

**(1952) 01 RAJ CK 0002**  
**In the Rajasthan High Court**  
**Case No : Second Appeal No. 459 of 1949**

Mt. Manphul Bai

APPELLANT

Vs

Ladhuram

RESPONDENT

**Date of Decision :** 02-01-1952

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Contract Act, 1872 — Section 45  
Evidence Act, 1872 — Section 116

**Citation :** AIR 1952 Raj 115 : (1952) RLW 51

**Hon'ble Judges :** Sharma, J;Ranawat, J

**Bench :** Division Bench

**Advocate :** B.K. Bhargava and M.B.L. Bhargava, for the Appellant; D.M. Bhandari, for the Respondent

**Final Decision :** Allowed

## Judgement

Ranawat, J.—This is the plaintiff's second appeal against the judgment of the District Judge, Sawai Jaipur Gangapur, dated the 7th September 1949, by which the decree of the first Court was set aside and the suit of the plaintiff was dismissed with costs.

2. Manphul Bai. widow of Lalchand, filed a suit against Ladhuram and Gulab Bai in the Court of the Civil Judge, Jaipur City, on the 15th of November 1943 for ejectment and for rent in respect of a shop for three years amounting to Rs. 1800/-. The rent was claimed from 28th October 1940 to 27th October 1943 at the rate of Rs. 600/- per annum on the basis of a rent note executed by Ladhuram on the 27th of August 1938, which is Ex. 21 on the record. The shop in respect of which rent and ejectment are claimed by the plaintiff is situated in Johri Bazar, Jaipur City, and is admittedly said to have been the property of one Chhogalal, who died in the month of Chait in Sambat year 1957 leaving behind him his widow Mohar Bai and an adopted son Phulchand. Phulchand died in the month of Asarh in Sambat year 1967 leaving behind him his adoptive mother

Mohar Bai and his widow Gulab Bai. After the death of Phulchand, Gulab Bai is said to have adopted one Lalchand in Sambat year 1968. Lalchand also died on the 1st day of the dark half of the month of Chait in St. year 1990 corresponding to the 1st day of March 1934 leaving behind him his adoptive mother Gulab Bai and grand-mother Mohar Bai and his widow Manphul Bai. Mohar Bai died on the 21st of November 1937 and after the death of Mohar Bai the relations between the two widows Gulab Bai and Manphul Bai became strained. Originally, Manphulbai filed a suit for rent and ejectment in respect of the very same shop against I adhu-ram and the suit was finally dismissed by the Jaipur High Court on the 28th of March 1941 on the ground that Manphulbai's name was mentioned in the rent note which was the basis of the suit as a co-promisee and Manphul Bai not having been joined as one of the defen-dants in spite of the order of the Court in that behalf the suit of the plaintiff was not main-tainable. The plaintiff Manphul Bai after the decision of that case filed this suit against Ladhuram impleading Gulab Bai as a pro forma defendant. No relief was claimed against Gulab Bai but a decree was claimed for rent and ejectment against Ladhuram only. The basis of this suit is a rent note executed by Ladhuram, which is marked Ex. 21 and which is dated the 27th August 1938. A copy of this document appears at p. 37 of the paper book. This rent note has been addressed both to Manphul Bai and Gulabbai but Manphul Bai has been described as the owner of the property and Gulab Bai as an elderly lady in the family. A notice, for ejectment was given by the plaintiff to Ladhuram and on his failing to vacate the shop this suit was filed.

Ladhuram contested the suit on the ground that the rent note Ex. 21 even though executed by him was so executed on account of fraud. He pleaded that Gulab Bai was the owner of the shop and he had paid the rents in respect of the shop to Gulab Bai for the period for which the plaintiff had filed the suit. It was also stated on his behalf that the plaintiff alone could not serve a notice of ejectment without joining Gulab Bai with her. Gulab Bai also took the same defence as was taken by Ladhuram and she admitted that Ladhuram had been paying rent of this shop to her and that there was nothing due against Ladhuram on account of rent of this shop. She also denied the adoption of Lalchand and it was pleaded on her behalf that the plaintiff Manphul Bai had no locus standi to sue in respect of the disputed shop which was claimed by Gulab Bai to be her property which, she alleged, she inherited from her husband, Phulchand.

3. The trial Court held that Lalchand's adoption was proved and the plaintiff, the widow of Lalchand, was the owner of the property. Gulab Bai who was held to be the adoptive mother of Lalchand, had no interest in the property except her claim for maintenance. Consequently, the suit of the plaintiff was decreed in full against both the defendants so far as the amount of rent was concerned and against Ladhuram only for ejectment. On appeal. the learned District Judge set aside the decree of the first Court on the ground that the suit of the plaintiff was barred by Section 11 of the Civil Procedure Code. He also held that the plaintiff failed to prove the adoption of Lalchand to Phulchand.

