

(1996) 07 MAD CK 0112

In the Madras High Court

Case No : S.A. No's. 592 to 594 of 1996 S.A. No. 592 of 1996

V. Asirvatham (Deceased) and others

APPELLANT

Vs

Rt. Rev. G. Chirstdoss and others

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 62, 80, 92, 92(1)

Citation : (1996) 07 MAD CK 0112

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : A.L. Somayaji, for M/s A. Jinasenan, A. Palaniappan and A. Chidambaranathan, for the Appellant; G. Subramaniam, M/s. N. Paul Vasanthakumar, K. Ravichandra Babu and T.S. Sivagnanamm, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—These three Second Appeals are filed by the respective defendants in three suits. Second Appeal No.592 of 1996 arises from O.S. No. 50 of 1977, on the file of Sub Court, Nagercoil. Second Appeal No. 593 of 1996 arises from O.S. No. 93 of 1977, on the file of Sub Court, Padmanabhapuram, and Second Appeal No. 594 of 1996 arises from O.S. No. 26 of 1979, on the file of Sub Court, Kuzhithurai. Even though all the three suits were disposed of separately by the trial court and separate judgments were delivered, when the matter was taken on appeal before the first appellate court, all the appeals were clubbed together and were disposed of by a common judgment. Since, in these Second Appeals, common questions of law have been raised for consideration, they are clubbed together for disposing of the claims put forward by the appellants. When the above Second Appeals came for admission, respondents, who had already filed caveat, wanted to be heard and, therefore, the entire matter was heard at the admission stage itself.

2. In O.S. No. 50 of 1977, the plaintiffs therein filed the suit for declaration of title of the Church of South India Trust Association, to the plaintiff schedule

property and for recovery of possession of the same on behalf of the Association and for consequential injunction. The subject matter in that suit is Vadassery Church and its properties. In O.S. No. 93 of 1977, the subject matter is "Kristucoil Church" and the relief sought for is to declare the right, title and possession of the Church of South India Trust, and for a permanent prohibitory injunction. In O.S. No. 26 of 1979, the subject matter is "Kuzhicode Church", which is also a suit filed by the Church of South India Trust Association for its right, title and interest being declared and for permanent prohibitory injunction.

3. The material common facts which are the subject matter of all these proceedings can be stated thus:-

The protestant Churches in Travancore were originally known as "London Mission Churches", since they were founded by Missionaries sent out by London Missionary Societies. The same were founded in 1795 and the first Missionary sent out by the Society to India was one Rev. Ringeltaube. He converted a large number of persons in the Travancore area to the Christian faith. He was succeeded by Rev. Mead who founded many of the Protestant Churches in Travancore. In 1863, with a view to co-ordinate the activities of the missionaries and to ensure efficient working of the Missions, the Society directed the missionaries to form in all Mission centres District Committees and issued general regulations in that behalf. Similar missionaries were sent to other parts of India also, and various Churches were founded by the Missions. By the end of 19th Century, there came into being a strong movement for the unity of churches in India. At a conference held in 1919, called the Tranquebar Conference, the possibility of a union with Episcopal churches subject to certain cardinal principles was envisaged. Negotiations continued thereafter for a long time and after prolonged discussions in various committees and general body meetings, a proposal emerged. This proposal was approved by a meeting of the Church Councils in 1946. The resolution for the union was placed before a General Assembly in September 1946 and was passed by an overwhelming majority, and the Church of South India was formed. It is seen that the Church of South India was formally inaugurated at St. George Cathedral, Madras, and, on 26.9.1947, the Church of South India Association was incorporated under Indian Companies Act. After the formation of the Trust, all the assets were taken over by it and thus the London Mission Society was wound up. Certain members who were against the matter of the London Mission Society with the newly formed Church of South India Trust filed suits and one such suit was O.S. No. 1 of 1960, on file of the Subordinate Judge's Court, Nagernil. That suit was filed by five individuals under O. 1, R.8, C.P.C. for a declaration that the subject matter of the suit or Trust properties of the. London Mission Society, a total number of 456 Churches situated in various parts of Madras and Kerala were scheduled therein. The subject matter of these three suits are admittedly the subject matter included in O.S. No. 1 of 1960: In that suit, the plaintiffs claimed a declaration that the plaint properties are trust properties of the London Mission Church, and for consequents reliefs.

