1 acre 40 cents and that the plaintiffs had no claim whatsoever to that extent. The trial Court decreed the suit. But in the appeal

preferred by the second claimant, the decree of the trial Court was reversed holding that the second claimant was entitled to 1 acre 40 cents. This

decision of the first appellate Court was confirmed by this Court in S. A. No. 606 of 1943. As the plaintiff in the suit had obtained possession after

the suit was decreed by the trial Court, the second claimant applied for restitution claiming that he was entitled to 1 acre 40 cents. The restitution

was allowed. Against that order, the first claimant preferred an appeal but without success, with the result the second claimant's title to 1 acre 40

cents became conclusive as against the first claimant. What the first claimant, the appellant in this appeal, now contends is that the said decision,

though it became final, cannot be put against him in this acquisition proceeding, as it cannot operate as res judicata. The learned counsel for the

appellant contended that the aforesaid decision was given by the District Munsif, whereas the question that has to be decided in this proceedings, is

one that falls within the exclusive jurisdiction of the Court under the Land Acquisition Act, which is the Court of original jurisdiction and which is a

court of superior jurisdiction over the Court of the District Munsif and that, therefore, the principles of res judicata cannot be applied. It is also

contended that Section 11 of the CPC embodying the principles of res judicata is applicable only to suits, that the reference under the Land

Acquisition Act is not a suit and that, therefore, the decision above referred to cannot operate as res judicata.

2. The scope of the principles of Section 11 of the CPC has been the subject of consideration in a number of decisions, and it has been uniformly

held that the section is not exhaustive. In *Sheoparsan Singh v. Ramnandan*, 43 Ind App 91 = AIR 1916 PC 78 the probate and Administration

Act (Act V of 1881), rejecting the claim of certain persons who claimed to be the next reversioners and who contended that the will was a forgery.

The very same persons filed a suit praying for a declaration that they were the next reversioners to the estate of the deceased and that the probate

should be revoked. The decision in the probate proceedings was put forward as operating as res judicata by the defendants in that suit. This

defense was sought to be met by the plea that the decision in the probate proceedings cannot operate as res judicata. Rejecting this contention Sir.

Lawrence Jenkins, speaking for the Board, observed at page 98:

..... the rule of res judicata, while founded on ancient precedent, is dictated by a wisdom which is for all time. "It hath been well said," declared

Lord Coke, "interest rei publicae ut sit finis litium; otherwise great oppression might be done under color and pretence of law"; 6 Coke, 9a.

Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded

by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this

purpose the text of Katyayana, who describes the plea thus: "If a person though defeated at law sues again he should be answered. "You were

defeated formerly". This is called the plea of former judgment." (See the Mitakshara (Vyavahara) bk. II, ch. I edited by J. R. Gharpure, p. 14 and

the Mayuka, ch. ii., S. I, p. 11 of Mandlik's edition). And so the application of the rule by the Courts of India should be influenced by no technical

considerations of form, but by matter of substance within the limits allowed by law." The question again arose before the Judicial Committee in

Hook v. Administrator General of Bengal, 48 Ind App 187 AIR 1921 PC 11 in an administration suit in the High Court during the lifetime of the

last surviving annuitant. It was held that certain conditions in the will had not been fulfilled and that there was not an intestacy as to the surplus

income, rejecting a contention on behalf of the next of kin that the gift over was invalid. In further proceedings in the suit after the annuitant's death

the next of kin contended that they were entitled again to raise the contention that the gift over was invalid. Lord Buckmaster observed at page 194

referring to the scope of Section 11 of the Code of Civil Procedure:

That section prevents the retrial of issues that have been directly and substantially in issue in a former suit between the same parties, and this

question obviously arises in the same and not in a former suit, but it does not appear that the learned Judge's attention was called to the decision of

this Board in Ram Kirpal Shukul v. Rup Kuari, (1883) 11 Ind App 37 which clearly

shows that the plea of res judicata still remains apart from the limited provisions of the Code, and it is that plea which the respondents have to meet in the present case. In the words of Sir Barnes Peacock (at page 41): The binding force of such a judgment in such a case as the present depends not upon S. 13 of Act X of 1877 (now replaced by S. 11 of the Code of Civil Procedure, 1908) but upon general principles of law. If it were not binding there would be no end to litigation".