4. In this appeal it has been contended on behalf of the appellant that the lower appellate Court was wrong in holding that the suit was barred by the provisions of Section 11 of the CPC and the following reasons have been stated in this behalf:

1. That the present suit is of a valuation which it was not competent for the Court of the Munsif which decided the former suit to entertain. The decision of the former suit being of a Court which was not competent to entertain the present suit cannot bar the decision of the present suit.

2. that the former suit was decided merely on the ground of non-joinder of the parties & the suit not having been decided on merits its decision cannot bar the decision of this suit.

5. In reply to the above argument of the appellant it has been pleaded by the opposite side that even though the present suit being of a higher valuation could not have been entertained by the Court of Munsif, which decided the previous suit, yet as the cause of action of the present suit is divisible, decision of the issue in the previous suit that Gulab Bai was a compromisee for the purposes of the rent note Ex. 21 should be considered final, barring the decision of the same issue in this suit by virtue of Section 11, C. P. C. Further it has been added that the former suit was dismissed on account of non-joinder of the parties but the point had been decided in that suit as between the plaintiff and Ladhuram regarding the effect of the rent note which was the basis of the former suit and is also mainly in dispute in the present suit.

6. Section 11 of the CPC runs as follows:

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been 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."

7. In the case of "RUN BAHADUR SINGH v. LUCHO KOER", 11 Cal 301, which was a case under the CPC of 1877, their Lordships of the Privy Council approved the observations of Sir Barnes Peacock in the case of "MT. EDUN v. MT. BECHUN", 8 W R 175 (FB), which was a case relating to Section 2, C. P. C. of 1859, which were as follows:

"The judgment of a Court of concurrent jurisdiction directly upon the point is as a plea, a bar, or has evidence conclusive between the same parties upon the same matter directly in question in another Court."

and "Concurrent jurisdiction" was further explained by Sir Barnes Peacock as follows:

"In order to make the decision of one Court final and conclusive in another Court,

it must be the decision of a Court which would have had jurisdiction over the matter in the subsequent suit in which the first decision is given in evidence as conclusive."

8. In the case of "MISSER RAGHUBAR-DIAL v. SHIVBUX SINGH", 9 Cal 439, the Privy Council observed that:

"In their Lordships opinion it would not be proper that the decision of a Munsiff upon (for instance) the validity of a will or of an adoption, in a suit for a small portion of the property affected by it, should be conclusive in a suit before a District Judge or in the High Court, for property of a large amount, the title to which might depend upon the will or adoption.....by taking concurrent jurisdiction to mean concurrent as regards pecuniary limit as well as the subject-matter this evil or inconvenience is avoided."

9. Their Lordships further observed in the case of "RANG BAHADUR v. LUCHO KOER", 11 Cal 301 (PC), at the position of law u/s 2 of the CPC of 1859 as interpreted by Sir Barnes Peacock was the same as was defined by Section 13 of Act I of 1877. Their Lordships observed in this connection as follows:

"But their Lordships state that if the case had arisen under the law as it existed before the statute, consisting of the previous somewhat imperfect statute supplemented by the general law, their decision would have been the same, and they do not construe the Act of 1877 as having altered the law."

10. Section 11 of Act V of 1908 is almost in the same terms as Section 13 of Act X of 1877. The law in this behalf has not been changed by the new CPC and the observations of their Lordships of the Privy Council in "RANG BAHADUR v. LUCHO KOER", 11 Cal 301 (PC), still are good law even under the provisions of the CPC of 1908. It may further be mentioned that in 11 Cal 301 (PC)", their Lordships further observed as follows:

"If this construction of the law were not adopted, the lowest Court in India might determine finally, and without appeal to the High Court, the title to the greatest estate in the Indian Empire."

11. In the case of "GOKUL MANAR v. PUDMA NAND SINGH", 29 Cal 707 (PC), the appeal was dismissed by their Lordships of the Privy Council on the merits but their Lordships noted in the judgment the following very important observations which have been differentially interpreted subsequently by the various High Courts in India:

"The appeal therefore fails on the merits, and it is not necessary for their Lordships to decide whether the decision of the Revenue Officer can be pleaded as res judicata on the issue as to "GOKUL MANDAR"S" status. They will only observe in reference to arguments addressed to them that u/s 13 of the CPC a decree in a previous suit cannot be pleaded as res judicata in a subsequent suit, unless the Judge by whom it was made, had jurisdiction to try and decide, not only the particular matter in issue, but also the subsequent suit itself, in which

the issue is subsequently raised. In this respect the enactment goes beyond Section 13 of the previous Act X of 1877, and also, as appears to their Lordships, beyond the law laid down by the Judges in the "DUCHESS OF KINGSTON'S CASE", (1776) 2 S L C 10 Edn. 713. They will further observe that the essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction."

12. In "SHIBO RAUT v. BABAN RAUT", 35 Cal 353, the facts of the case briefly stated were that

"B sold certain property to C; A brought a suit against B, C and others, in the Court of the Munsif, for recovery of possession of property so conveyed, and to have the kobala granted by B to his vendee set aside; the suit was decreed in favour of A on the ground that B had no share in the disputed land and that no relationship existed between A and B.