4. In that suit, the plaintiffs therein challenged the Resolutions passed by the Church of South India and also the London Mission Society and thereby the merger between them was sought to be set at naught and they wanted a declaration that the London Mission Society continues to be in existence. It is seen that as per judgment dated 1.4.1996 learned Subordinate Judge, Nagercoil held that the Resolution of 1947 is valid, and the London Mission Society has no existence after the resolution and that the Resolution was properly passed. It also held that the plaintiffs thereto are not entitled to any relief. It was further held to that case that the suit filed by the plaintiffs though in a representative character under O. 1, R. 8, C.P.C., is defective since SS. 92, C.P.C. has not been complied with, and the suit is bad for that reason.

5. The dismissal of the suit was challenged before this Court in A.S. No. 23 of 1968. The appeal was dismissed as abated. SLP was filed before the Supreme Court, SLP No. 1012 of 1985. The same was to dismissed.

6. Thereafter, another suit was filed in O.S. No. 108 of 69 by the Church of South india Trust Association, for declaration of it rights over management of the properties and churches and for consequential injunction. The same was dismissed by the trial court and the matter was taken in appeal as A.S. No. 3 of 1972. The appeal was allowed and the suit was decreed as prayed for. Aggrieved by the judgment in the said appeal, defendants therein filed S.A. No. 1924 of 1972. In that Second Appeal, the injunction prayed for was refused. But there were certain observations directing the plaintiffs therein to file a separate suit for recovery of the property. It is on the basis of the direction in Second Appeal No. 1924 of 1972, O.S. No. 50 of 1977 was filed. In so far as the other two suits are concerned, on the same facts, they wanted a declaration of the properties and they also wanted a mandatory injunction.

7. The contention of the defendants in all the three suits was that the decision in O.S. No. 1 of 1960 will not bind the individual churches and they have also prescribed title by adverse possession. It is also contended that O.S. No. 1 of 1960 was not a properly instituted suit since sanction under S. 92, C.P.C. was not obtained and, therefore, any observation regarding the merger of the London Mission Society with the church of South India Trust Association has no legal validity, for, according to them, the same was not necessary for the proper disposal of the suit. According to them, the decision in O.S. No. 1 of 1960 will not constitute res judicata.

8. The trial court, though tried the three suits independently, held that the decision in O.S. No. 1 of 1960 will constitute res judicata, and the plea of adverse possession by the defendants cannot be sustained. The trial court also held that the question of merger was directly and substantially in issue in the earlier suit, and since it was a representative suit under O. 1, R. 8. C.P.C., the principle of res judicata applies. A decree was granted as prayed for in all the three suits.

9. Aggrieved by the decision, the respective defendants preferred three appeals

before the lower appellate court. In appeal, they filed the judgment in S.A. No. 731 of 1979 dated 10.10.1991 as additional evidence. The lower appellate court admitted the said judgment as additional evidence. In spite of the same, by a common judgment it dismissed all the appeals with costs. It is against the concurrent judgments, the defendants have preferred these Second Appeals.

10. In all these Second Appeals, the common substantial questions of law raised in the Memoranda of Appeal are as follows:-

a. Whether the suit in O.S. No. I of 1960 could be said to be in a representative suit so as to be binding on the parties by this litigation?

b. In the light of the admitted position that the suit in O.S. No. 1 of 1960 was filed without following the procedure under S. 92, C.P.C., whether the said judgment would be said to constitute res judicata between the parties?

c. In the light of the judgment in S.A.731 of 1979 in which it has been held that the suit in O.S. No. I of 1960 was not validly filed and incompetent and in the light of the findings rendered therein, whether the judgments of the courts below to the effect that O.S. No. I of 1960 would constitute res judicata as against the appellants, are sustainable.

d. Having regard to the reliefs sought for in the present suit, whether the same is not hit by S. 92, C.P.C. for want of sanction?

