

(1986) 08 MAD CK 0040
In the Madras High Court

Sri Sangameswaraswamy Temple

APPELLANT

Vs

A.M. Kunhamo (died) and Others

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Citation : (1987) 100 LW 41 : (1987) 1 MLJ 47

Hon'ble Judges : Ratnam, J

Bench : Division Bench

Judgement

Ratnam, J.—The defendant in O.S. No. 1548 of 1972, District Munsif's Court, Coimbatore, who succeeded before the trial Court and lost before the lower appellate Court, is the appellant in this second appeal. That suit was laid by the deceased first respondent, (whose legal representatives are respondents 2 to 15) for a declaration of his title to the superstructure in T.S. No. 2/1309 in Perumal Koil Street, Nandavanam, Mottamedu, Coimbatore town, and for an injunction restraining the appellant from enforcing an order of eviction obtained by it in R.C.O.P. No. 385 of 1967. According to the case of the deceased first respondent, he took on lease from the appellant a vacant site measuring 22 feet east to west and 80 feet north to south in T.S. No. 2/1309 in Perumal Koil Street, Nandavanam Kottamedu, Coimbatore town, belonging to the appellant in 1953 and after levelling it up, put up a construction thereon incurring considerable expenditure. The further case of the deceased first respondent was that towards the end of 1964, the appellant demanded enhanced rent and owing to the refusal of the deceased first respondent to pay the rent so demanded, the appellant initiated proceedings in R.C.O.P. No. 385 of 1967. That application, according to the deceased first respondent, was dismissed, but on appeal, in R.C.A. No. 479 of 1968, the appellate authority ordered eviction and that order was confirmed in C.R.P. No. 56 of 1970 by the District Court, Coimbatore, and a further revision to this Court was of no avail, but that as the proceedings before the authorities constituted under Tamil Nadu Buildings (Lease and Rent Control) Act are of a summary nature, those authorities were not competent to decide the question of title to the building. Stating that taking advantage of the eviction order, the

appellant was trying to take possession of the suit property, the deceased first respondent instituted the Suit O.S. No. 1548 of 1972 praying for the reliefs set out earlier.

2. In the written statement filed by the appellant, it contended that the deceased first respondent was only a tenant of a building and that had also been finally decided by the authorities constituted under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and cannot be reopened and that the suit was only an attempt on the part of the deceased first respondent to continue unlawful possession of the premises for as long as possible. Besides, the appellant also pleaded that in view of the prior decision under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, which had become final, the deceased first respondent was not entitled to file the suit as it was barred by *res judicata*. In an additional written statement, the appellant raised a plea regarding the correctness of the Court-fee.

3. The suit O.S. No. 1548 of 1972 was filed by the deceased first respondent on 25.9.1972. By Section 3 of the Madras City Tenants' Protection (Amendment) Act 24 of 1973, Section 9(1)(a)(ii), as inserted in the Madras City Tenants' protection Act, 1922, enabling a tenant, within a period of two months from 28.7.1973, to apply to the Court, whether or not a suit for ejectment had been instituted or proceeding u/s 41 of the Presidency Small Causes Courts Act, 1882, has been taken by the landlord, whether or not such suit or proceeding is pending having jurisdiction to entertain a suit for ejectment or in the city of Madras either to such Court or to the Presidency Small Causes Court, for an order that the landlord under the tenancy agreement shall be directed to sell for a price to be fixed by the Court the Whole or part of the extent of land specified in the application. The deceased first respondent filed O.P. No.38 of 1973 before the District Munsif's Court, Coimbatore, u/s 9(1)(a)(ii) of the Madras City Tenants' Protection Act praying for the passing of an order directing the appellant to sell a total extent of 2,240 sq. ft. of land in T.S. No. 2/1309 measuring east to west 28 feet and north to south 80 feet. In that application, the deceased first respondent, after referring to the institution of the suit in O.S. No. 1548 of 1972, claimed that he put up the superstructure on the vacant site leased out to him by the appellant and, therefore, he was entitled to claim the benefits of Section 9(1)(a)(ii) of the Madras City Tenants' Protection Act 1922, as amended by Madras City Tenants' Protection (Amendment) Act, 24 of 1973. The appellant resisted that application contending that what was leased out in favour of the deceased first respondent was a building and not a vacant site and that the deceased first respondent did not put up any building after having taken a lease of the vacant site from the appellant. Reference was also made to the proceedings in eviction initiated by the appellant and the appellant contended that the application was initiated only for prolonging the proceedings. The claim of the deceased first respondent that he was entitled to purchase the land of the appellant under the provisions of the Madras City Tenants' Protection Act, 1922, as amended by Madras City Tenants' Protection (Amendment) Act, 24 of 1973,

