
(1971) 09 AP CK 0007
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 690 of 1970

Mangu Ramdas

APPELLANT

Vs

Madurai Venkataratnam and Others

RESPONDENT

Date of Decision : 03-09-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1973 AP 256

Hon'ble Judges : Gopal Rao Ekbote, J;A.V. Krishna Rao, J

Bench : Division Bench

Advocate : Principal Government Pleader and N.V. Ranganadham, for the Appellant; A.G. and M.S.R. Subrahmanyam, for the Respondent

Judgement

Gopal Rao Ekbote, J.—The Assistant Settlement Officer, Anakapally started a suo motu enquiry u/s 15 of the Madras Estate (Abolition and Conversion into Ryotwari) Act, (hereinafter called " the Act") to determine the nature and history of the land and to consider the claims of the land holders for the grant of ryotwari patta.

2. At a later stage of the said enquiry two land-holders claimed patta for themselves alleging inter alia that the land in question is zeryothi private land.

3. The 1st respondent in the proceedings opposed the claim of the land-holders and claimed patta for himself contending that he has the occupancy rights and he is therefore entitled to the patta.

4. The 2nd respondent the daughter - in - law of the original tenant contended that her father-in-law was the original tenant and had occupancy rights. He having died the 2nd respondent is the legal heir and therefore entitled to the grant of ryotwari patta.

5. The Assistant Settlement Officer after proper enquiry held on 23-5-1959 that the land is darmilla inam and consequently the land-holders are not entitled to patta u/s 15 of the Act. In the same order he however, held that the 2nd

respondent has the occupancy rights and therefore she is entitled to the patta. The 1st respondent was found to be sub-tenant of the 2nd respondent.

6. Aggrieved by that order of the Assistant Settlement Officer the 1st respondent preferred appeal A.S.No. 44 of 1959 to the Estates Abolition Tribunal Rajahmundry. The Tribunal by its order D/- 13-8-1960 disallowed the appeal.

7. The 1st respondent questioning the validity of the order of the Tribunal filed Writ Petition No. 709 of 1960. Srinivasachari J., by his order D/- 27-7-61 (Andh Pra) dismissed the writ petition.

8. An appeal was carried to the Division Bench in W.A.72 of 1961. The Chief Justice and K.V.L. Narasimham J. By their order D/- 11-9-1961 (Andh Pra) dismissed the appeal.

9. Not contended with this round of litigation the 1st respondent filed an application u/s 56 of the Act on 2-11-1961 before the Assistant Settlement Officer. He asked for a declaration that it is he who is the lawful ryot and not the 2nd respondent lady.

10. This petition was contested by the 2nd respondent. Now the principal contention was that the previous order of the Tribunal made in A.S. No. 44 of 1959 on 13-8-1960 (Andh. Pra) as well as the order made in W.A.No. 72 of 1961 D/- 11-9-1961 (Andh pra) operate as res judicata. She also disputed the right of the 1st respondent to get the patta.

11. During the pendency of the said proceedings a C.R.P. was filed contending that the issue regarding res judicata be disposed of as a preliminary issue. The petition was allowed and the Assistant Settlement Officer was directed to decide the question of res judicata as a preliminary question.

12. In the meanwhile the enquiry seems to have been concluded. The Assistant Settlement Officer by his order dated 21-11-1965 held firstly that the previous said decisions do not operate as res judicata. On merits it was found that the 1st respondent is the tenant having occupancy rights and it is he who is entitled to patta. The Assistant Settlement Officer declared the right accordingly.

13. The 2nd respondent aggrieved by that order carried the matter in appeal to the Estates Abolition Tribunal, Appeal No. 1 of 1966. The Tribunal while holding as was held by the Assistant Settlement Officer that the 1st respondent is the lawful ryot disagreed with the view of the Assistant Settlement Officer that the said previous orders do not operate as res judicata. He held that the said two orders bar the present proceedings u/s 56 of the Act.

14. It is to question the validity and correctness of the order of the Tribunal dated 26-3-1968 that W.P. 1851 of 1968 was filed K.Ramachandra Rao, J. By his order dated 16-3-1970 allowed the Writ Petition by holding that the previous two orders do not operate as res judicata. The present proceeding u/s 56 is not barred. He was not called upon to consider the question on merits. In fact the

2nd respondent gave up her contention that she was the lawful ryot. It is this order the learned Judge that is now assailed in this writ appeal by the 2nd respondent.