e. In view of the judgment in S.A.731 of 1979, whether the respondents/plaintiffs are not stopped from claiming that the suit is not hit by S. 92, C.P.C. and that O.S. No. 1 of 1960 constitutes as res judicata?

f. Whether the judgment of the Supreme Court referred and relied upon by the Courts below would conclude all the issues raised by the appellants, and, is not the court bound to determine it as to whether the suit Church and its properties have merged with C.S.I, or not?

g. Whether the judgments of the Courts below holding that the respondents/plaintiffs are in legal possession of the properties and granting an injunction in terms thereof is sustainable in law particularly when the appellants were disputing the rights in question and are found to be in physical possession of the properties?

h. Whether the suits filed by the respondents are not liable to be rejected as barred by limitation?

i. Whether the appellants have not prescribed title to the properties by adverse possession and whether the judgments of the courts below which have not considered the said question are not vitiated in law.

11. The main point urged by the learned counsel for the appellants is that no reliance can be placed on the judgment in O.S. No. I of 1960 since it is not a suit under S. 92, C.P.C. and, therefore, it cannot constitute res judicata. Learned

counsel also submitted that even though the lower appellate court, has admitted the judgment in S.A. No. 731 of 1979 as additional evidence, it has not discussed the evidentiary value of the said decision. According to the learned counsel, even if the judgment in S.A. No. 731 of 1979 is not res judicata, the reasoning in that judgment can be accepted in this case as a judicial precedent and, therefore, the finding that the suit is barred by res judicata has to be set aside. Learned counsel for the appellants submitted that the present suits filed by the plaintiffs are also hit by the principle of res judicata; since they have not been filed after obtaining sanction under S. 92, C.P.C.

12. Before considering S. 92, C.P.C, let us see the reliefs that are sought in O.S. No. 1 of 1960, on the file of Sub Court, Nagereoil, copy of the plaint in that suit is marked as Ex.A-7 in O.S. No. 50 of 1977, from which S.A. No. 592 of 1996 arises. In O.S. No. 1 of 1960, the reliefs claimed are as follows:-

A) The plaintiffs pray for a declaration that the plaint properties are trust properties of the London Mission Church and the LM. Christian Community in erstwhile Travancore.

B. They pray for a declaration that the plaintiffs and those who remain as London Mission Christians are alone entitled to the beneficiary rights to the plaint properties and that those L.M. Christians who have joined the C.S. I have thereby become aliens to the LM. Church and have forfeited all rights, interest and benefits over the plaint properties and for the recovery of the plaint properties which are found in the possession of the defendants with future mesne profits at the rate of Rs. 1,00,000/- per annum.

C. They pray for an injunction restraining the defendants 2 to 8, their agents, commissioned, ordained or otherwise appointed from entering upon the plaint L.M. properties, churches and (sic) (Scheduled) and conducting divine service officiating in any other functions.

d. They pray for an injunction restraining the defendants 2 to 8, their agents, commission ordained or otherwise appointed from alienating the plaint L.M. properties and committing waste on the properties.

e. The plaintiffs pray that the suit be decreed in terms of the plaint with costs from the defendants 2 to 8.

f. They also pray for such other reliefs which in the opinion of the court are necessary for the protection of the interest of the members of the L.M. Community, the plaintiffs, and the plaint properties and which justice and equity require. Copy of the judgment in O.S. No. 1 of 1960 is also filed as Ex.A-3. Issue Nos. 17 to 23 in O.S. 1 of 1960 related to the various resolutions which were challenged in that suit and also related to the continued existence of the London Mission Church. After discussing the entire evidence, those issues were found against the plaintiffs in that suit, and it was further held that the church of South India was competent to unite and form the Church of South India Trust

Association. It was also finally concluded that the London Mission Society was also dissolved in the year 1947 and its identity was not preserved here after. It was further held that the principle of estoppels also applies and the plaintiffs therein who filed the suit in the representative character have acquiesced in the formation of the Church of South India since 1922. After discussing all the issues, it held that the plaintiffs therein were not entitled to relief and the London Mission Society has been separate existence. The suit was dismissed. It is admitted that there was an appeal before the Court against the said judgment. The same was dismissed as abated, and the Special Leave Petition preferred against the abatement with the same fate.