was refuted. Before the learned Additional District Munsif, Coimbatore, a large volume of documentary evidence in support of the rival contentions of the deceased first respondent and the appellant was let in and there was also some oral evidence. On a consideration of the evidence, by order dated 5.1.1976 in O.P. No. 38 of 1973, the learned Additional District Munsif, Coimbatore, found that the deceased first respondent was not a tenant of a vacant site belonging to the appellant and that he had not put up the superstructure in question. On these conclusions, O.P. No. 38 of 1973 was dismissed. Aggrieved by this, the deceased first respondent preferred an appeal in C.M.A. No. 261 of 1976 before the Sub Court, Coimbatore, and the learned I Additional Subordinate Judge, by his judgment dated 7.12.1977, confirmed the findings of the learned Additional District Munsif, Coimbatore, in O.P. No. 38 of 1973 and dismissed the appeal. There is no dispute now that the order passed in C.M.A. No. 261 of 1976, Sub Court, Coimbatore, had become final, though the evidence of the deceased first respondent was not very clear whether he did not prefer any further proceeding or that it was so preferred, but was not entertained.

4. Before the Trial Court, the appellant put forth the plea that the suit O.S. No. 1548 of 1972 instituted by the deceased first respondent was barred by the principle of *res judicata* on account of the proceedings in eviction under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act as well as those under Madras City Tenants' Protection Act. The learned Additional District Munsif, Coimbatore, was of the view that the proceedings above referred, which had also become final, would prevent the deceased first respondent by the principle of *res judicata* from raising again and agitating the question of his title to the superstructure. In this view, the suit was dismissed. However, on appeal by the deceased first respondent in A.S. No. 22 of 1979, the I Additional Subordinate Judge, Coimbatore, referred only to the proceedings under the Tamil Nadu Buildings (Lease and Rent Control) Act and concluded that as those proceedings are summary in nature and the Rent Controller is also not competent to decide upon the question of title, which can be decided only by the civil Court, the decision of the Rent Controller affirmed by the other authorities, would not operate as *res judicata*. On that conclusion, the learned I Additional Subordinate Judge, Coimbatore, allowed the appeal and decreed the suit as prayed for by the deceased first respondent. It is the correctness of this that is challenged in this Second Appeal.

5. The Learned Counsel for the appellant, relying upon Exs. B-22 and B-24, contended that whatever may be the scope of the adjudication under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, the final decision negating the claim of the deceased first respondent to purchase the land u/s 9(1)(a)(ii) of the Madras City Tenants' Protection Act on the ground that he has put up the superstructure on the vacant site leased out to him by the appellant, would operate as *res judicata*. On the other hand, the Learned Counsel for the legal representatives of the deceased first respondent submitted that as the proceedings culminating in Exs. B-22 and B-24 did not arise out of a suit, but

originated as an original petition, the principle of res judicata would not apply. It was also further submitted that the proceedings under Exs. B-22 and B-24 had not been decided prior to the institution of the suit O.S. No. 1548 of 1972 and they would not, therefore, operate as res judicata. Yet -another contention put forward by the Learned Counsel is that the proceedings u/s 9(1)(a)(ii) of the Madras City Tenants' Protection Act are summary in character and cannot, therefore, be treated as a complete adjudication as to render applicable the principle of res judicata.