Following the aforesaid decision, the same Lord Buckmaster in *Ramachandra Rao v. Ramachandra Rao*, 49 Ind App 129 AIR 1922 PC 80 held

that where in a land acquisition proceeding in respect of a right to receive compensation, a decision is given, that decision would operate as res

judicata in a subsequent suit between the parties to the dispute or those claiming under them, whether or not the decree is to be regarded as one

"in a former suit" within the meaning of Section 11 of the Code of Civil Procedure. Rejecting the contention that the decision in the land acquisition

proceeding would not operate as res judicata the learned Lord observed at page 138:

If such a plea were admissible, there would be no finality in litigation. The importance of a judicial decision is not to be measured by the pecuniary

value of the particular item in dispute. It has been suggested that the decision was not in a former suit, but whether this were so or not makes no

difference, for it has been recently pointed out by this Board in 48 Ind App 187 AIR 1921 PC 11 that the principle which prevents the same case

being twice litigated is of general application, and is not limited by the specific words of the Code in this respect.

3. The decisions in 43 Ind App 91 AIR 1916 PC 78; 48 Ind App 187 AIR 1921 PC 11 and 49 Ind App 129 AIR 1922 PC 80 were followed

by the Judicial Committee in a subsequent decision in AIR 1930 22 (Privy Council) . That was a case of a contentious proceedings under the

Probate and Administration Act, 1881. On the finding that a certain person was the nearest heir of the deceased, the question arose whether that

decision was binding in a subsequent suit between the same parties. Following the earlier decisions, the Board affirmed that the decision was

binding under the general principles, though not u/s 11 of the Code of Civil Procedure.

4. The Supreme Court had to consider in *Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others*, the question whether a decision after

contest in a land acquisition proceeding as to the title between the rival claimants would operate as *res judicata* in a subsequent suit. Applying the

principles laid down by the Judicial Committee in 49 Ind App 129 AIR 1922 PC 80, the Court observed :

It was urged that to substantiate the plea of *res judicata* even on general principles of law it was necessary that the Court that heard and decided

the former case should be a Court competent to hear the subsequent case. This contention was based on the language of Section 11. The

condition regarding the competency of the former Court to try the subsequent suit is one of the limitations engrafted on the general rule of *res*

judicata by Section 11 of the Code and has application to suits alone. When a plea of *res judicata* is founded on general principles of law, all that is

necessary to establish is that the court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in

such cases to further prove that it has jurisdiction to hear the later suit. A plea of *res judicata* on general principles can be successfully taken in

respect of judgments of Courts of exclusive jurisdiction like revenue Courts, land acquisition Courts, Administration Courts, etc. It is obvious that

these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the statute.

5. The general principles of *res judicata* have been held to be applicable even in regard to awards passed by the Tribunals in industrial disputes in

Burn and Co., Calcutta Vs. Their Employees, . Venkatarama Ayyar, J., speaking for the Court, observed at page 789:

Are we to hold that an award given on a matter in controversy between the parties after full hearing ceases to have any force if either of them

repudiates it u/s 19(6) and that the Tribunal has no option, when the matter is again referred to it for adjudication, but to proceed to try it *denovo*,

traverse the entire ground once again, and come to a fresh decision. That would be contrary to the well-recognized principle that a decision once

rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be reagitated. It is on this

principles that the rule of *res judicata* enacted in Section 11 of the CPC is based. That section is no doubt in terms in applicable to the present

matter, but the principle underlying it, expressed in the maxim "interest rei publicae ut sit finis litium" is founded on sound public policy and is of universal application (vide Broom's Legal Maxims, Tenth Edition, Page 218).

6. The question arose before the Supreme Court in Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, whether the principles of res

judicata could be applied to writ proceedings under Article 32 of the Constitution of India. An earlier petition under Article 32 raising the question

of the power of the Committee of Privileges of a State Legislative Assembly was dismissed. There was change in the personnel of a particular

committee against which the writ was sought. The same petitioner filed another writ petition under Article 32 of the Constitution for the same relief.

The Supreme Court, following its earlier decision in Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, , held that the subsequent petition

was barred by the general principles of res judicata. At page 1190 it is observed:

This Court has laid it down in Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, that the principle underlying res judicata is applicable

in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no

jurisdiction to try the subsequent suit and even though the subject matter of the dispute was not exactly the same in the two proceedings. In that

case the rule of res judicata was applied to litigation in land acquisition proceedings. In that case the general principles of law bearing on the rule of

res judicata, and not the provisions of Section 11 of the Code of Civil Procedure, were applied to the case. The rule of res judicata is meant to

give finality to a decision arrived at after due contest and after hearing the parties interested in the controversy.

In the result, the Court held that the question already decided cannot be permitted to be re-opened merely because there was change in the

personnel of the Committee.