13. Learned counsel for the appellants wanted to rely on another judgment of this Court in S.A. No. 731 of 1979. That Second Appeal arose from a suit filed by few individuals in their individual capacity. That related to a church situate in Andarkulam in Kanyakumari District. In that suit also, the question whether there was a merger of London Mission Church with Church of South India was agitated. That suit was instituted by some members of the Church of South India, though in their individual capacity. That suit was decreed and it was confirmed in appeal. In Second Appeal, the correctness of the concurrent judgments was challenged and the main question that was urged before this Court was, that the judgment in O.S. No. I of 1960 will not constitute res judicata. The learned judge of this Court accepted the said contention and came to the conclusion that the judgment in O.S. No. I of 1960 will not constitute res judicata and the suit was dismissed.

The main reason for holding that the suit is not barred by res judicata was that O.S. No. I of 1960 was not a suit under S. 92, C.P.C. and, therefore, the very institution was inherently defective. The learned judge also held that once the trial judge, in O.S. No. I of 1960, has held that S. 92, C.P.C. is applicable, that itself will be sufficient for dismissal of the suit, and any finding on the merits of the case, will not constitute res judicata. Legally also, the learned judge held that the suit O.S. No. I of 1960 should have been filed under S. 92, C.P.C, and sanction not having been obtained, the judgment rendered therein is without jurisdiction.

14. Learned senior counsel for the appellants in this case wanted that judgment to be followed. According to him, even if the judgment in Second Appeal No. 731 of 1979 will not constitute res judicata, the reasoning therein will apply, and he wanted the same to be accepted as his arguments.

15. Before going to the merits of the said contention, it may be noted that the decision of this Court in S.A. No. 731 of 1979 has not become final. A SLP has been filed, and leave has also been granted by the Supreme Court in SLP No. 4521 of 1992. Civil Appeal is pending before the Supreme Court. Once finality is lost, no contention can be raised that the decision rendered therein has any binding force.

16. Even on merits, the decision in S.A.No731 of 1979 will have no bearing so far as the facts of these cases are concerned.

17. It is not disputed that the said suit was filed by a few individuals, and they have not filed the suit under O. I, R.8, C.P.C. nor was that suit filed under S. 92, C.P.C. In fact, the Church of South India Trust Association is also not a party to that case. So, any decision rendered therein will not be binding on the Church of South India Trust Association, which claims to be the owner of all the properties.

18. Learned senior counsel for the appellants thereafter contended that the judgment in O.S. No. I of 1960 is not barred by res judicata, and they can re-agitate the question of merger in these suits. According to him, the relief prayed for in O.S.1 of 1960 having been found to be coming under S. 92, C.P.C, the Subordinate Judge who decided O.S. No I of 1960 had no jurisdiction to decide the same. How far the said contention is legally acceptable is the only question to be decided in these Appeals.

19. I have already extracted the reliefs that were sought for in O.S. No. I of 1960.

20. S. 92, C.P.C. is included in Part V of the Code of Civil Procedure, and the same deals with suits relating to public matters. S. 92, C.P.C. deals with "Public Charities" and it reads thus:-

In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the court, may institute a suit, whether contentious or not in the principal Civil Court of Original Jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

- a. removing any trustee;
- b. appointing a new trustee;
- c. vesting any property in a trustee;
- cc. directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- d. directing accounts and inquiries;
- e. declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- f. authorizing the whole or any part of the trust property to be let, sold mortgaged or exchanged;

g. settling a scheme; or

h. granting such further or other relief as the nature of the ease may require.

