

(2006) 09 OHC CK 0014
In the Orissa High Court

Panchanan Panda and Others

APPELLANT

Vs

Premlal Panda and Others

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104, 11, 96
Specific Relief Act, 1963 — Section 34

Citation : (2007) 103 CLT 496 : (2006) 2 OLR 797

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Mahanty, J.—In the present application, the petitioners seek to challenge the order dated 27.2.1998 (Annexure- 3) passed by the Joint Commissioner of Consolidation (O.P. No. 9) in Revision Case No. 51 of 1994 allowing the revision and reversing the order dated 29.4.1992 (Annexure- 1) passed by the Consolidation Officer as well as the appellate order dated 18.9.1993 (Annexure- 2) passed by the Deputy Director of Consolidation.

2. The petitioners seek to challenge the order (Annexure-3) passed in the Revision by the Joint Commissioner of Consolidation, inter alia, on the ground that the Revisional Authority had failed to take proper account of the principle of res judicata and in particular, the provisions of Section 11 of CPC and erroneously came to the conclusion that the claim of adoption by Premlal-opposite party No. 1, was not barred by the principle of res judicata.

3. At the outset, it is necessary to take note of the genaology of the parties which is as follows:

Jagannath	(Dead)	
Ugrasen Panchanan Sahadev Chandra	(Dead)	Krushna
No. 1)	(Petitioner	(O.P. No. 4)
		Bhabagrahi

Mahadev Premlal Ramlal (O.P. No. 3) | (O.P. No. 2) (O.P. (Dead) | No. 1) | | _____ | | Subash Duryadhan " Surya Kumar 4. The dispute in the present case relates to rival claims pertaining to succession to the property of Krushna Chandra (the eldest son of Jagannath) who died issueless. Opposite party No. 3 (Bhabagrahi), son of petitioner No. 1-Panchanan, filed a suit being Title Suit No. 24/42 of 1978/81 seeking a declaration that he was the adopted son of late Krushna Chandra and made a further prayer seeking a declaration that Premlal (opposite party No. 1) was not the adopted son of Krushna Chandra and that the registered deed of adoption dated 14.12.1977 said to have been executed in his favour, was invalid and illegal.

5. The learned Munsif, Sambalpur on consideration of the pleading of the parties framed several issues, relevant issues are as follows:

1. Is the suit maintainable ?
2. Did the Krushna Chandra (defendant No. 1) adopt Premlal (Defendant No. 2 and present opposite party No. 1) validly ?
3. Is the deed of adoption Dtd. 14.12.77 in favour of Premlal (Opposite Party No. 1) valid and genuine and was acted upon ?
4. Was the plaintiff Bhabagrahi (opposite party No. 3) ever taken in adoption by the defendant No. 1-Krushna Chandra and his wife ? If so, is it valid and was acted upon ?
5. Is there any cause of action ?
6. To what relief is the plaintiff entitled ?
7. Is the suit barred by law of limitation ?

6. The learned Munsif came to the following findings in its judgment dated 23.12.1981;

(a) ISSUE NOS. 2 AND 3

That the deceased Defendant No. 1-Krushna Chandra never adopted Defendant No. 2 (present O.P. No. 1-Premlal) and the deed of adoption dated 14.12.1977 is not a valid and genuine document. Both the issues were decided accordingly.

(b) ISSUE NO. 4

That the plaintiff (present O P No. 3- Bhabagrahi) was not taken in adoption by the deceased Defendant No. 1 (Krushna Chandra and his wife) and as such he is not the adopted son of late Krushna Chandra.

(c) ISSUE NOS. 1. 5. 6&7:

Issue No. 7 was not pressed and Issue No. 1, 5 and 6 were taken up together and the learned Munsif reached at a conclusion that the plaintiff (Bhabagrahi-O.P. No. 3) failed to prove that he is the adopted son of Krushna Chandra (deceased

Defendant No. 1). He has conclusively proved that the said Krushna Chandra never adopted Defendant No. 2 (Premlal-O.P. 1) but further came to hold that since the plaintiff having failed to prove himself to be the adopted son of Krushna Chandra, has no locus standi and legal right to seek a declaration that Premlal (Defendant No. 2) is not the adopted son of Krushna Chandra, under the provisions of Section 34 of the Specific Relief Act. Therefore, he came to a finding that the plaintiff had no cause of action to file the suit and that the suit being not maintainable the plaintiff is not entitled to any relief claimed in the suit and ordered that the plaintiff's suit be dismissed on contest against Defendant Nos. 2 and 3 and ex-parte against Defendant No. 4.