15. At the outset we must say that even before us it was not argued that on merits the appellant ought to have been held to be a lawful ryot. The whole argument was concentrated on the question of res judicata.

16. Now the principle of res judicata or the rule of conclusiveness of judgments is not exhaustively provided for in Section 11, C.P.C. Section 11 is not exhaustive of the general doctrine of res judicata. It is also clear that Section 11 or for that matter the doctrine of res judicata does not deal with the question of jurisdiction or it does not affect cognizability of suits or proceedings but merely bars their trial. What is therefore plain is that the principle of conclusiveness of judgment is much wider than the terms of the section and remains effective even apart from the provisions of the Code. Thus where circumstances other than those provided in Section 11 exist the principle underlying the rule of res judicata can always be invoked in a proper case without recourse to the provisions of Section 11. Section 11 applies to suits in and to that extent it being exhaustive, in cases which fall within its terms, it is plain that the Court cannot travel outside Section 11, and apply the general principles of law. It is not in doubt that Section 11 C.P.C. does not apply to proceedings before the Tribunals constituted under the Act. It is to the analogous principle of res judicata therefore one has to look to.

17. The essentials for the applicability of the general principles of res judicata are succinctly brought out in the leading case of *Duchess of Kingston*. (2 Smiths Leading Cases 11th Edn. 731 at 732.)

"From the variety of case related to judgments being given in evidence in civil suits these two deductions seem to follow as generally true" first that a judgment of a court of concurrent jurisdiction, directly speaking on the point is on a plea a bar, or as evidence conclusive between the same parties upon the same matter directly in question in another Court; secondly, that the judgment of a court of exclusive jurisdiction directly on the point, is in like manner conclusive upon the same matter between the same parties coming incidentally in question in another court for a different purpose. But neither the judgment of a court of concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction not of any matter incidentally cognizable nor of any matter to be inferred by argument from the judgment."

Daryao and Others Vs. The State of U.P. and Others, quotes approvingly the abovesaid case.

18. It is evident that like Section 11 the general principles of res judicata in all its essentialities apply to the cases of exclusive jurisdiction.

19. The question then is whether Section 64-A of the Act exhaustively and

expressly provides for res judicata or in spite of Section 64-A the general principles of res judicata would still continue to apply to the proceedings under the Act.

20. Now Section 64-A in its two sub-sections provides for the application of the rule of res judicata in two cases only. Firstly a decision of a Tribunal or Special Tribunal in any proceedings under the Act or of a Judge of a High Court hearing a case u/s 51(2) is declared to be binding in any suit or proceeding in a civil court in so far as such matter is in issue between the parties in such suit or proceedings.

21. Secondly the decision of a civil court except that of a District Munsif or the Court of Small Causes, on any matter falling within its jurisdiction shall be binding on the parties in any proceeding under the Act before a Tribunal, Special Tribunal or a High Court Judge hearing a case u/s 51 (2) of the Act.

22. It would be immediately clear that Section 64-A does not make any provision for the application of the principle of res judicata to proceedings before the Tribunals under the Act. For example if a dispute falling u/s 56 is decided on an application under that section by the Tribunal will it operate as res judicata in a subsequent proceeding regarding the same matter and between the same parties ? This is so even in regard to the other proceedings postulated under the Act.

23. We do not think the maxim *expressio unius est exclusio alterius* applies to the provision in question. It is axiomatic that the maxim requires great caution in its application and in all cases is applicable only under certain conditions. It is said that it is often a valuable servant but a dangerous master to follow in the construction of statutes. Where the meaning of the provision invades public policy or is in derogation of the common law a strict or literal interpretation should be given to it. Normal intrinsic and extrinsic aids of interpretation are employed in ascertaining whether the maxim will prevail. No doubt provisions sometimes found in statutes enacting imperfectly or for particular cases only that which was already and more widely the law have occasionally furnished ground for the contention that an intention to alter the general law was to be inferred from the partial or limited enactment resting on the maxim *expressio unius est exclusio alterius*. But that maxim is inapplicable in such cases. See Maxwell on Interpretation of Statutes, 8th Edition .

24. It cannot be doubted that Section 64-A is only a partial or limited provision in regard to the rule of res judicata. Unless the intention of the legislature is clear to confine the application of rule of res judicata only to cases coming u/s 64-A the maxim will have no application and in spite of Section 64-A the general principles of res judicata would continue to apply to cases not coming u/s 64-A but decided under the Act.