21. The Supreme Court had occasion to consider the scope of S. 92, C.P.C. and the cases to which the same will not apply. One of the earliest decisions is reported in Mahant Pragdasji Guru Bhagwandasji Vs. Patel Ishwarlalbhai Narsibhai and Others, , wherein their Lordships held thus:-

In a suit framed under S. 92, the only reliefs which the plaintiff can claim and the court can grant are those enumerated specifically in the different clauses of the Section. A relief praying for a declaration that the properties in suit are trust properties does not come under any of these clauses. A suit under S. 92 is a suit of a special nature which pre-supposes the existence of a public trust of a religious or charitable character. When the defendant denies the existence of a trust, a declaration that the trust does exist might be made as ancillary to the main relief claimed under the Section if the plaintiff is held entitled to it; but when the case of the plaintiff fails for want of a cause of action, there is no warrant for giving him a declaratory relief under the provisions of S. 92. The finding as to the existence of a public trust in such circumstances would be no more than an obiter dictum and cannot constitute the final decision in the suit.

The same was followed in the decision reported in Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, wherein their Lordships held thus:

To invoke S. 92 of the CPC three conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable religious nature; (ii) there was a breach of trust or a direction of court is necessary in the administration of such a trust; and (iii) the relief claimed is one or other of the reliefs enumerated therein. If any of the three conditions is not satisfied, the suit falls outside the scope of the said section. The relief in the superior declaration that a property belongs to the trust is not one of the reliefs enumerated in S. 92 and as such the provisions of that section are not attracted.

In recovering the possession of its property from a person who is in illegal possession thereof, the rule is only enforcing its private right and, therefore S. 92 of CPC is not applicable to such against instituted by idol for recovery of its property....

22. In A.1.R.1972 S.C.246 (Harendra Nath Bhattacharya and others v. Kaliram Das (dead by his legal representatives and others), it was held thus;

A suit under S. 92 is of a special nature was presupposes the existence of a public trust of religious or charitable character. Such suit can proceed only on the allegation that there is a breach of trust or that directions from the court are necessary for the administration of the Trust. In the however, there must be a prayer for one or other of the reliefs that are specifically mentioned to the Section. Only then the suit has to be filed in conformation with the provisions of S. 92.

23. In Charan Singh and Another Vs. Darshan Singh and Others, after following the earlier decisions, their Lordship of the Supreme Court held thus:

A suit of the nature envisaged by S. 62 obtain a decree for any one or more of the learned enumerated in clauses (a) to (h) of the Code has also filed by the Advocate General or two or more present having an interest in the Trust with the constant of writing of the Advocate General.

The maintainability of the suit under S. 92 depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement.

The plaintiffs having failed to obtain the consent of the Advocate General instituted the suit, against the trustee of the religious institution (Gurdwara) endeavouring to frame it in such a manner so as to take it out of the ambit of S. 92. They alleged acts of breach of trust, mismanagement, undue interference with the right of the public in the worship of Granth Sahib. They wanted a decree of the court against the defendant to force him to carry out the objects of the trust and to perform his duties as a trustee.

Held that the suit was a suit for a decree under S.92 and since it was not filed in conformity with the requirement of the said provision of law it was not maintainable. The relief sought for did not strictly or squarely fall within clauses (e) or (g) but was very much akin to either and hence was covered by the residuary clause (h). Reading the plaint as a whole it was not a suit where the plaintiffs wanted a declaration of their right in the religious institution in respect of the Granth Sahib. But it was a suit where they wanted enforcement of due performance of the duties of the trustee in relation to a particular object of the trust.....

(Emphasis supplied)

24. Our High Court also had occasion to consider the same point, and the decision rendered thereon is reported in 1976-1-M.L.J.204 = 89L.W. 456 (T.R. Krishnamoorthy and others v. T.S. Krishnamachary and others. At page 215, their Lordships held thus:-

One objection to the maintainability of the suit is that this is a suit for directing accounts in respect of a trust created for public purposes of a charitable or a religious nature, and the suit is, therefore, barred under S. 92 of the Code of Civil Procedure, for want of the written consent of the Advocate-General. A Full Bench of this High Court in Appanna Poricha v. Narasinga Poricha has held that a suit by a trustee of a public charitable or religious trust against a co-trustee for accounts does not fall within S. 92 of the Code the Civil Procedure and may be brought without the consent of the Advocate General. As explained in that ruling, the words "directing accounts and enquiries" in clause (1) (d) of S. 92 of the Code of Civil Procedure, should be confined to suits by the Advocate-General or by two or more persons with his consent against all the trustees for an account

of their management, and not to suits filed by one or more trustees against the others, as each trustee has a right to call upon the other to account to him for the trust funds he has received, even though the other trustee commits no breach of trust. Further, in this case, the suit is filed not even against the co-trustees, but is filed by the plaintiffs, who are the trustees of the suit trust, for recovery of possession of the trust properties from defendants 1 to 4, who, we have already held, are merely in the position of trustees de son tort. The suit is, therefore, clearly outside the mischief of S.92 of the Code of Civil Procedure.