7. It is the admitted case of both the contesting parties that neither the plaintiff nor the defendant preferred any appeal against the aforesaid decree.

Bhabagrahi Panda (O.P. No. 3) had also filed Objection Case No. 23/91 before the Consolidation Officer, claiming to be the adopted son of late Krushna Chandra, and on its rejection, carried Appeal No. 73/92 to the Deputy Director Consolidation who affirmed the order of the Consolidation officer. Thereafter, no challenge to the same having been made, merits no further consideration in the present proceeding.

8. Shorn of unnecessary details, the events leading to the present challenge are noted hereinafter:

(a) In the year 1990, when the consolidation operation commenced in the locality, Panchanan (petitioner No. 1) filed Objection Case No. 26 of 1991 and Objection Case No. 68 of 1991 before the Consolidation Officer with a prayer that since Krushna Chandra, his eldest brother had died issueless, his lands may be recorded jointly in the names of his surviving brothers, namely, Ugrasen, Panchanan (petitioner No. 1) and Sahadev.

On their other hand, O.P. No. 1 Premlal filed Objection Case Nos. 70 of 1991 and 17 of 1991 and prayed for recording the lands which stood in the name of Krushna Chandra in his name alone claiming to be the adopted son of late Krushna Chandra and on the basis of the deed of adoption dated 14.12.1977.

(b) The Consolidation Officer (O.P. No. 7) clubbed all the objection cases relating to the claims to the properties of late Krushna Chandra, heard them analogously and disposed them by a common judgment dated 29.4.1992 (Annexure- 1) rejecting the Objection Case Nos. 70 and 17 of 1991 instituted by opposite party No. -1 Premlal but allowed the Objection Case Nos. 26 and 68 of 1991 filed by petitioner No. 1 directing allotment of 1/3rd share property of late Krushna Chandra in favour of each of surviving brothers, i.e., Ugrasen, Panchanan and Sahadev.

(c) Opposite party No. 1-Premlal preferred an appeal against the aforesaid order and the Deputy Director Consolidation-O.P. No. 8 on hearing the appeal dismissed the same affirming the order passed by the Consolidation Officer vide

his judgment dated 18.9.1993 (Annexure-2).

(d) The opposite party No. 1-Premal preferred Revision Case No. 51 of 1994 against the order of the Deputy Director Consolidation and the said revision was allowed by the order dated 27.2.1998 (Annexure-3) which is the subject matter of challenge in this writ application).

9. Before proceeding any further it would be worthwhile to take note of various findings reached by various statutory authorities during the proceedings under the Consolidation Act, 1974.

(a) The Consolidation Officer vide his order dated 29.4.1992 after taking note of the facts as noted hereinabove came to hold as follows:

As seen from the judgment of the learned Munsif, Sambalpur in the said Title Suit, (T.S. No. 24/82 of 78/81), it is held that Defendant No. 2 (Premal) is not the adopted son of late Krushna Chandra Panda. The deceased Defendant No. 1 (Krushna Chandra Panda) never adopted Defendant No. 2 and the deed of adoption dated 14.12.1977 is not a valid and genuine document.

The Consolidation Officer framed Issue No. 3 as follows:

Whether the claim of both Bhabagrahi Panda and Premal Panda in this case is barred by res judicata on the issue of adoption in view of the judgment and decree passed by the learned Munsif, Sambalpur in T.S. No. 24/82 of 1978/81.

Placing reliance on the aforesaid findings of the learned Munsif, Sambalpur, the Consolidation Officer rejected the claim of O.P. No. 1 to be the adopted son of the late Krushna Chandra.

(b) The learned Consolidation Officer has taken note of the aforesaid finding of the civil Court on the issue, discussed the rival contentions as well as judgments relied upon by both the parties. Some of his findings on the plea of res judicata at page- 14 are as follows:

Over and above, I hold that the claim of Premal Panda and Bhabagrahi Panda on adoption is barred by the principles of res judicata in this Court. Since it is decided in a former suit, they have no right to raise the same matter in the present suit and as such the door of the Consolidation Court is closed for them.

After rejecting the pleas of adoption raised by Bhabagrahi Panda (O.P. No. 3) and Premal (O.P. No. 1), the Consolidation Officer concluded his judgment declaring that the claim in favour of the present petitioner, inasmuch as, holding that the present petitioner and the two other surviving brothers of Krushna Chandra, i.e., Ugrasen and Sahadev, being legal heirs of the deceased are entitled to one third (1/3rd) share each of the property of late deceased Krushna Chandra.