"In a subsequent suit brought by B in the Court of the Subordinate Judge, for a declaration of his title to an eight-anna share in a certain property, a portion of which was covered by the aforesaid kobala, and for joint possession thereof with A, defence was that the suit was barred by res judicata or at least it was so with respect to that portion of the disputed property, which was the subject-matter of the previous litigation."

13. It was held by a Division Bench of the Calcutta High Court consisting of Stephen and Mukherjee JJ. that the suit was not so barred. Stephen J. in his judgment, distinguishing the case of "BHUGWANBUTTI v. A. H. FORBES". 28 Cal 78, proceeded to observe as follows:

"In a previous suit before a Munsiff the defendant had sued for a refund of what he had paid for road and public works cess, and the suit was decreed on the ground that the plaintiff was not liable to pay the cesses at the enhanced rate claimed. It was held that the plaintiff in the second suit could not Join a cause of action on which he had been previously defeated, with new causes of action; and that such an action amounted to an evasion of Section 13. In the present case it was not open to the plaintiff to divide his cause of action as he might have done in the former case. By Section 43 he was compelled to include the whole of the claim which he was entitled to make in respect of the cause of action. The land he sued to recover was all held under one title according to his case. He might it is true, have omitted the land which was the subject-matter of the action before the Munsif, and it may be argued that this was not the land he was entitled to make a claim in respect of. But this argument is not of sufficient force to induce me to extend the principle of the decision to a case where the facts differ so essentially. The principle makes an apparent, though not a real, inroad on the meaning of Section 13. To extend it as suggested in this case would in my opinion be making the inroad a real one."

14. Mukherjee J. in his judgment referred to the observations reproduced above

in "GOKUL MANDAR v. PUDMA NAND", 29 Cal 707 and placed reliance on them in deciding the case on the point of res judicata.

15. In "DRUPAD CHANDRA v. DINDU-MOYI DAS", AIR 1926 Cal 1053, suit was brought for a declaration that certain properties were debutter and for an injunction to restrain the defendants from interfering with the plaintiff's possession therein. A previous suit was instituted before the Munsif for recovery of possession by the plaintiff of a portion of the properties which are covered by the deed of dedication. It was held in that suit that the dedication was invalid and accordingly it was urged in the subsequent suit, & further that in any case the previous decision operates as res judicata so far as the portion of the debutter properties covered by that suit is concerned. It was held that as the pecuniary value of the subsequent suit was beyond the jurisdiction of the Munsif who tried the previous suit the Munsif had no jurisdiction to deal with the relief sought in the subsequent suit with the result that the prior suit did not operate as res judicata with regard to the matters at issue in the subsequent suit. At the same time it was also held that so far as the property dealt within the previous suit was concerned that decision operated as res judicata with regard to that portion of the property only. The same principle was followed in Priyanath Chakravarty Vs. Kalicharan Chakravarty, and it was laid down that

"Where a decision has been given by a competent Court in a previous suit regarding part of the claim in the subsequent suit and Where both the suits are between the same parties and the causes of action relating to part of the claim are the same that much part of the claim should be excluded from the subsequent suit being barred by the principle of res judicata and in determining whether the Court giving decision was competent to try the subsequent claim on the same cause of action, the value of the part of the claim adjudicated upon ought to be deducted from the value of the entire claim on that cause of action in the subsequent suit."

16. In Sekendar Ali Mridha Vs. Sadaruddin Bhuniya, the case law was discussed in detail on the point of res judicata and it was observed by a Division Bench as follows;

"The section (Section 11, C. P. C.) speaks of the trial of a suit as also the trial of an issue and lays down a rule under which the trial of a suit or the trial of an issue has to be regarded as barred; & the section makes it perfectly clear that the competency of the Court which tried the previous suit or issue in the previous suit depends upon its jurisdiction to try the subsequent suit....The question is as to whether the relevant issue having been decided in the previous suit, there is a bar to the trial of that issue in the present suit, or whether the previous suit itself having been decided, the present suit or any part of it is barred by the principle of res judicata."

17. The Court after quoting the passage reproduced above from the judgment of their Lordships in "MISSER RAGHUBARDIAL v. SHIVBUX SINGH", 9 Cal 439,

proceeded to note that the observations of their Lordships in that case were not ignored in the subsequent revision of the CPC interpreting the terms of Section 11, C. P. C. and held that

"So far therefore as the trial of an issue is concerned, even though in the previous suit it had been decided but decided only by a Court which had no jurisdiction to entertain a subsequent suit, the decision, in our opinion, can never be regarded as operating as *res judicata* when the same issue arises in subsequent suit."