7. In Daryao and Others Vs. The State of U.P. and Others, the question that arose for consideration was whether the prior decision of a High

Court on a Writ Petition under Article 226 of the Constitution would operate as a bar to a petition under Article 32 of the Constitution before the

Supreme Court, Gajendragadkar, J., as the then was, speaking for the Court observed at page 1462:

The binding character of judgments pronounced by Courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the constitution lays so much emphasis. as Halsbury has observed "subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies and is conclusive evidence against all the world of its existence, date and legal consequences." Halsbury's Laws of England, 3rd Edn., Vol. 22, p. 780, paragraph 1660. Similar is the statement of the law in Corpus Juris: "the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction. The rule is subject to the limitation and the judgment in the former action must have been rendered by a Court or Tribunal of competent jurisdiction", Corpus Juris Secundum, Vol. 50 (Judgments), p. 603. "It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon", Ibid p. 608.

Again at page 1463, the learned Judge observed:

Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Art. 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a Court of competent jurisdiction, there has been a contest between the parties before the Court, a fair opportunity has been given to both of them to prove their case, and at the end the Court has pronounced its judgment or decision. Such a decision pronounced by a Court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution.

8. In Halsbury's Laws of England, 3rd Edition, Volume 15, Paragraph 357 it is observed:

The doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation.

Halsbury also adds that the doctrine applies equally in all Courts, and it is immaterial in what Court the former proceeding was taken, provided

only that it was a Court of competent jurisdiction or what form the proceeding took, provided it was really for the same cause (page 187, Para

362). In Corpus Juris Vol. 34, page 743 it is observed:

Res judicata is a rule of universal law, pervading every well regulated system of jurisprudence and is put upon two grounds, embodied in various

maximums of the common law, the one, public policy and necessity, which makes it to the interest of the State that there should be an end to

litigation interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause--Nemo

debat bis vexari pro eadem causa.

9. It would be seen from the foregoing principles that even though the Court that rendered the former judgment may be competent to hear the

subsequent proceeding, still that judgment would operate as res judicata on general principles, if the decision was one rendered by a competent

Court after full contest between the parties. It is not necessary in such cases to prove further that the Court that rendered the judgment on a former

occasion should have jurisdiction to hear the later proceeding also. If the judgments of Courts of exclusive jurisdiction like revenue Courts, land

acquisition Courts, administration Courts, etc., would operate as res judicata on general principles in respect of subsequent proceedings by way of

suit in ordinary civil Courts--a principle which has been affirmed in several decisions--there is no reason why the same effect should not be given to

the judgment of ordinary civil Courts rendered after full contest between the parties, when their binding nature arises for consideration before

Courts of exclusive jurisdiction. The cardinal principle underlying the application of general rule of res judicata in respect of proceedings not falling

within the strict terms of Section 11, C.P.C. is that there should be an end to litigation and that a successful party in a prior litigation which was

decided on merits after full contest in a competent Court should not be vexed twice over in respect of the same matter even when the case does

not fall within the strict terms of Section 11, C.P.C. In the instant case the controversy in the earlier litigation was fought out in three courts

including the High Court. The decision was again reaffirmed in restitution

proceedings in two competent courts and the matter thus reached its finality. The final position that emerged after all these proceedings was that the second claimant was entitled to 1 acre 40 cents. The first claimant wants to set at naught this finality on the plea that the matter does not fall squarely within the terms of Section 11, C.P.C. If this plea were to prevail then there would be no end to litigation. It is to prevent such a result that Courts have applied the rule of conclusiveness of judgments of competent Courts even though Section 11, C.P.C., may be in terms inapplicable. Section 11, C.P.C., does not do away with the principles of estoppel by Record"" subject of course to the consideration that where a case falls within its terms, Courts cannot travel outside the section and apply the general principles of law. We are of the opinion that the decision in O. S. No. 360 of 1939 upholding the claim of the second claimant to 1 acre 40 cents is binding upon the first claimant and operates as res judicata against the first claimant in the land acquisition proceedings from contending that the second claimant was entitled only to 1 acre 16 cents. The lower Court was, therefore, right in giving effect to the said decision and in upholding the claim of the second claimant to an extent of 1 acre 40 cents. In that view, the decision of the trial Court awarding to the second claimant compensation as regards the extent of 8,208 sq. ft., is correct.

10. In the result, the appeal fails and is dismissed. As the legal representatives of the second claimant are not represented, we make no order as to costs.

11. Appeal dismissed.