10. Premal (O.P. No. 1) and Bhabagrahi (O.P. No. 3) being aggrieved by the order passed by the Consolidation Officer, preferred an appeal before the Deputy Director, Consolidation and the same was registered as Appeal Case No. 73/92,

77/92, 78/92, 79/92 and 80/92 all these cases were tagged together and disposed of by a common order dated 18.9.1993 dismissing the appeals and affirming the order passed by the Consolidation Officer and agreeing with him that the principles of res judicata barred the claims of adoption raised by both Bhabagrahi (O.P. No. 3) and Premlal (O.P. No. 1).

11. Thereafter, Premlal (O.P. No. 1) being aggrieved by the dismissal of his appeals filed a revision before the Court of the Joint Commissioner of Settlement and Consolidation, Sambalpur and the said revision was registered as R.C. Case No. 51 of 1994 and disposed of by judgment dated 27.2.1998, reversing the concurrent judgments, passed by the Consolidation Officer and the Deputy Director, Consolidation referred hereinbefore, inter alia, for the following reasons noted in his orders.

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There is absolutely no provision of law under Order 41 or under Order 43 of the CPC for the present petitioner (Premlal) to file an appeal disputing the concerned decree of the suit. Accordingly, the petitioner was debarred to take shelter of the higher Forum x x x x x.

The Revisional Authority purportedly relied upon the judgment of the Orissa High Court reported in 1998 CLT 508 which in turn had relied upon Smt. Ganga Bai Vs. Vijay Kumar and Others, and came to hold that since the suit against the petitioner (Premlal) was dismissed wherein he was the Defendant and so, whatever may be the finding against the Defendant (the present petitioner), he cannot prefer an appeal against the said suit. So, he cannot be able to dispute the legality in the findings in the appropriate Forum, and he cannot be hit the principles of res judicata". The learned Revisional Authority further held as follows:

xx xx xx xx xx I hold that in one hand there does not exist any law allowing the petitioner to prefer appeal against an order or decree which was passed in his favour, and at the same time it will be injustice to bind the said petitioner on the basis of some finding passed against him in subsequent proceeding by applying principles of res judicata. If such a proposition as submitted by the learned advocate for the O.P. will be accepted, then the finality of the litigation may be there but for injustice and unfair cause." xx xx xx xx xx "I hold that the principle of resjudicata will not be applicable to the present Consolidation Case, and it cannot be applied against the present petitioner, and accordingly a submission of the learned advocate for the O.Ps. is not acceptable.

By recording the aforesaid findings, the Revisional Authority allowed the revision and declared Premlal (O.P. No. 1) to be the adopted son of late Krushna Chandra and, therefore, directed recording of such land in favour of Premlal (O.P. No. 1).

12. In the present case, the question that arises for consideration is whether the findings recorded by the learned Munsif, Sambalpur in T.S. No. 24/82 of

1978/81, in its judgment dated 23.12.1981 declaring Premlal (O.P. No. 1) not to be the adopted son of late Krushna Chandra and further declaring the registered deed of adoption executed in favour of Premlal dated 14.12.1997 as "invalid and illegal, would operate as resjudicata in a subsequent proceeding under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Lands Act, 1972 or not ?

13. From the findings recorded by the Revisional Authority as noted hereinabove, it is to be ascertained as to whether the Revisional Authority had properly understood the provision of law under Order 43.

Order 43 of the Code of Civil Procedure, 1908 begins with the words "appeal from orders" and declares that an appeal shall lie from the following orders under the provisions of Section 104 of Code of Civil Procedure, "Lays down the statutory basis for appeals against orders". It is not understood as to how Order 43 could have any relevancy to the present case. T.S. No. 24/82 of 1978/81 was, no doubt, ultimately dismissed by the learned Munsif, Sambalpur but any challenge to the decree of the dismissal, cannot be contemplated neither u/s 104 of C.P.C. nor Order 43 of C.P.C. Even in course of hearing this matter, learned Counsel appearing for opposite party No. 1 fairly conceded that reference in the revisional order to Order 43 is probably by mistake.

14. Further, Section 96 read with Order 41 contemplates appeal against the original decrees which is noted herein below:

96. Appeal from original decree

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of small causes, when the amount or value of the subject matter of the original suit does not exceed² (ten thousand rupees).

ORDER XLI

APPEALS FROM ORIGINAL DECREES

1. From of appeal-What to accompany memorandum

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the (judgment):

Provided that where two or more suits have been tried together and a common judgment has been delivered therefore and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.