18. As regards the second point of the trial of a suit, the law was thus laid down by the judgment in this case:

"If a suit is instituted for recovery of cossession on declaration of title in respect of a small bit of land upon the allegation that the plaintiff has been dispossessed and a decision is arrived at by the Court on question of the plaintiff's title and that decision is against the plaintiff, it sometimes happens that after that decision has been delivered the plaintiff institutes another suit including therein not only the land from which he had been previously dispossessed and in respect of which he had previously instituted the suit and had failed, but a much large quantity of land. He gets the suit instituted in different Court, a Court of higher grade, and attempts to get a different decision from that Court on the question of title. With regard to cases of this description it has been decided that it is not open to the plaintiff to take such a course but that the subject-matter of the previous suit in which an adverse decision had been passed against him should be excluded from the subsequent suit And that the subsequent suit can only go on with regard to a subject-matter which did not form the subject-matter of the previous suit."

19. Analysing the principles underlying the above statement of law, the Court went on to say that

"a party who has lost in one Court cannot be permitted to add causes of action or prayers for reliefs in another suit for the purpose of swelling the valuation of his suit and claim that the decision in the former suit does not operate as *res judicata*. But it appears that his subsequent suit proceeded upon a cause of action which did not exist at the date of the previous suit, or if that cause of action existed it was one which he could not have availed of at that time, having regard to the nature of the suit as it then was, the fact that he had now instituted a suit embracing the entire cause of action with the result that his suit was of a higher value would justify him in claiming that the decision in the earlier suit was not operative as *res judicata*. If it is possible to treat the entire cause of action upon which the latter suit is founded as divisible and if in the earlier suit one of the component parts of the case of action was relied upon, then the previous decision will stand as a bar to the extent of the matter involved in the earlier suit."

20. In the light of the aforesaid decisions of the Privy Council and the Calcutta

High Court if the facts of this case are examined on the point of res judicata it would appear that the former decision cannot operate as res judicata. It is an admitted fact that the pecuniary value of the present suit is beyond the jurisdiction of the Munsif's Court, which decided the previous suit. It may be said that the issue pertaining to the interpretation of the rent note which was the basis of the former suit was decided in the previous suit and the same issue is reagitated in the present suit which is in respect of not the same cause of action but the cause of action which arose to the plaintiff subsequently to the decision of the previous suit. The plaintiff in the present case has sued for arrears of rent for three years subsequent to the period for which rents were claimed in the previous suit. It cannot under the circumstances be said that any portion of the cause of action of the present suit was the subject-matter of the causes of action of the previous suit. The observations of their Lordships of the judicial Committee in "RANG BAHADUR v. LU-CHO KOER", 11 Cal 301 (PC), which have been quoted above have a direct bearing. In case, the previous decision is held to be a bar to the subsequent suit in the present the circumstances of the present case, grave consequences would follow and as a result Courts of small jurisdiction would determine finally the question regarding title to large properties, which cannot be the intention of the law. The cause of action of the present suit cannot be regarded as divisible as it was not open to the plaintiff to leave any portion of the cause of action under the provisions of order 2, Rule 2 of the Civil Procedure Code. This view is supported by the judgment in "SHIBO RAUT v. BABAN RAUT", 35 Cal 353 . Similarly the principles that have been discussed in Sekendar Ali Mridha Vs. Sadaruddin Bhuniya, which have been referred to above also lead to the same conclusion that under the circumstances of this case the cause of action cannot be regarded as a divisible one, nor can it be said on the other hand that the plaintiff has joined several causes of action in this suit. The learned counsel of the respondent has tried to show that as rent becomes due after the expiry of each month under the terms of the rent note a separate cause of action arises in favour of the plaintiff each month and these distinct causes of action are joined together in the present suit. This argument ignores the provision of Order 2, Rule 2, C. P. C.

Even though a separate cause of action may be available to the plaintiff each month she cannot, even if she so desires, file separate suits for each of such causes of action after more than one of such causes of action had arisen unless she is prepared to abandon some of them. It may be that the plaintiff by waiting for three years raised the value of the suit so as to make her suit cognizable by a Court of higher jurisdiction but merely on account of delay in filing her suit she cannot be penalised by treating her cause of action to be divisible when under the provisions of Order 2, Rule 2, C. P. C. it is not open to her so to split his causes of action. No portion of the cause of action of the present suit formed the subject-matter of the previous suit and consequently no question for excluding any portion of the cause of action of the plaintiff's present suit on account of the previous suit. Both the suits were based on the same rent note and the decision

regarding interpretation of the rent note in the previous suit cannot be regarded as final for purposes of the present suit and the decision of the first Court cannot in the meaning of Section 11, C. P. C. be a bar to the decision of the same issue in this suit, because the present suit was not within the competence of the Court which decided the previous suit. This is the conclusion which would be arrived at in view of the decisions of the Calcutta High Court referred to above and the observations of the Privy Council in cases arising under the former Civil Procedure Code. The Madras High Court has however taken a different view.