6. In order to appreciate these rival contentions, it would be necessary to refer to certain undisputed facts. After the coming into force of Section 9(1)(a)(ii) of the Madras City Tenants' Protection Act, the deceased first respondent did file O.P. No. 38 of 1973 before the Additional District Munsif, Coimbatore, claiming that in a vacant site leased out by the appellant in his favour, he had put up a superstructure and, therefore, he was entitled to seek an order from the Court directing the sale of the land by the appellant to him. This was disputed by the appellant on the ground that there was no lease of a vacant site in favour of the deceased first respondent and that he did not put up any superstructure therein, but that a building has been leased out to him. It is seen from Exs. B-22 and B-24 that these rival claims were considered in the light of a large volume of documentary evidence placed before Court by both sides. Ultimately, the learned Additional District Munsif, Coimbatore, as well as the learned I Additional Subordinate Judge, Coimbatore, found that there was no lease of a vacant site to the deceased first respondent and that the superstructure was not put up by the deceased first respondent on such a vacant site. While dealing with the application filed by the deceased first respondent claiming the benefits of Section 9(1)(a)(ii) of the Madras City Tenants' Protection Act, 1922, as amended by Madras City Tenants' Protection (Amendment) Act 2f of 1973, it became necessary for the Court to consider the claim of the deceased first respondent that he put up the superstructure on a vacant site. In doing so, on a consideration of the available and relevant documentary evidence, the Courts negated that claim so made by the deceased first respondent. In other words, in those proceedings it was found that the deceased first respondent did not take on lease a vacant site and he also did not put up the superstructure. In the suit out of which this second appeal has arisen, precisely the same question regarding the superstructure has come up. Here also, the claim of the deceased first respondent was that having taken a lease of a vacant site from the appellant, he had put up the superstructure. It is thus seen that the claim made in the proceedings under the Madras City Tenants' Protection Act as well in this suit is identical. The matter directly and substantially in issue in this proceeding, namely, the ownership of the superstructure was directly and substantially in issue in the proceedings under Madras City Tenants' Protection Act. There is no dispute that the parties to the two proceedings are the same. Equally, there is no controversy that the deceased first respondent and the appellant have litigated under the same title in the proceedings under Madras City Tenants' Protection

Act. Likewise, there is no dispute that the Court, namely, the Additional District Munsif's Court, Coimbatore, which decided the proceedings under Madras City Tenants' Protection Act is also the Court competent to try the suit out of which this second appeal has arisen or the suit in which the issue regarding the ownership of the superstructure, is raised. The questions in issue in the proceedings under Madras City Tenants' Protection Act, namely, the leasing out of the vacant site and the putting up of the superstructure thereon and in the suit out of which this second appeal has arisen, namely, the leasing out of the vacant site and the putting up of the superstructure thereon by the deceased first respondent have been heard and finally decided by the Court in the proceedings under Madras City Tenants' Protection Act Under those circumstances", there is no doubt that the principle of res judicata would apply.

7. It may now be considered whether the proceeding operating as res judicata must only be a suit. No doubt, Section 11, C.P.C., uses the expressions "former suit" and "subsequent suit" and Section 26, C.P.C., refers to the institution of suits "by the presentation of a plaint. The rule of res judicata is rested on considerations of public policy. No doubt, it has some technical aspects also. But the twin principles which form, the foundation of the general rule of res judicata are that it is in the interest of the public at large that a finality should attach to binding decisions pronounced by Courts of competent jurisdiction and it is also in public interest that individuals should not be twice vexed with the same kind of litigation. If these principles are borne in mind, it would at once be apparent that the principle of res judicata is not a technical principle, but a fundamental doctrine aimed at putting an end to litigation and that doctrine would apply equally in all Courts irrespective of the form the proceedings have taken, provided it was on the same cause. It will be useful in this connection to refer to Halsbury's Laws of England, IV Edition, Paragraph 1535 at page 1035 to the following effect:

the doctrine applies equally in all Courts, and it is immaterial in what Court the former proceedings were taken, provided only that it was a Court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause.

Thus, the form of the proceeding, whether it originated as a suit or even as an original petition, as in this case, is not really very material, but only the substance thereof. Viewed in that light, it is clear that in the proceedings under Exs. B-22 and B-24, the deceased first respondent had agitated the very same claim as is now sought to be agitated, namely, he had taken a lease of a vacant site from the appellant and had put up superstructure thereon. When the cause is the same, as in this case as well, there is no escape from the application of the principle of res judicata on the ground that the form of the action is not a suit. Indeed, there are several decisions of the Privy Council, the Supreme Court and other Court which have recognised the applicability of the principle of res judicata with reference to decisions rendered in proceedings not strictly suits.