25. It is plain that if a change in the common law is to be effectuated, the legislative intent to do so must be clearly and plainly expressed. It is true that a

statute may take away a common law right, but there is always a presumption that the legislature has no such intention. We find no words in Section 64-A which would exclude the operation of general principles of res judicata to cases under the Act. And it is trite to say that no statute is to be construed as altering the common law further than its words import or follows by necessary implication from the language of the statute in question. It is not to be construed as making any innovation upon the common law which it does not fairly express. It is thought to be in the highest degree improbable that the legislature would depart from the general system of law without expressing its intention with irresistible clearness. And it is plain that if any case be doubtful upon a statute, it is good to construe it according to the common law. If the arguments on a question of interpretation are fairly and evenly balanced that interpretation should be chosen which involves the least alteration of the existing law. It is now fairly settled that the maxim ought not to be applied when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice. Recently the Court refused to apply the maxim where to have done so would have produced " a wholly irrational situation ". See *Re Newspaper Proprietors' Agreement* (1962) 2 All ER 250, *Prestcost (General) Ltd. V. Minister of Labour*. (1969) 1 WLR 89 and *Dean v. Wiesengrund*. (1955) 2 QB 120.

26. Viewed in this light we have no manner of doubt that the express provision made in Section 64-A covering only two types of cases does not exclude the operation of the analogous principles of res judicata to other types of cases falling under the Act to which such principles would have applied.

27. In fairness it must be stated that the learned counsel for the appellant did not argue that Section 64-A is a bar to the application of the general principles of res judicata to the cases decided under the Act. We have adverted to this question because some of the observations of the learned Judge are likely to be understood as laying down that Section 64-A is exhaustive. The learned Judge after observing that " The Estates Abolition Act is a self-contained code " said that

" In applying the principles of res judicata, it is not permissible to invoke the provisions of Section 11 of C. P. C. Or the principles underlying therein inasmuch as a specific provision has been made in that behalf in the Estates Abolition Act. Section 64-A of the Act lays down in what cases the principles of res judicata should be applied. "

The learned Judge finally holds that since Section 64-A is not applicable to the case it is not barred by res judicata. Although the learned Judge proceeds to consider the question and holds that as this is not necessary to decide the question u/s 56 or in any case it was only incidental it does not operate as res judicata, thus applying in effect the general principles of res judicata. We considered it necessary in these circumstances to clarify the position.

28. Let us then examine the two contentions relating to res judicata. Taking the first for consideration that the previous order in W. A. No. 72 of 1961 dated

11-9-1961 operates as a res judicata, it is not in doubt that the High Court has no exclusive or even concurrent jurisdiction to decide any dispute coming u/s 11, 15 or 56 of the Act or any issue incidental thereto. The jurisdiction to decide those disputes vests only in the statutory tribunals constituted under the Act. Hence, where the High Court in a Writ Petition has decided that the decision of the Estates Abolition Tribunal in appeal against an order of the Settlement Officer was correct, the plea of res judicata, if any, must be rested on the decision of the Estates Abolition Tribunal and not on the decision of the High Court. We are fortified in our view by a decision of the Madras High Court in *Burmah Shell and Storage and Distributing Co. of India Ltd., Madras Vs. The Labour Appellate Tribunal of India and Others*,

29. Moreover, the decision in W. P. No. 709 of 1960, D /- 27-7-1961 (Andh Pra) had become subjudice since W. A. No. 72 of 1961 was filed. The principle of finality, if at all would apply to the judgment in the said writ appeal. The appellate Court at the admission stage dismissed the appeal observing that the concurrent finding of fact by the Tribunal was accepted by the learned Judge both in regard to the question that the appellant therein was only a sub-lessee of the 4th respondent and also that there was no relinquishment of the lease granted to the father-in-law of the 4th respondent. It is pertinent to note what the learned single Judge observed :

" I do not think that this Court would be justified in scrutinising the evidence and come to its own conclusion where both the Tribunals have drawn particular conclusion. The conclusion arrived at by the Tribunals must be held to be final. "

30. What is evident is that the High Court did not decide anything on the merits of the case. It declined to interfere on the ground that the findings of facts by the Tribunal are conclusive and in a proceeding under Article 226 it is not possible for the High Court to interfere. Thus the decision of the High Court decides nothing except refusing to interfere on a question of fact. We fail to see how such a decision can operate as res judicata. When the proceedings are thus terminated on preliminary technical ground and where the matter has not been decided, the decision in such a case cannot operate as res judicata.