21. The Madras High Court has interpreted the observations of their Lordships in "GOKUL MANDAR v. PUDMA NAND", 29 Cal 707 (PC), differently than what has been understood by those observations by the Calcutta High Court in the cases that have already been discussed above. Vide "SHIBO RAUT v. BABAN RAUT", 35 Cal 353. In "T. RAMAN v. K. P. MANAKKAL", 27 Ind Cas 989 (Mad), Sadasiva Aiyar J. said that the observations of their Lordships in 29 Cal 707 (PC)", were only in criticism of an objection that the finding of a Revenue Officer in a revenue case was res judicata in the subsequent suit which was not within the revenue Officer's jurisdiction and consequently the learned Judge felt himself at liberty to follow the principle laid down in "PATHUMA v. SALIMAMMA", 8 Mad 83, in which it was held that the principle of res judicata did apply to that part of the claim which was within the revenue officer's jurisdiction and consequently the learned Judge felt himself at liberty to follow the principle laid down in "PATHUMA v. SALIMAMMA", 8 Mad 83, in which it was held that the principle of res judicata did apply to that part of the claim which was within the jurisdiction of the Court, which tried the first suit. He quoted in support of his view the judgment of Sir Arnold White C. J. in "RANGANATHAM CHETTY v. LAKSHMIAMMAL", 21 Ind Cas 15 (Mad), thus:

"Although taking all the causes of action together, the second suit may be said to be outside the jurisdiction of the original Court, still if the specific question be within the jurisdiction of the original Court and was determined by the original Court, it is no answer to say that the whole suit was beyond the jurisdiction."

22. In Pattrachariar Vs. Alamelumangai Ammal, the decision in "PATHUMA v. SALIMAMMA", 8 Mad 83, was followed. It may be pointed out that with due respect to the Hon<sup>ble</sup> Judges of the Madras High Court, who decided the case referred to above it appears that the view taken by that Court is not in keeping with the observations of their Lordships in "GOKUL MANDAR v. PUDMA NAND", 29 Cal 707 (PC) and it is also contrary to the express terms of Section 11, C. P. C. itself which requires that the Court which decided the previous suit or the issue must be a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised. If a Court tried a suit or an issue was not competent to entertain the subsequent suit or the suit in which such issue has been raised, its decision would not have the effect of res judicata in a subsequent suit.

23. The Bombay High Court has also adopted the same view as was taken by the

Calcutta High Court in the cases referred to above in "RAMDAYAL v. JANKIDAS", 24 Bom 456 . In that case Jankidas filed a suit against Ramdayal for Rs. 3152/- being the amount of one instalment due in a bond. The suit was heard and decided by a Subordinate Judge of the Second Class who decreed the amount claimed. The plaintiff then brought another suit against the same defendant in the Court of a Subordinate Judge of the First Class to recover Rs. 6526/- being the amount of two instalments due in the same bond. In the second suit the defendant raised the same contention as in the former suit. It was held by a Division Bench of the High Court of Bombay consisting of Parsons and Ranade JJ., that the decision in the first suit did not operate as res judicata in the second suit as the Court that tried the first suit had no jurisdiction to try the second suit. In another case Vyankat Awachit Patil Vs. Onkar Nathu Chawdhari, a Division Bench consisting of Macleod C. J. and Shah J. observed that

"A decree in a previous suit cannot be pleaded as res judicata in a subsequent suit unless the Judge by whom it was made had jurisdiction to try and decide, not only the particular matter in issue, but also the subsequent suit in which the issue is subsequently raised."

"GOKUL MANDAR v. PUDMA NAND", 29 Cal 707 (PC), was relied upon in this case.

24. In Shamaji Narayan Vs. Govind Rangacharya and Others, a Division Bench consisting of Divatia and Weston JJ. laid down as follows:

"It is true that ordinarily the decision of an issue in a Court of lower pecuniary jurisdiction will not operate as res judicata in a subsequent suit filed in a Court of superior jurisdiction and triable only by such Court. But it is not open to a plaintiff to evade the bar of res judicata by joining several causes of action against the same defendant or defendants in a subsequent suit instituted in a Court of higher pecuniary jurisdiction. Where a decision has been given by a competent Court in a previous suit, regarding part of the claim in the subsequent suit, and between the same parties, then so much of the claim which is common to the two suits, should be excluded from the subsequent suit as barred by the principles of res judicata."

25. The decision in Shamaji Narayan Vs. Govind Rangacharya and Others, referred to above supports the view expressed in Sekendar Ali Mridha Vs. Sadaruddin Bhuniya, Thus, it would be clear that the view taken by the Calcutta High Court is not different from the view of the High Court of Bombay.