25. A.N. Saha, in his Commentaries to the Code of Civil Procedure, 5th Edition (1996), at page 467, has summarised the law thus:-

In a suit framed under S. 92, C.P.C. the only reliefs which the plaintiffs can claim and the court can grant are those enumerated in different clauses of the Section. Plaintiffs cannot claim reliefs which do not find mention in the leave granted (sanction accorded by Advocate-General as stood earlier in the section). Suit for declaration that certain properties belong to trustee and for possession thereof from the alienee does not fall under S.92. Suit filed by trustee of the suit trust for recovery of possession of suit properties from sons of defendants who were merely in the position of de son tort is outside the purview of S.92. When an owner of land adjoining a public street sues for demolition of structure on public street, the suit should not conform to S.92, for, apart from the question of affecting public right, the owner has an independent cause of action against infringement of his right of access.

26. On going through the plaint as well as judgment in that case, it is seen that there was a rival dispute regarding title to various churches which were outside the scope of S. 92, C.P.C. The question of validity of a Resolution regarding merger was the main issue and that issue was found against the plaintiffs in that case. In a suit under S. 92, C.P.C, the reliefs must be as stated in S.92 (1), C.P. Code.

27. Even though the reliefs claimed in O.S. No. 1 of 1960 may not come under S.92, C.P.C., the learned Subordinate Judge, while deciding the same, came to the conclusion that the suit ought to have been filed under S.92, C.P.C. That is a finding which binds the parties. What will be its effect on the finding on other issues when the court has held that the suit is hit under S.92, C.P.C.

28. Various issues were raised including the validity of the Resolution and also the question of continued existence of the London Mission Society. On all these issues, the decision was against the plaintiffs in that case. The findings on these issues themselves were sufficient for dismissal of the suit, even though the learned Subordinate Judge held that the suit is also hit under S.92, C.P.C. When the parties have joined issue as to the validity of the Resolution and have also raised an issue regarding the title of the London Mission Society over the properties, and after the taking of evidence, plaintiffs have obtained an adverse decision, it cannot be held that merely because the issue regarding S.92, C.P.C.

was itself sufficient to dismiss the suit, evidence on other issues was irrelevant and therefore, not res judicata. Each and every point found in that case will be binding on the parties to the suit. I am supported to take this view by the decision reported in A.I.R.1924 Privy Council 144 = 20 L.W. 770 (Midnapur Zamindary Co. Ltd. v. Kumar Naresh Narayan Roy and others) wherein their Lordship held thus:

Where the plaintiff had excluded certain questions by the statement of his pleader and the first court had therefore expressly stated that it could not decide it but the defendant expressly urged in appeal that the judge was wrong in not deciding that question even though his action was based on the plaintiff's adviser's statement and he asked the lower appellate court expressly to decide it and the court did decide it.

Held, that the question was necessary for the decision of the suit and therefore the decision thereon operated as res judicata. It was immaterial that the court did not refer to that question in its judgment.

29. In a subsequent decision by the Privy Council reported in AIR 1932 50 (Privy Council) was held thus:-

Where a point is not properly raised by in plaint, but both parties have without protest chose to join issue upon those points the decision on the point would operate as res judicata between the parties.

30. The Supreme Court also had occasion to consider the effect of such a decision, and the ruling of the Supreme Court is reported in Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai, and reads thus:-

Where the final decision in any matter at issue between the parties is based by a court on its decision more than one point, each of which by itself would be sufficient for the ultimate decision, the decision each of these points operates as res judicata between the parties.