31. We then turn to the question whether the judgment of the Estates Abolition Tribunal dated 13-8-1960 operates as res judicata. It is no doubt true that the Tribunal in an appeal u/s 15 of the Act decided firstly that the land being a darmilla inam the land-holders have no right to claim patta u/s 15. It is not a private land of the land-holders. Secondly that the respondent herein is not entitled to a ryotwari patta as he is the sub-tenant of the appellant herein and further held that the appellant having the occupancy rights is entitled to ryotwari patta u/s 11 of the Act.

32. It must, however, be remembered that the proceedings were originally initiated suo moto by the Settlement Officer. On the application of the land-holders for the grant of patta the suo moto enquiry was converted into an

enquiry on the application of the land-holders. At first the first respondent opposed the application on the ground that it is a darmilla inam and not a private land of the land-holders. He also claimed patta for himself contending that he has the occupancy rights.

33. At a subsequent stage the appellant, who is the sister of the land-holders also claimed occupancy rights opposing the claims of the land-holders and requested for the grant of patta to her.

34. It is a common ground that neither the appellant nor the respondent had filed any separate application u/s 11 for the grant of patta. It is also a common ground that the Settlement Officer at no stage of the case initiated suo moto enquiry u/s 11 of the Act.

35. It is also a common ground that neither of the parties filed any application to decide the question as to who the lawful ryot is u/s 56 of the Act. The Settlement Officer could not have initiated suo moto enquiry u/s 56 of the Act. At no stage the proceedings were considered partly or wholly coming u/s 56 of the Act. Nobody took that proceeding to be u/s 56 in the valuation of the subject-matter of appeal by the respondent in his memo to the Tribunal hardly alters the character of the proceedings. At stages of the proceeding it was treated as if it was a proceeding u/s 15 of the Act and no more.

36. It cannot be doubted that in order to attract Section 56 a dispute must have arisen after an estate is notified. The dispute must relate as to who the lawful ryot in respect of any holding is. Such a dispute brought before the Settlement Officer shall be decided by him.

37. Rule 2 of the Rules made u/s 67 read with Section 56 of the Act enjoins that no dispute mentioned in Section 56 (1) shall be enquired into without a written application by a interested person. Such an application must be filed in the prescribed form. The form prescribed has 8 columns. Column 6 requires the mention of nature of dispute and column 7 requires grounds for application. Such an application according to Rule 5 (a) must be presented in person or sent by registered post acknowledgment due. Rule 6 then requires the Settlement Officer to fix a date of hearing and issue a notice to the petitioner, the manager of the estate and the respondent in prescribed form and caused to be served in person, if possible by other modes referred to therein. Rule 7 relates to the mode of enquiry and determination of the dispute. It requires that a copy of the order shall be delivered to the petitioner and each respondent. A copy also shall be sent to the immediate superior officer if the officer conducting the enquiry is an Assistant Settlement Officer and to the manager of the Estate.

38. It will be seen that proceeding u/s 56 has to be commenced on a written application by the interested person and the Settlement Officer cannot suo moto enquire into any dispute referred to in Section 56 (i). It is conceded that no one filed any application u/s 56 nor the requirements of the rules mentioned above were either adhered to by the parties or were followed by the Settlement Officer

at any stage of the proceedings in question. It is therefore plain that the proceeding in question, was not a proceeding u/s 56 and in fact no dispute was brought to the Settlement Officer on application which he could decide. In truth and reality he has not decided any dispute falling within the meaning of Section 56 (1). Merely because he decided to grant ryotwari patta to the respondent, it does not necessarily mean that either the proceedings in which such orders were passed were conducted u/s 56 or any dispute under that section was in fact decided by the Settlement with the learned Judge that the Settlement Officer never decided any dispute u/s 56 of the Act. The order of the Settlement Officer or for that matter of the Estates Abolition Tribunal was definitely not made u/s 56 of the Act. It cannot also be in doubt that in the absence of an application and without following the rules if an order u/s 56 is passed it will not be binding on those who should have been served with the notices.

39. It is already seen that in a proceeding u/s 15 an order which can be said to come u/s 11 has been passed by the Settlement Officer and the order has been confirmed by the Estates Abolition Tribunal. We have therefore to consider the effect of an order passed u/s 11 in a proceeding u/s 15 of the Act. Its nature will decide the question as to whether the order passed u/s 11 in such a proceeding operates as *res judicata*.