Sheoparsan Singh v. Ramnandan Singh 31 M.L.J. 77 : (1916) 43 Ind. App. 91, had to consider the effect of the grant of probate of a Will under the Probate and Administration Act V of 1881, on a subsequent suit for a declaration that the plaintiffs are the next reversioners to the estate of the testator. Upholding the view of the Calcutta High Court that the suit was barred by res judicata, Sir Lawrence Jenkins pointed out that the application of the rule of res judicata should not be influenced by technical considerations of form, but by matter of substance within the limits allowed by law. In Hook v. Administrator-General of Bengal 40 M.L.J. 423 : (1921) 48 Ind. App. 187, the question arose whether an adjudication in an administration suit regarding the validity of a gift over would not operate as res judicata in a suit commenced after the annuitant's death by the next of kin. In holding that the prior decision would operate as res judicata, Lord Buckmaster referred to the dictum of the Board in Ram Kirpal Sukul v. Rup Kuari (1883) 11 Ind. App. 37 : ILR 6 All 269 and stated that that the plea of res judicata still remains apart from the limited provisions of the Code. The following observations of Sir Barnes Peacock at Page 41 of Ram Kirpal Sukul v. Rup Kuari (1883-84) 11 Ind. App. 37 : ILR 6 All. 269, were quoted with approval:

The binding force of such a judgment in such a case as the present depends not upon Section 13 of Act X of 1877 (now replaced by Section 11 of the Code of Civil Procedure, 1908) but upon general principles of law. If it were not binding there would be no end to litigation.

In Ramachandra Rao v. Ramachandra Rao 43 M.L.J. 78 : 16 L.W. 1 : AIR 1922 P.C. 80 : ILR 45 Mad. 320 : (1922) 49 Ind. App. 129, the question arose was, whether the decision rendered on a reference u/s 31(2) of the Land Acquisition Act operated as res judicata in a subsequent suit between the same parties as to who was entitled to some property of considerable value. The Privy Council, while dealing with the argument that the previous decision was not rendered in a suit, observed as follows:

It has been suggested that the decision was not in a former suit, but whether this were so or not makes no difference, for it has been recently pointed out by this Board in Hook v. Administrator General of Bengal 40 M.L.J. 423 : (1921) 48 IA 187, that the principle which prevents the same case being twice litigated is of general application and is not limited by the Specific words of the Code in this respect;

This decision, therefore, lays down that a decision given in a proceeding, which is not a suit, may nevertheless operate as res judicata, if substantial rights of parties are decided. In Arikapudi Balakotayya and Others Vs. Yadlapalli Nagayya and Another, , a Division Bench of this Court applied the doctrine of res judicata to a final decision in a proceeding arising u/s 84(2) of the Madras Hindu Religious Endowments Act and also pointed out that a decision given in a proceeding where substantial rights of parties are determined may operate as res judicata, though such a proceeding was not a suit. In N. Seshamma v. K. Gangaraju 1956 A.W.R. 899 : AIR 1957 A.P. 841, Viswanatha Sastri, J., had occasion to consider

the applicability of the principle of res judicata to an application for scaling down under the provisions of the Tamil Nadu Agriculturists Relief Act 4 of 1938. The learned Judge observed as follows:

A proceeding under Madras. Act IV of 1938 for scaling down the debt of an agriculturist and for the amendment of a decree passed against him on such scaling down, is an original proceeding, the decision in which is subject to appeal. A Proceeding for scaling down the debt and amending the decree on such scaling down is not a suit and therefore might not fall within the literal terms of Section 11, Civil Procedure Code. At the same time, it has been held by the Judicial Committee that Section 11 is not exhaustive of the circumstances in which an issue may be res judicata. As observed by the Judicial Committee, the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law. See AIR 1930 22 (Privy Council) and Sheoparsan v. Ramanandan 31 M.L.J. 77 : L.R. 43 IndAp 91 : I.L.R.(1916) Cal. 694 : AIR 1916 P.C. 78. The Judicial Committee laid down in Hook v. Administrator-General of Bengal 40 M.L.J. 423 : L.R. 48 IndAp 187 : I.L.R.(1921) Cal. 499 : AIR 1921 P.C. 11 : 14 L.W. 221 that the plea of res Judicata still remained apart from the limited provisions of Section 11 CPC and, referred with approval to an earlier decision of the Board in Ram Kirpal v. Rup Kuari (1883-84) L.R. 11 LA. 37 : I.L.R.(1884) All. 269 , which held that" the binding force of an interlocutory judgment in execution proceedings depended not upon the section of the CPC but upon general principles of law. In Ramachandra v. Ramachandra 43 M.L.J. 78 : 49 I.A. 129 : I.L.R.(1922) Mad. 320 : 16 L.W. 1 : AIR 1922 P.C. 80, the Privy Council again reiterated the principle that a decision in order to constitute res judicata need not necessarily have been given in a prior suit. The principle which prevents the same case being twice litigated is of general application, and is not limited by the specific words of Section 11, Civil Procedure Code, in this respect. It is, therefore, clear that the decision of the Court scaling down the decree as regards the amount payable under it would be res judicata, between the parties in a subsequent proceeding.