The said decision was again followed by the Supreme Court in Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa Gugwad and Others, In that case, the suit was against the Government wherein the question under S.92, C.P.C. was also in issue. A decision on S.80, C.P.C. itself was sufficient for rejection the plaint; instead, the courts below apart from deciding that point against the plaintiff, decided various other issues on merits. While considering the question on S.80, C.P.C, their Lordship held thus:-

It is open to a court not to decide all the issue which may arise on the pleadings before it if it find-that the plaint on the face of it is barred by any law if however, final decision in any matter at issue between the parties is based by a court on its decisions on more than one point-each of which by itself would be sufficient for the ultimate decision - the decision or each of these points operates as res judicata between the parties.

Where in an earlier suit based on Will the court decided after elaborately going into the question the defendant acquired absolute right in the pretend left under the Will and also that the suit was prematurely filed, the decision on becoming final operates as regards both issues as res judicata between the parties in any subsequent suit filed on basis of that Will. The finding that the suit was prematurely filed does not make it a decision on a preliminary issue so as to render the finding on the other issue mere obiter or surplusage.....

Where the plaintiffs cause of action is against a Government and the plaint does not show that notice under S.80 claiming relief was served in terms of the said Section, it would be the duty of the court to reject the plaint recording an order to that effect with reasons for the order. In such a case the court should not embark upon a trial of all the issues involved and such rejection "would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. But, where the plaint on the face of it does not show that any relief envisaged by S.80 is being claimed, it is the duty of the Court to go into all the issues which may arise on the pleadings including the question as to whether notice under S.80 was necessary. If the court decides the various issues raised on the pleadings, the adjudication of the rights of the parties, apart from the question as to the applicability of S.80 of the Code and absence of notice thereunder, operates as res judicata in a subsequent suit where the identical questions arise for determination between the same parties.

From the above settled position of law, the conclusion is irresistible that even though decision as to the maintainability of the suit under S.92, C.P.C. itself was sufficient to non-suit the plaintiff, the parties have joined issue on other points as well, and a decision was arrived, conclusions on those issues also will be binding on the plaintiff. The concurrent finding on each issue was sufficient to non-suit the plaintiff and, therefore, will be barred by res judicata.

31. It cannot be contended for a moment that the other issues were irrelevant or were not in issue therein. In spite of the finding on the issue regarding the applicability of S.92, C.P.C. the decision thereon will be res judicata, especially when the suit filed under O. 1, R.8, CPC was a representative suit.

32. If we are to accept the contention that to the suit O.S. No. I of 1960, S.92, C.P.C, is applicable and, therefore, it is bad, the same reasoning will have to follow to the suit, which was the subject matter in S.A.731 of 1979 and any finding therein also will have no force. So, substantial questions of law Nos. (a) to (f) have to be rejected.

33. In this connection, it is also worthwhile to take into consideration the judgment reported in Church of South India Trust Association Vs. Telugu Church Council, . In that litigation, the Church of South India Trust Association was a party. In that litigation also, the merger between London Mission Society and the C.S.I. and the Resolution of 1946 were in issue. Their Lordships held that after Resolution, the London Mission Society has no legal existence, and the Church of

South India has taken over all the assets of London Mission Society. Their Lordships considered the scope of res judicata in that case. The decision will have great bearing in this case also.

34. I hold that the findings of the courts below that the Church of South India Trust Association are the owners of the properties and they are entitled to a declaration of title and are also entitled to manage the properties are not liable to be interfered with.

35. The other substantial question of law is regarding the prescriptive title claimed by the appellants. The courts below have concurrently held that the appellants have not substantiated the same and have entered factual finding against the appellants. In Second Appeal, the same is not liable to be interfered with.

36. Learned counsel for the appellants also contended that even though the lower appellate court admitted the judgment in S.A.731 of 1979 as additional evidence and has marked the same as an additional exhibit, nothing was discussed in the judgment. It is true that the lower appellate court has omitted to consider the evidentiary value of that judgment. But that by itself is not going to help the appellants in any manner. The effect and consequences of that judgment have already been discussed by me, and I have held that it has no value so far as these cases are concerned. In the result, all the Second Appeals are dismissed with costs. Consequently, the connected C.M.Ps. are also dismissed.