(2) Contents of memorandum: The memorandum shall set forth concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.

15. The principles of res judicata draws its roots from Section 11 of the Code of Civil Procedure, 1908 which is quoted below:

11. Res judicata

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 the 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.

Explanation I: The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II: For the purposes of this Section the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V: Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI: Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to

claim under the persons so litigating.

Explanation VII: The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue of former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII: An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

16. The mandate of Section 11 lays down the following criteria/issue must have directly or substantially arisen for consideration in order to attract the applicability of Section 11 and for the principles of res judicata to become applicable the following essential requirements must be satisfied:

(i) Issue directly or substantially raised in the present suit must have directly or substantially raised in an earlier suit, and held in favour of some parties or between parties under whom they or any of them claimed.

(ii) Such issue must have been determined by a Court competent to try such issues.

(iii) The Court in the earlier suit heard and finally decided such issue.

Explanations 1, 2 and 3 are extremely relevant for the present case and have been extensively quoted hereinabove.

17. Sri S. N. Mohapatra, learned Counsel for the petitioner in the present writ application placed reliance upon the judgment of the Apex Court in the case of Pawan Kumar Gupta Vs. Rochiram Nagdeo, . Relevant portions of the said judgment is quoted below:

Though the word "dismissed" has been employed in the last paragraph of the judgment a reading of it, as a whole, would show that the plaintiff had won the suit. The Court found against the plea of the defendant that plaintiff was not the rightful owner of the building. Dismissal of the suit was not on account of any defect in the plaintiff's claim nor in the frame of the suit nor even on any technical reason, but solely because the amount claimed by the plaintiff from the defendant has been deposited by the defendant in the Court during pendency of the suit. As the plaintiff was permitted to withdraw that amount his grievance in the suit would necessarily have been redressed fully.

The rule of res judicata incorporated in Section 11 of the CPC (CPC) prohibits the Court from trying an issue which "has been directly and substantially in issue in a former suit between the same parties," and has been heard and finally decided by that Court. It is the decision on an issue, and not a mere finding on any

incidental question to reach such decision, which operates as *res judicata*. It is not correct to say that the party has no right of appeal against such a decision on an issue though the suit was ultimately recorded as dismissed. The decree was not in fact against the plaintiff in that first suit, but was in his favour as shown above. There was no hurdle in law for the defendant to file an appeal against the judgment and decree in that first suit as he still disputed those decisions on such contested issues.

Before coming to the conclusion at para-15 and 16, Justice K.P. Thomas took note of the earliest decision on the principles of *res judicata* decided by the Privy Council i.e., in the case of *Midanpur Namindari Company v. Naresh Narayan Roy* AIR 1992 PC 241 which was relied upon by the Nagpur High Court; in the case of *Waris Khan v. Ahmdulla Khan* AIR 1952 Nag. 2386 in the case of *Firm Kanhaiyalal Mohanlal Somani vs. Param Sukh* AIR 1956 Nag. 273 and while taking note of the said decisions also took note of the judgment of Madras High Court in *Veeraswamy Mudali Vs. Palaniappan and Others*, and in Calcutta High Court in *Murad Biswas v. Basti Mandal*, 1929 Cal. 448 which distinguished the said principles in cases where the first/earlier suit was dismissed due to want of notice to quit and cases where findings on disputed issues were decided and further held that the second group of cases, where finding on disputed questions were determined was held sufficient to operate as *res judicata* in suits between the same parties. The Lordships of Hon'ble Apex Court sought to assimilate the propositions that flow from the aforesaid two sets of cases, i.e., the views of the Nagpur High Court in one hand and the judgment of the Madras and Calcutta High Courts on the other hand and come to conclude para- 19 as follows:

Thus the second legal position is this: If dismissal of the prior suit was on a ground affecting maintainability of the suit any finding in the judgment adverse to the defendant would not operate as *res judicata* in a subsequent suit. But if dismissal of the suit was on account of extinguishment of the cause of action or any other similar cause a decision made in the suit on a vital issue involved therein would operate as *res judicata* in a subsequent suit between same parties. It is for the defendant in such a suit to choose whether the judgment should be appealed against or not. If he does not choose to file the appeal he cannot thereby avert the bar of *res judicata* in the subsequent suit.