Ultimately, it was held that the proceedings under Tamil Nadu Agriculturists Act, IV of 1938, would operate as res judicata. In AIR 1930 22 (Privy Council) ,the Privy Council was called upon to consider how far a finding rendered in contentious proceedings under the Probate and Administration Act, 1881 would be binding upon the parties in a subsequent suit and those claiming under them. Lord Darling observed at page 27 referring to Sheoparsan Singh v. Ramanandan Singh (1916) 43 Ind.App. 91, thus:

It appears to their Lordships worthwhile to repeat what was said by Sir Lawrence Jenkins in delivering the judgment of the Board in Sheoparsan Singh v. Ramnandan Singh 31 M.L.J. 77 : AIR 1916 P.C. 78 : (1916) 43 Ind.App. 91 : In view of the arguments addressed to them, their Lordships desire to emphasise that the rule of res judicata, while founded on ancient precedent, is dictated by a

wisdom which is for all time, "It hath has been well said, "declared Lord Coke, "Interest reipublicae ut sit finis litium - otherwise, great oppression might be done under colour and pretence of "law" (6 Coke 9a). Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu Commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: "If a person, though defeated at law, sue again, he should be answered, "You were defeated formerly." "This is called the plea of former judgment. (See the. Mitakshara (Vyavahara), Bk. II, Ch. I., P. 11, edited by J.R. Charpure, P. 14, and the Mayuka, Ch. I., s. 1, p. 11, of Mandlik's editions). And so the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of" substance within the limits allowed by law.

Finally, the Privy Council upheld the plea of res judicata.

8. The Supreme Court in Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, , considered the effect of an adjudication regarding the title under the provisions of the Land Acquisition Act, on a subsequent suit between the same parties on the question of title. The Supreme Court pointed out that the binding force of a judgment delivered under the Land Acquisition Act depends on general" principles of law and not on Section 11, CPC and the decision of a Land Acquisition Judge would "operate as res judicata even though he was not competent to try the subsequent suit. It was also further pointed out that the rule of res judicata applied even though the subject-matter of dispute in the land acquisition proceedings was the compensation money and not the property, which was in dispute in the subsequent suit. Burn and Co., Calcutta Vs. Their Employees, , laid down that although the rule of res judicata as enacted by Section 11, of the CPC does not apply in terms to an award of the Industrial Tribunal, its underlying principle which is founded on sound public policy and is of universal application must apply. The Supreme Court in Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, , was concerned with the applicability of the principle of res judicata with reference to writ petitions. In that case, the Editor of a newspaper was called upon to show cause before the Committee of Privileges of the Bihar Legislative Assembly as to why he should not be proceeded against for breach of privilege of the Speaker and the Assembly for publication of an inaccurate account of the proceedings. Thereupon, a petition under Article 32 of the Constitution of India was resorted to and the question which arose for decision was, whether the privilege under Article 194(3) of the Constitution of India was subject to the fundamental rights of a citizen under Article 19(1)(a) of the Constitution and the Supreme Court, by a majority, found against the Editor ox the newspaper. Thereafter, the Assembly was prorogued several times and after the reconstitution of the Committee of Privileges, a fresh notice was issued to the Editor of the newspaper, which was sought to be questioned in another Writ Proceeding. On the question whether the Editor of the

newspaper could be allowed to do so, the Supreme Court held that the general principles of res judicata applied and the judgment of the Supreme Court cannot be allowed to be reopened and must bind the petitioner and the Legislative Assembly and the reconstitution of the Committee of Privileges would not make any difference. In other words, the Supreme Court applied the Principle of res judicata to a proceeding under Article 32 of the Constitution of India. Again, in *Daryao and Others Vs. The State of U.P. and Others*, , the Supreme Court applied the principle of res judicata to a petition under Article 32 of the Constitution of India on the ground that the High Court had considered that matter in a proceeding under Article 226 of the Constitution of India and that had become final. In so holding, it was pointed out by the Supreme Court that the general principle of res judicata founded on considerations of public policy namely, that binding decisions of Courts of competent jurisdiction should be final and that no person should be made to face the same kind of litigation twice over, is not a mere technical rule that cannot be applied to petitions under Article 32 of the Constitution of India. It may also be stated that the principle of res judicata has been held to be applicable to execution proceedings. Such proceedings are taken with reference to a decree obtained in a suit and cannot, therefore, be strictly called a suit. Even with reference to such proceedings, the principle of res judicata has been held to apply. This is also now statutorily recognised by incorporating Explanation VII to Section 11, C.P.C.