26. Mr. Bhargava has cited the case of AIR 1943 338 (Oudh) a Full Bench case, in which there was a difference of opinion among the Judges composing that Bench. Bennett J. wrote the majority judgment with which Thomas C. J., Gulam Hussain and Agarwal JJ. agreed. Madeley J. gave a dissenting judgment. The facts briefly stated in so far as they related to the question of res judicata were that Mr. Hunter, Liquidator of the Bank of Upper India purchased Bhil Wal estate at an auction-sale and was sued by the plaintiffs for a declaration of their rights

in respect of their maintenance allowances and for arrears of such allowances for one year. The suit was decreed and the decision was upheld by the Oudh Chief Court. Subsequently the same plaintiff filed another suit against the same defendant to recover arrears of the maintenance allowance for a period subsequent to the period for which the previous suit had been filed. The question then arose whether the previous decision operated as res judicata in the subsequent suit as regards the objection raised by the defendant in the previous suit. The parties contested the appeal inter alia in the Oudh Chief Court on the basis of the general principles of res judicata and the case was referred to a Full Bench and one of the questions which was referred was as below:

"Whether the general principles of res judicata can be applied to the case."

27. Dealing with this question Bennett J. extensively discussed the decisions of Calcutta, Bombay, Madras and Lahore High Courts. The parties conceded that if Section 11 does not apply the general principles of res judicata cannot apply because they would be excluded by the terms of Section 11. He therefore proceeded to examine the principles of res judicata u/s 11 of the CPC and observed:

"It is clear from Section 11 that the Court which tried the earlier suit must be competent to try the later suit in which the same subject-matter is in issue and the question for consideration is whether the word "suit" (which is not defined in the Civil Procedure Code) can be construed in the section as meaning a part of a suit. Many of the cases in which this construction is adopted suggest that the more literal construction would lead to unreasonable and even absurd results. The difficulty is enhanced by certain observations (of an obiter nature) made by their Lordships of the Judicial Committee in "GO-KUL MANDAR v. PUDMA NAND", 29 Cal 707 (PC)."

28. The learned Judge then proceeded to discuss "GOKUL MANDAR v. PUDMA NAND", 29 Cal 707 (PC) and the various authorities of the Calcutta, Bombay, Madras, Allahabad, Lahore and those of Oudh Chief Court. He then observed:

"Reference is made to some of the cases cited above, and it is said that if it is possible to treat the entire cause of action upon which the later suit is founded as divisible and, if in the earlier suit, one of the component parts of the cause of action was relied on, then the previous suit will stand as a bar to the extent of the matter involved in the earlier suit. It will be seen from this survey of the principal authorities on the point that they mostly favour a liberal construction of the words of Section 11 under consideration. On grounds of common sense, there certainly appears to be no reason why, when the matter has been decided by a Court of competent jurisdiction, the decision should not be regarded as conclusive between the same parties when the question arises again in a different suit, though that suit as a whole could not be tried by the Court which decided the earlier suit. In the present case the decision in the earlier suit was that the plaintiffs were entitled to annual maintenance of a certain amount as a

charge upon the property. The only reason why the later suit was brought in a higher Court was that arrears amounting with interest to over Rs. 2000/-were claimed. There is no good reason in my opinion why the decision as to the right of maintenance arrived at in the earlier suit should not be regarded as conclusive between the parties, the only question to be decided on that view in the later suit being whether the arrears claimed were in fact due. I would therefore answer the question referred by saying that the principle of *res judicata* enunciated in Section 11, CPC can be applied to the present case (at page 346)."

29. The majority decision referred to above has proceeded on a liberal and commonsense construction of the term "suit" in Section 11 of the Code of Civil Procedure, but it is evident that the view adopted by that judgment is opposed to the observations of their Lordships of the Privy Council in "*GOKULMANDAR v. PUDMA-NAND*", 29 Cal 707 (PC), and even if these observations were obiter, yet yet value of the observations of their Lordships of the Privy Council could not be minimised on that account alone. A Court of inferior jurisdiction would if the view expressed by Bennet J. is excepted be capable of deciding rights and title to very large and valuable properties which cannot be regarded to be the intention of the legislature, when the jurisdiction of such Courts is limited to suits of small value only in the present case, the Munsif's Court which decided the previous suit was not competent to entertain the subsequent suit because the subsequent suit was of higher value than the one which could be taken cognizance of by that Court and on this account the decision of the Munsif's Court regarding interpretation of the rent note cannot operate as *res judicata*. Further, it may be noted that the subject-matter of the present suit cannot be regarded as divisible because it is not open to the plaintiff to bring separate suits for the component parts of the subject-matter of this suit. The decision of the lower appellate Court which was passed on the point of *res judicata* does not appear to be correct.

Moreover, the decision in the former suit was on the basis of non-joinder of the parties and in that decision the Court interpreted the rent note only in so far as it was necessary to decide the question of the necessary parties to the suit. The Court did not decide the case on merits and it cannot therefore be said that the decision of that case operates as *res judicata* in this case. In *Chimanlal Ganpatram Ghanchi Vs. Natvarlal Maganlal*, it was held that where the Court refused to consider the merits of the case at all and dismissed the suit upon the threshold for misjoinder of causes of action and for misjoinder of parties, the decision did not operate as *res judicata*.