18. Learned Counsel for the petitioners further relied upon the judgment of the Apex Court in the case of *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, wherein it has been held that the principles of *res judicata* is based on need of giving a finality to a judicial decision. In other words, it has been held that once a *lis* has been adjudicated, such *lis* is no more available for being adjudicated once again. The principles of *res judicata* applies as between the past litigation and future litigation. When the matter whether a question of fact or question of law has been decided between two parties in a suit or a proceeding such decision is final either because no appeal has been taken to a higher Court or because the appeal was dismissed or no appeal lies. Neither

party will be allowed in a future suit or a proceeding between the same parties to canvass the same matter once again. The principles of res judicata are embodied in relation to the suits u/s 11. of the CPC and even where Section H does not apply, the principles of res judicata has been applied by Courts "for the purpose of achieving finality in litigation". The result of this is that the original Court as well as any higher Court must in any future litigation proceed on the basis that the previous decision was correct.

The petitioner further relied upon the decision in the case of Laxmi Gouda and Ors. v. Dandasi Goura (dead) and after him Smt. Baidehi Bhuyan and Ors. 1990 (II) OLR 340 where the judgment of the Apex Court in Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, was relied upon and reiterated the principles of res judicata have to be applied for the "purpose of achieving finality in the litigation".

Learned counsel for the petitioner also relied upon a decision in the case of Bhubindra Narayan Bhattachariya v. Mt. Tarupriya Debya and Ors. AIR 1950 GAU 119 where in a Division Bench of the Assam High Court came to hold that notwithstanding that a suit has been dismissed against the defendant, the defendant has a right of appeal, if he is aggrieved by the decree. The question whether he is aggrieved by the decree is a question of fact to be determined in each case according to its peculiar circumstances. In order to find out whether a defendant is aggrieved by a decree dismissing the suit against him it is not merely the form but the "substance of the decree and the judgment" that should be looked into. Where a point adversely decided to such a defendant is directly and substantially in issue and where it will operate res judicata in subsequent proceeding, the defendant should have the right of appeal against decree though the particular finding is not embodied or incorporated in the decree.

19. Mr. Milan Kanungo, learned Counsel for opposite party No. 1 placed reliance on a judgment of the Apex Court in the case of Smt. Ganga Bai Vs. Vijay Kumar and Others, which has been referred to by the revisional authority in the impugned revisional order vide Annexure-3. In the aforesaid judgment the Apex Court has come to hold that no appeal lies against a mere finding for the simple reason that the Code does not provide for such an appeal. An appeal may lie against a finding on the ground that the justice provided that it would operate as res judicata is correct. In that case their Lordships are of the view that in the earlier suit, i.e., "mortgage suit" the matter relating to "partition" was not directly or substantially in issue and that the finding given by the trial Court while disposing of the "mortgage suit" on the issue of "partition" was incidental and therefore, unnecessary and could not operate as res judicata in a subsequent "suit for partition".

It is clear that this judgment would have no application to "the present case" at hand and has clearly been misapplied by the revisional authority. In the present case the question of adoption of opposite party No. 1 as well as deed of adoption on the basis of which he claims his status was directly and substantially in issue

in the earlier suit, i.e., Title Suit No. 24/42 of 1978-81, decided by a Court of competent jurisdiction, i.e., by the learned Munsif, Sambalpur, and therefore the defendant (aggrieved party) could have appealed against the decree and judgment, but not having done so, such a finding would operate as *res judicata* in so far as once again raising of a claim of adoption is concerned before the consolidation authority.

Mr. Kanungo, learned Counsel for opposite party No. 1 further placed reliance upon a decision of this Court in the case of *Karunakar Panda v. Durgabati Bewa and Ors.* ILR 1980 ORI 363 wherein a suit had been filed challenging the sale of property by a widow on the ground that such sale not been supported by legal necessity. A decree has been passed in favour of the defendant resulting dismissal of the suit, therefore, the facts case in the above referred judgment are wholly different from the facts of the present case and therefore the said judgment would not have no applicability whatsoever and cannot form basis for supporting the revisional order.

Mr. Kanungo learned Counsel for opposite party No. 1 further relied upon a judgment of this Court in the case of *Ghanashyam Sahu and Ors. v. Mahant Sri Raghubar Ramanuj Das and Ors.* 1971(1) CWR 993. In this case the plaintiffs suit had been dismissed by the trial Court on the ground that the civil Court has no jurisdiction to entertain the litigation and hence this Court held that any finding arrived at in a suit by a Court competent to do so, on account of lack of jurisdiction, cannot operate as *res judicata*. Neither the facts of the present case nor the issue that arises therefrom are in any manner similar to the facts and issues in the present case. It is not the case of opposite party No. 1 that the Munsif, Sambalpur did not have the jurisdiction to entertain the suit, i.e., T.S. No. 24/42 of 1978-81. Therefore, the aforesaid case has no applicability to the facts of the present case.