9. It is thus seen that the Principle of res judicata has been applied with reference to proceedings which are not strictly suits. If the foundation on which the Principle of res judicata is rested is borne in mind, then it would be evident that it is not the form of the proceeding in which the adjudication was made that matters, but the real essence of it. Looked at the this point of view, the adjudication under Exs. B-22 and B-24 was by a Court of competent jurisdiction with reference to the claim of the deceased first respondent regarding the lease of the vacant site as well as the putting up of the superstructure thereon by him and that adjudication had become final. That precisely was also the question which arose directly and substantially in the suit out of which the second appeal has arisen. In view of what has been said already, there cannot be any doubt that the principle of res judicata would be applicable to the present suit by reason of the adjudication under Exs. B-22 and B-24, though those proceedings did not originate by means of a suit, but were commenced by filling an original petition only.

10. The submission that the adjudication under Exs. B-22 and B-24 had not come into existence prior to the institution of the suit lacks substance. Even prior to the introduction of Expln. 1 to Section 11, C.P.C, the expression "former suit" had been interpreted by Courts to mean a previously decided suit, though the institution of such a suit might have been later in point of time. Explanation I to Section 11, C.P.C., now puts the matter beyond any controversy and that states that 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 there to. In this case,

it is seen that, the decisions under Exs. B-22 and B-24 were rendered on 5.1.1976 and 7.12.1977, long prior to the disposal of the suit out of which the Second Appeal has arisen, on 30.8.1978. It may be that O.P. No. 38 of 1973 was filed after the institution of O.S. No. 1548 of 1972, but that cannot make any difference to the applicability of the principle of res judicata in view of Explanation I to Section 11, C.P.C., referred to earlier. In view of that explanation, the adjudication under Exs. B.22 and B.24 has to be considered as one in a former suit, though in point of time the Proceedings were instituted later. The Supreme Court in *R. Viswanathan Vs. Rukn-UI-Mulk Syed Abdul Wajid*, , had to consider the plea of conclusiveness of a foreign judgment would operate, only if that judgment was delivered after the suit in which it is pleaded, was instituted. It was pointed out by" the Supreme Court that Section 13, C.P.C., incorporates a branch of the principle of res judicata which applies to all adjudications in a "former suit", which expression, by Explanation I to Section 11, C.P.C., denotes a suit which has been decided prior to the suit in question, whether or not it was instituted prior thereto. The decisions in *Balkrishnan v. Krishanlal* I.L.R.(1889) All. 148 and *Beni Madho v. Indar Sahai* I.L.R.(1910) All. 67, were referred to and approved as establishing that proposition conclusively. In *Balakrishnan v. Krishanlal* I.L.R.(1882) All. 148, A Full Bench of the Allahabad High Court held that if after the commencement of the trial of an issue, a final adjudication on the same issue is pronounced by a Court of competent jurisdiction, it operates as res judicata. It is the aforesaid principle that is approved by the Supreme Court. Again in *Sheodan Singh Vs. Smt. Daryao Kunwar*, , the Supreme Court pointed out that one of the conditions for the applicability of the principle of res judicata is that there should be a decision in a former suit and as a decision in two of the appeals had been rendered earlier, that would suffice to operate as res judicata. Again in *Lonankutty Vs. Thomman and Another*, , the Supreme Court referred to Explanation I to Section 11, C.P.C., and held that as the issue relating to easementary right to the flow of water had been heard and finally decided in a proceeding between the same parties before the decision was rendered by the High Court in Second Appeal, that would operate as res judicata, though the decision itself arose out of a suit instituted subsequently. In view of Explanation I to Section 11, C.P.C., and the principles laid down in the aforesaid decisions of the Supreme Court, the decision rendered under Exs. B.22 and B.24, though filed subsequent to the institution of the suit in O.S. No. 1548 of 1972, would operate as res judicata and the contention contra cannot be accepted.