30. It has been seen above that the decision of the Jaipur High Court cannot be regarded as barring the issue about the interpretation of the rent note Ex. 21 in the present suit. The rent note therefore shall have to be examined and interpreted correctly to find out whether the inclusion of the name of Gulab Bai in it would have the effect of making Gulab Bai and Manphul Bai both co-lessees. Ex. 21 purports to be a rent-note which is executed by Ladhuram son of Daulat Ram Ahir of Jaipur, who is defendant No. 1 in the present case, in favour of both

Gulab Bai who is described as the widow of Phulchand Sarogi and Manphul Bai, widow of Lalchand, who is described as the adopted son of Phulchand. The executant Ladhuram after giving the description of the shop which, he says, was already in his possession agreed to pay Rs. 50/- per month as rent. Further on in this rent note Ladhuram has described the capacities of both Manphul Bai and Gulab Bai by saying for the former as the owner of the property and the latter as an elderly lady of her family. He has also entered in Ex. 21 a term that he would regularly make payments of the rent every month and would obtain a receipt thereof from the owner of the shop. The learned counsel of Manphul Bai has argued that as Manphul Bai is described as the owner and as Ladhuram has agreed to pay the rent to the owner and to obtain a receipt from her the intention of the rent note should be regarded to give the status of a lessee (lessor ?) to Manphul Bai. The name of Gulab Bai has been entered in this rent note simply because she was an elderly lady in the house. On the other hand, the counsel for Gulab Bai has contended that after addressing the rent note Ex. 21 to both the ladies Ladhuram has written that I have taken your shop on rent and from this term "Your shop" it should be inferred that Ladhuram took both the ladies to be the owners of the shop and as such they should both be regarded as joint lessees (lessors ?).

It may be pointed out that there is clear provision in the rent not as regards the capacities of both Manphul Bai and Gulab Bai. The former has been described as the owner as also she has been described as the widow of Lalchand. On the other hand Gulab Bai has been described as the widow of Phul-chand being an elderly lady in the family. It is therefore not necessary to infer from the term "Your shop" appearing in the rent note the intention of treating both the ladies as joint lessees (lessors ?), because when their respective positions have been clearly described their capacities should not be misunderstood by such vague terms. The execution of Ex. 21 is admitted by the defendant Ladhuram but he has raised an objection that it was so executed on account of fraud but he has failed to prove the existence of fraud. Earlier rent notes of the same shop have been brought on the record of this case. Ex. 18 is the first rent note which was executed by Ladhuram and Chotey Lal in Sambat year 1983. The second rent note is Ex. 23 which was executed by Ladhuram only, in Sambat 1986. Thereafter, Ex. 24 was executed by Ladhuram in favour of Lalchand in Sambat year 1989. After the death of Lalchand a notice dated the 31st May 1938 was served on Ladhuram on behalf of Manphul Bai through her agent Gopichand for arrears of rent and ejectment, which is Ex. 16 on the record of this case.

After the notice (Ex. 16) was served Ladhuram, it appears, executed the rent note Ex. 21 which is the basis of this suit. Ladhuram was let into possession of this shop by the first rent note Ex. 23 which was in favour of Lalchand, the husband of Manphul Bai. Ladhuram, who is a tenant of Manphul Bai is under these circumstances estopped from challenging the title of his lessee. Section 116 of the Evidence Act provides that no tenant of immovable property or person claiming through such tenant shall during the continuance of the tenancy be

permitted to deny that the landlord of such tenant had at the beginning of the tenancy a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given. In AIR 1937 505 (Oudh) it has been laid down that no tenant can deny the title of his landlord, unless he can prove fraud; coercion, misrepresentation or mistake. In the present case though fraud was pleaded Ladhuram failed to prove it, and in this appeal the plea of fraud has not been pressed. Though Ex. 21 is not a lease deed and it is only a rent note, yet the relationship between the plaintiff and Ladhuram has been clearly proved to be that of a landlord and a tenant. Ladhuram has also admitted his status to be that of a tenant. In "RAMZANI v. BANSIDHAR", AIR 1935 Oudh 385, it has been held that

"Section 116 relates also to tenancies other than those in which the tenant was first let into possession and the principle of the section would be the same whether a man was let into possession or whether he has continued in such possession by specific agreement between himself and his landlord."

31. This decision was based on the authority of "MT. BILAS KUNWAR v. DESRAJ RAN-JIT SINGH", AIR 1915 P C 96. Obviously when a notice of ejectment was served on behalf of Manphul Bai on Ladhuram in the year 1938 the parties agreed to continue the tenancy and Ex. 21 was executed as a result of such a contract. It cannot, therefore, be pleaded by Ladhuram that since he was first let into possession by Lalchand and not by Manphul Bai he cannot be estopped from questioning the title of Manphul Bai. No difference would be made in first letting him into possession and in allowing him to continue in possession after notice to quit and after determination of the previous tenancy, when by virtue of a subsequent contract he was allowed to occupy the property by Manphul Bai, Similarly in "RAM DITTA MAL. v. CHARAT SINGH", AIR 1938 Pesh 49, it has been observed that

"Once a tenant admits the title of his landlord and acknowledges that he is the person to whom he shall pay the rent, Section 116 will apply and it does not make any difference whatsoever whether the landlord has put him into possession or whether the tenant has merely attorned to him. Of course it is open to every tenant to prove that he attorned under coercion or as a result of fraud, misrepresentation or mistake; but subject to this modification every tenant is estopped from denying the title of his landlord when with open eyes he has attorned to him and has admitted that he was entitled to receive the rent."