40. In *Pentamma v. Lakshamma* (1963) 2 AWR 19, *Subba Rao v. E.A. Tribunal* (1964) 2 AWR 154, it has been decided that in an enquiry u/s 15(1) of the Act enquiry u/s 11 should not be held nor enquiry u/s 56 can be dovetailed in an enquiry u/s 15 (1). Section 15 (1) does not contemplate an enquiry as to whether anyone other than the land-holder is entitled to a patta.

41. Although one may not agree with the view taken by the learned Judge that

"In view of the three decisions mentioned above it is clear that an enquiry u/s 11 or 56 could not be dovetailed into an enquiry u/s 15 and such an enquiry and the order passed therein would be wholly illegal and invalid" one has to find out the effect of such an order on the question of *res judicata*. The order in such an inquiry u/s 15 (1) cannot be said to be "wholly illegal and invalid". The question however is whether an order passed u/s 11 in an enquiry u/s 15 (1) operates as *res judicata* in a subsequent proceeding taken u/s 56 (1) of the Act. We do not think that such an order bars inquiry into the dispute as to who the lawful ryot is u/s 56.

42. In this case there are two vantage points from which we can hold that the order of the Estates Abolition Tribunal given in A.S. 44 of 1959 on 13-8-1960 does not operate as *res judicata*. Firstly it has to be seen whether it was necessary for the effective disposal of the enquiry u/s 15 before the Tribunal to resolve the conflict between the two co-respondents claiming patta u/s 11. It is true that when parties are arrayed on the same side such as co-defendants or co-respondents an adjudication between them may be *res judicata* but that is only in certain circumstances. If the following conditions are satisfied then alone it will

operate as res judicata.

(1) There must be a conflict of interest between the defendants or respondents concerned.

(2) It must be necessary to decide the conflict in order to give the relief which the plaintiff or the petitioner claims.

(3) The question between the defendants or respondents must have been finally decided and

(4) The co-defendants or co-respondents were necessary or proper parties in the former suit.

43. If all the conditions exist the adjudication will operate as res judicata between co-defendants or co-respondents. But it will not so operate if there was no necessity to decide such conflict for granting relief to the plaintiff. This view gathers support from the following decisions: AIR 1950 17 (Privy Council) , AIR 1931 114 (Privy Council) and AIR 1931 231 (Privy Council) The abovesaid view has been approved by the Supreme Court in Sashibhoosha Prasad Misra v. Babaji Rai (C.A.11010 of 1965 D/- 27-11-1966 (SC).

44. It is in the light of this principle that we have to examine the present case bearing in mind that the doctrine of res judicata must be applied to co-defendants with great caution. From the facts narrated above it will be immediately plain that it was altogether unnecessary to resolve the conflict between the two co-respondents who were claiming patta u/s 11 separately. The enquiry u/s 15 as land-holders" claim to ryotwari patta after examining the nature and history of the lands. It could not be doubted that in order to decide that question it was unnecessary to examine and find out as to who among the two co-respondents was entitled to patta u/s 11. The land-holders claimed that the land in question was their private land while the contention of both the respondents was that it was a darmilla inam and not a private land of the land-holders the petition of the land-holders u/s 15 (1) could have been effectively disposed of without the Settlement Officer making further enquiry as to who between the two co-respondents is entitled to patta u/s 11. As such the determination was not necessary for determining the land-holder"s petition u/s 15 (1) of the Act. Such an adjudication u/s 11 therefore does not operate as res judicata in an enquiry u/s 56 of the Act.

45. Secondly it is well known that an unnecessary or irrelevant issue the decision of which either way will not affect the decision of the main proceedings cannot be said to have been directly and substantially in issue. A matter merely because it is alleged on one side and denied on the other does not necessarily become a matter directly and substantially in issue. Such a matter may be collectively or incidentally or even unnecessarily in issue for the purpose of deciding the real matter which is directly in issue in the main proceedings. It is evident that a matter although directly in issue in the previous proceedings will not necessarily

operate as res judicata in the subsequent proceeding unless it was also substantially in issue in such former proceeding. The word "substantial" means "of importance and value" and a matter is substantially in issue if it is of importance and value for the decision of the main proceeding. For example an unnecessary or irrelevant issue the decision of which either way will not affect the decision of the main proceeding cannot be of any importance or value for the decision of the proceeding and is therefore not substantially in issue. With this background in mind we do not find any difficulty in holding that the matter in controversy between the two respondents falling u/s 11 was not a matter of importance or value for the adjudication of the main proceeding u/s 15. Any adjudication therefore of such an unimportant or valueless matter cannot be said to be substantially in issue in the former proceedings and any determination of such an irrelevant issue cannot operate as res judicata in a subsequent proceeding u/s 56 of the Act.