20. In view of the discussions made hereinabove, I am of the view that the issue of adoption raised by Premlal (O.P. No. 1) in the consolidation proceeding which was initiated under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972, i.e., whether Premlal was ever taken in adoption by Krushna Chandra (deceased) and as to whether the deed of adoption dated 14.12.1977 was valid, were issues taken up for consideration by the Civil Court as issue Nos. 2 and 3 in T.S. No. 24/42 of 1978/81 and by the judgment dated 23.12.1981 learned Munsif, Sambalpur had conclusively answered the issues in negative and held that Premlal-O.P. No. 1 was not the adopted son of late Krushna Chandra and further held that the deed of adoption dated 14.12.1977 was invalid.

Such an issue having directly and substantially been raised as an issue in the former suit between the self-same parties, therefore, in terms of Section 11 of the Code of Civil Procedure, such issue cannot once again be subsequently raised in the Consolidation Proceeding, and is barred by the principle of *res judicata*.

It is further clarified that the Munsif, Sambalpur was a competent Court to try and determine such an issue, i.e., adoption and such determination by him (not having been challenged) is final and binding on the parties, irrespective of any provisions as to a right of appeal from the decision (Explanation-II to Section 11 of the C.P.C.).

21. On a conjoint reading of Section 96 with Order 41, there appears to be absolutely no legal bar for a defendant to file an appeal even after the plaintiff's suit is dismissed. The possibility exists that a defendant may be aggrieved by a finding on an issue decided in a suit, which has been dismissed. If a defendant disputes any decision rendered in the suit on any contested issue, neither Section 96 nor Order 41, debars such a defendant from challenging a decree of dismissal of the suit and therefore, the finding of the Revisional Authority, to the effect that Premalal (O.P. No. 1) was debarred to take shelter in the higher Forum, challenging the finding of the Civil Court, itself is a finding bereft of any legal basis.

22. It is fairly clear from the language used in Section 11 of the Code of Civil Procedure, that the principles of res judicata would apply to a proceeding under the Consolidation Act and Section 11 of the CPC prohibits the Consolidation authorities from determining any issue which has been directly and substantially decided in an earlier suit between the same parties (T.S. No. 24/82 of 1978/81). This suit has been heard and finally decided by the learned Munsif, who has clearly held and declared that Premalal (O.P. No. 1) was not the adopted son of Late Krushna Chandra and that the registered deed of adoption dated 14.12.1977 was illegal and therefore, invalid. This finding on the issue Nos. 2 and 3 framed in the suit cannot be held to be a finding on any incidental question and, therefore, such a finding would operate as res judicata between the contesting parties.

The Revisional Authority was not correct in its opinion that Premalal (O.P. No. 1) had no right of appeal against such a decision on an issue since the suit was ultimately recorded as dismissed. The decree passed in the suit was not in fact wholly against the plaintiff, inasmuch as, the plaintiff while having sought a declaration in his favour to the effect that he was the adopted son, but also at the same time, had also prayed for a declaration that Premalal (O.P. No. 1) was not the adopted son of Krushna Chandra and for declaring the registered deed of adoption dated 14.12.1977 in favour of Premalal (O.P. No. 1) was invalid. No doubt, it is true that the plaintiff's prayer seeking declaration of himself to be the adopted son of late Krushna Chandra failed, but, on the second prayer, that is to the effect that Premalal (O.P. No. 1) was not the adopted son and that the deed of adoption in his favour was invalid and illegal, was found in favour of the plaintiff and against Premalal (O.P. No. 1).

23. In view of the conclusions noted hereinabove, I am of the view that the Revisional order dated 27.2.1998 (Annexure-3) passed in Revision Case No. 51 of 1994 by the Joint Commissioner of Settlement and Consolidation ought to be

quashed and the writ application is allowed by issuing a writ a certiorari, confirming the order passed by the Consolidation Officer dated 29.4.92 (Annexure- 1).

24. Before parting, I would like to place on record, the Court's appreciation of the detailed manner of presentation and the indepth analysis made by the Consolidation Officer Sri K.C. Meher (O.A.S.) evident from his order dated 29.4.1992 (Annexure- 1) to the writ petition. The officer's sincere effort deserves to be appropriately appreciated and to be accorded due recognition.

The writ application is, accordingly, allowed but in the circumstances without cost.