32. It is argued on behalf of Ladhuram that Lalchand was a minor at the time the property was leased to him on behalf of Lalchand and consequently no lease was created. "GOVINDA KURUP v. BEEKKU", AIR 1931 Mad 147 and Indian Cotton Co. Ltd. Vs. Raghunath Hari Deshpande, have been cited in support of this argument. It may be pointed out that even though Lalchand may have been a minor at the time Ladhuram was first let into possession yet he attorned to

Manphul Bai after the death of Lalchand knowing full well that Manphul Bai was the widow of Lalchand and he executed a rent note in which he acknowledged Manphul Bai to be the owner of the property. Under these circumstances Ladhuram cannot be allowed to resile from his averment in the rent note. In AIR 1937 251 (Privy Council) it has been laid down that:

"Section 116 of the Evidence Act does not deal or profess to deal with all kinds of estoppel or occasions of estoppel which may arise between landlord and tenant. It deals with one cardinal and simple estoppel and states it first as applicable between landlord & tenant & then as between licensor & licensee, a distinction which corresponds to that between the parties to an action for rent and the parties to action for use and occupation. The section postulates that there is a tenancy still continuing that it had its beginning at a given date from a given landlord. It provides that neither a tenant nor any one claiming through a tenant shall be heard to deny that that particular landlord had at that date a title to the property. The section applies against the lessee, any assignee of the term, any sub-lessee or licensee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, e. g., by attornment, acceptance of rent etc. In this sense it is true enough that the principle only applies to the title of the landlord who "let the tenant in" as distinct from any other person claiming to be reversioner. Nor does the principle apply to prevent a tenant from pleading that the title of the original lessor has since come to an end."

33. Ladhuram, in the present case is therefore estopped from disputing the title of Manphul Bai who was admitted by him in the rent note to be the owner of the property. It is common case of both the parties that the shop belonged to Chhogalal who adopted Phulchand as his son. After the death of Phulchand, it is said Gulab Bai, the widow of Phulchand, adopted Lalchand, whose adoption is disputed in the present case both by Ladhuram and by Gulab Bai. Lalchand left behind him his widow Manphul Bai, who is the plaintiff in this case. Lalchand was the person in whose name Ladhuram executed the first rent note when he was let into possession during the minority of Lalchand. The relationship of landlord and tenant continued even after Lalchand attained majority and after Lalchand's death when Man-phul Bai had served a notice to quit against Ladhuram he executed the rent note Ex. 21 & was allowed to continue in possession with the consent of Manphul Bai. In such circumstances Section 116 of the Evidence Act would apply and Ladhuram would be estopped from questioning the title of Manphul Bai. Even Though an issue has been framed regarding the adoption of Lalchand, it is necessary to decide that issue in the present suit. Gulab Bai is a pro-forma defendant and no relief is claimed against her. Ladhuram cannot challenge the title of Manphul Bai and as such the relief sought by the plaintiff can be granted to her against Ladhuram without going into the question of

Lalchand's adoption. The learned lower Court has also held that it was not necessary for the purposes of this case to determine the validity of Lalchand's adoption. But at the request of both the parties it went on to decide this issue as well. In this Court the learned counsel of the appellant has admitted that it is not necessary for the purposes of this case to go into the question of Lalchand's adoption. No opinion is therefore expressed as regards the validity of Lalchand's adoption in this case. Gulab Bai has strenuously contested the issue of adoption of Lalchand but it would be improper to decide that issue in the present case.

34. Gulab Bai has admitted that she had received the arrears of rent for the period for which Manphul Bai has brought this suit but she could not have given the discharge to Ladhuram regarding rent of the shop, which belonged to Manphul Bai as per rent note Ex. 21. Ladhuram could not elect between the two ladies and pay rent to any one of them, when it was expressly stipulated in the rent note that he would pay rent to the owner of the property only, who was described as Manphul Bai

35. In conclusion, it may be stated that the decision of the Jaipur High Court cannot be regarded as having the force of *res judicata*. As per terms of the rent note Ladhuram is liable to pay rent of the disputed shop to Manphul Bai and he is estopped from denying her title to the property. The question of the validity of adoption of Lalchand is not necessary to be decided in this case.

36. The appeal of Manphul Bai is allowed with costs and a decree is passed against Ladhuram for arrears of rent amounting to Rs. 1800 and for ejectment.

Sharma, J.

37. I agree.