46. It was however contended by the Principal Government Pleader appearing for the appellant that as the previous adjudication apart from deciding the question u/s 15 decided the questions falling u/s 11 as well as Section 56 of the Act, it operates as res judicata. His submission was that if the parties and the Tribunal has dealt with the matter as if it formed a direct and principal issue it must be taken to have been directly and substantially in issue though in the first instance it was not raised properly by filing separate petition under Sections 11 and 56 of the Act. Any error in the procedure does not preclude the previous order of its effect as res judicata. In support of this contention reliance was placed mainly on the following two decisions of the Supreme Court although some other decisions of the High Courts were also referred to Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa Gugwad and Others, and Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai, .

47. We find it difficult to accept this contention, It is true that a finding which is the real ground of the decision will operate as res judicata even though there may have been other issues on which the case might equally well have been decided. In other words where the judgment is based on the findings on two issues one of which by itself is sufficient to sustain the judgment the decision on both the issues will be res judicata in as much as the decision of the case in such a case must be taken to have rested on the findings on both the issues each being the additional or supplemental ground to the other for disposal of the case. That is what the two abovesaid cases of the Supreme Court decide. It must however be remembered that the decision on such issue must be necessary or relevant for the purpose of effective disposal of the case. WE have already seen that an unnecessary or irrelevant issue the decision of which either way will not affect the decision of the case cannot be said to have been directly and substantially in issue. Merely because several issues have been decided in a case each one of them or all of them need not necessarily be said to have been directly and substantially in issue. In each such case where the question of res judicata is raised it becomes the duty of the Court to examine the facts and

circumstances of the case and if it comes to the conclusion that the decision is based on several issues and such a decision can be on the findings given on each issue the finding on every issue will operate as res judicata. It is plain that the question whether a matter was directly and substantially in issue in the former suit or proceeding is one of fact to be decided with reference to the circumstances of each particular case. It does not absolve the Court from its responsibility of finding out whether the findings given on particular issues were unnecessary or irrelevant. If it comes to that conclusion then such findings will not operate as res judicata.

48. We have in a way considered to the two Supreme Court decisions relied upon by the appellant and we found that the dicta in those cases are not near enough to the facts of the present case to provide an analogy.

49. In view, of what is said above it is not necessary to consider other decisions cited to us at the bar on this question.

50. So far we considered the question whether or not the previous order of the Estates Abolition Tribunal made in A.S. 44 of 1959 given on 13-8-1960 operates as res judicata and we held that it does not. In view, however, of the three decisions of this Court referred to have holding that enquiries under Sections 15, 11 and 56 of the Act cannot properly be dovetailed into an enquiry u/s 15 we are bound to say that the appeal filed before the Tribunal from the decisions of the Settlement Officer by one of the co-respondents claiming patta u/s 11 was totally misconceived. The land-holder who had lost before the Settlement Officer did not prefer any appeal to the Estates Abolition Tribunal. The dispute before the Estates Abolition Tribunal was taken up by one of the rival claimants of patta u/s 11 against the other claimant. And it is plain that no appeal against an order u/s 11 if the order is so taken to be can lie to the Estates Abolition Tribunal. The Tribunal therefore had no jurisdiction to deal with that question in appeal. Consequently its order in appeal was without jurisdiction and therefore invalid. The order of the Settlement Officer therefore alone remains. That order also cannot operate as res judicata for the reasons which we have given above in referring to the Tribunal's order. The same approach would apply mutatis mutandis to the order of the Settlement Officer. And we are clear in our view that the order of the Settlement Officer does not operate as res judicata in the proceedings u/s 56 of the Act.

51. Even if it is assumed without so holding that the previous order u/s 11 was properly made though made in an enquiry u/s 15 (1) even then we do not think that it would operate as res judicata in a subsequent proceeding u/s 56 (1) of the Act. Obviously because the determination of a question u/s 11 only incidentally or collaterally determines the dispute mentioned in Section 56 of the Act. The collateral or incidental decision does not operate as res judicata in a direct proceeding initiated with view to get the dispute mentioned in Section 56 (1) decided after following the proper procedure in that behalf.

52. We therefore, agree with the conclusion of the learned Judge although we have reached that conclusion by somewhat different route. Since no other contention was raised the result of the foregoing discussion is that the appeal fails and is dismissed with costs. Advocate's fee Rs.100/-

53. Appeal dismissed.