11. That leaves for consideration the submission that the proceedings u/s 9(1)(a) (ii) of the Madras City Tenants' Protection Act, 1922, are summary and an adjudication therein cannot be pressed into service for the application of the principle of res judicata. The right conferred u/s 9(1)(a)(ii) of the Madras City Tenants' Protection Act on the tenant is a statutory right and the adjudication therein has serious civil consequences in that the landlord may be deprived of and compelled to sell the land to the tenant, in the event of the tenant

establishing that he put up the superstructure on a vacant site leased out to him and fulfilling certain other requirements as well. In other words, the statute compels the landlord to sell the site to the tenant, though against his will. Neither the Act nor the Rules thereunder prescribe the procedure to be followed in dealing with applications made u/s 9(1)(a)(ii) of the Madras City Tenants' Protection Act. In the absence of any statutory provision or even a rule restricting the scope of enquiries in such matters, it cannot be assumed that such enquiries are summary. On the other hand, such enquiry has to be after affording an opportunity to the parties to let in such evidence as they may think fit to support their respective claims and thereafter the Court has to act upon the materials so placed before it in order to arrive at a decision, whether the tenant is entitled to the benefits of the Madras City Tenants' Protection Act and the landlord should, therefore, be directed to sell the site to him. The circumstance that the application u/s 9(1)(a)(ii) of the Madras City Tenants' Protection Act has to be laid before the Court having jurisdiction to entertain a suit for ejectment or to the Presidency Small Causes Court shows that the Court is seized of the matter and necessarily, therefore, the procedure has to be the same as for suits in a, Court. This is also further established by Section 141, C.P.C., which states that the procedure in suits shall be followed as far as it can be made applicable in all proceedings in any Court of civil jurisdiction. u/s 9-A of the Madras City Tenants' Protection Act, an order passed u/s 9 of the Act is made appealable and the appeal lies to that Court to which an appeal would lie from any decree passed by the Court dealing with the application. The provision of a further remedy by Way of a regular appeal as if it was against a decree would also indicate that the enquiry in an application u/s 9 of the Madras City Tenants' Protection Act is not intended to be summary. The Learned Counsel for the respondent attempted to rely upon the analogy of the scope of the proceedings under Tamil Nadu Buildings (Lease and Rent Control) Act. That does not, however, assist the respondents in any manner, for, by Rule 12(2) of the rules framed under the Tamil Nadu Buildings (Lease and Rent Control) Act, the nature of the enquiry is indicated. Apart from this, the authority constituted under the Tamil Nadu Buildings (Lease and Rent Control) Act are designated authorities and not Courts ordinarily functioning as such. In addition, by the rules framed under the Tamil Nadu Buildings (Lease and Rent Control) Act, all the provisions of the CPC have not been made applicable. There are thus clear indications in the rules that the enquiry is not intended to be similar to the one in a proceeding before a Civil Court. The reliance upon the nature and scope of the enquiry under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act is, therefore, not at all of any assistance to the respondents. Therefore, it follows that when proceedings are committed to the jurisdiction of the ordinary civil Courts, the enquiry has got to be full and complete and in accordance with the provisions of the CPC and the adjudication under Exs. B.22 and B.24 is one such rendered after giving a full and adequate opportunity to both parties to establish the rights pleaded by them. Therefore, the contention of the Learned Counsel for the respondents that the enquiry into O.P. No. 38 of 1973 was summary and,

therefore, the decision rendered therein as well as on appeal therefrom would not operate as res judicata is unacceptable.

12. It is seen that while the trial Court, on the strength of the adjudication under Exs. B.22 and B.24, has applied the principle of res judicata in paragraph 14 of its judgment and dismissed the suit, there is no reference to it in the judgment of the lower appellate Court. It is rather unfortunate that the lower appellate Court has not adverted to such a vital and important plea of res judicata raised before the trial Court and dealt with by it in the course of its judgment, which would have the effect of precluding the Court from entering upon a consideration of the matter on merits. Without bestowing any attention on such a vital and important point, which would go to the root of the matter, the lower appellate Court has proceeded to consider the other aspects to conclude that the superstructure belonged only to the deceased first respondent. That conclusion of the lower appellate Court, as pointed out earlier, cannot at all be sustained on the application of the principle of res judicata.

13. Consequently, the second appeal is allowed, the judgment and decree of the lower appellate Court are set aside and those of the trial Court will stand restored with costs, throughout.