Swamy Atmananda & Ors vs Sri Ramakrishna Tapovanam & Ors on 13 April, 2005

Author: S.B. Sinha

Bench: B.P. Singh, S.B. Sinha

CASE NO.:
Appeal (civil) 2395 of 2000

PETITIONER:
Swamy Atmananda & Ors.

RESPONDENT:
Sri Ramakrishna Tapovanam & Ors.

DATE OF JUDGMENT: 13/04/2005

BENCH:
B.P. Singh & S.B. Sinha

JUDGMENT:

J U D G M E N T WITH CIVIL APPEAL NO. 3740 OF 2000 S.B. SINHA, J :

The question as to whether the jurisdiction of the Civil Court stands ousted in terms of Sections 53 and 53A of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (hereinafter referred to as 'the Act') falls for consideration in this appeal which arises out of a judgment and order dated 13.10.1999 passed by a Division Bench of the Madras High Court in A.S. No.568 of 1998 whereby and whereunder the appeal preferred by the Appellants herein from a judgment and decree dated 7.8.1998 passed in O.S. No.1254 of 1994 by the Subordinate Judge, Tiruchirapally decreeing the plaintiff-Respondents' suit, was dismissed.

BACKGROUND FACTS :

The First Respondent herein (hereinafter referred to as 'Tapovanam') is a registered Society. It was founded by Swamy Chidbavananda. It has been functioning since 1942. The said Swamy Chidbavananda used to propagate the ideals of Swamy Ramakrishna Param Hans and Swamy Vivekananda. It started functioning at Ooty and later shifted to Thiruparaithurari. A number of branches were established at various places, namely, Thiruvedagam, Courtallam, Chitraichavadi, Thirunelveli, Kodaikanal, Ramanathampuram, Rameshwaram, Salem and Karur. Educational institutions and ashrams as well as dispensaries were established at all these places. Swamy Chidbavananda during his life time acquired various properties by collecting

funds from the public, which partook the character of Trust property.

The First Appellant herein was an employee in a mill at Coimbatore. He joined 'Tapovanam' as an ordinary member. He became Sanyasi in 1970 whereupon he was assigned a job at Thiruvedagam and later transferred to Karur in the year 1976. 'Tapovanam' established a number of educational institutions at Karur from donations collected from the public as also with the funds available through the trusts called Vairaperumal Trust and Tathinagireswarar Trust, the object whereof was to dedicate their properties to Tapovanam to enable it to establish educational institutions.

It is not in dispute that in the year 1987, the First Appellant herein got a Trust registered known as 'Sri Ramakrishna Ashramam Trust'. A claim was set up by him to the effect that all the institutions at Karur had been founded by him from his own money as well as the money collected by him individually. He filed a suit in the Court of the Subordinate Judge, Karur, marked as O.S. No.251 of 1991, for a declaration that he along with other members were the owners as well as founders of the educational agencies of the six educational institutions mentioned in the plaint. The said suit was dismissed as withdrawn whereupon he filed another suit, marked as O.S. No.1368 of 1990 in the Court of the District Munsif at Karur, which was subsequently transferred to the Court of Subordinate Judge, Karur and re- numbered as O.S. No.459 of 1991, the subject-matter whereof was two educational institutions, namely, Sri Vivekananda Higher Secondary School for Boys and Sri Sarada Girls Higher Secondary School at Pasupathipalayam. In the said suit a question arose as regard the status of the First Appellant vis-`-vis the First Respondent herein (Tapovanam) as regard 'educational agency' in terms of the provisions of the said Act.

In the said suit the Trial Judge framed the following issues :

(i) Whether the Plaintiff No.1-trust was in management and whether it was in existence?

(ii) Whether it was legally constituted?

(iii) Whether the plaintiffs were the owners of the suit Schedule Institutions?

(iv) Whether the Defendant No.1 was not the Educational Agency of the Plaint Schedule Schools?

(v) Whether the Plaintiff No.2 functioned as an agent of the Defendant No.1?

(vi) Whether the Defendant No.1 had no right over the Plaint Schedule Schools?

(vii) Whether the suit was maintainable?

(viii) Whether the Plaintiffs were entitled to the declaration prayed for?

(ix) To what relief the Plaintiffs were entitled to?

The said suit was dismissed by a judgment and order dated 30.4.1992, by the Court of Subordinate Judge, Karur, inter alia, holding :

(i) The Appellant No.2 Trust was not legally constituted and was never in existence.

(ii) The Appellant No. 1 was an agent of Tapovanam and Tapovanam was the owner and Educational Agency of the Schools in question.

The Appellants preferred an appeal thereagainst in the Court of the District Judge, Trichirapally, which was marked as A.S. No.288 of 1992. The said appeal was also dismissed by a judgment and order dated 17.2.1993, inter alia, on the following findings :

(i) Defendants 3 and 4, were misguided by 2nd Plaintiff in forming the 1st Plaintiff Trust.

(ii) The Trust deed, Ext. A-1 was not proved, not genuine and did not come into existence.

The Appellant Nos. 1 and 2 preferred a Second Appeal thereagainst in the High Court of Madras which was also dismissed by a judgment and order dated 28.4.1997, holding :

(i) Appellant No.1 herein was only an agent of Tapovanam.

(ii) Appellant No.2 herein did not come into existence.

A Review Petition filed thereagainst was also dismissed by an order dated 13.9.1999.

During the pendency of the said proceeding before the High Court, Tapovanam filed a suit in the Court of Sub Judge, Karur, marked as O.S. No. 273 of 1992 on or about 6.7.1992, which was subsequently transferred to the Court of Subordinate Judge, Trichirapally and renumbered as O.S. No.1254 of 1994, against the Appellants and 13 others for a declaration that it was the absolute owner of the suit properties more fully and in details described in Schedule-A therein, and furthermore it was the educational agency in respect of the institutions mentioned therein. The Appellants herein in their written statement, inter alia, contended that the Appellant Nos. 2 and 3 were independent trusts and no money in relation thereto was contributed by Tapovanam for establishing the institutions and furthermore the Appellant No.1 herein was not its agent.

In said suit filed before the learned Subordinate Judge, Trichirapally, the following issues were framed :

"(i) Whether the Plaintiff is entitled for declaration and possession as prayed for?

(ii) Whether the Plaintiff is entitled for an injunction as against the 1st defendant from projecting himself as the Secretary and Correspondent?

(iii) Whether the Plaintiff is entitled for accounting relief?

(iv) Whether assignment deeds dated 22.5.1987 and 15.7.1989 are enforceable against the Plaintiff?

(v) Whether the Plaintiff is the owner of the B-Schedule properties or any other properties acquired by the 1st defendant?

(vi) To what relief?

(vii) Whether the suit claim had been valued properly and whether correct Court fee had been paid on the Plaint?"

The said suit filed by Tapovanam was decreed, inter alia, on the premise that the finding in the earlier suit the First Appellant herein having been held to be an agent of Tapovanam being binding upon the Appellants, the same would attract the principle of res judicata. An appeal preferred by the Appellants before the High Court of Madras, marked as A.S. No.568 of 1998 was dismissed by the impugned judgment holding :

(i) The earlier judgment is O.S. No.459 of 1991 confirmed in A.S. No.288 of 1992 and Second Appeal No.604 of 1993 constituted res judicata.

(ii) In view of Rule 3 of the Rules of Tapovanam the properties belonged to the Appellant Nos. 2 and 3 automatically became the property of Tapovanam.

(iii) The suit could not be dismissed for non-compliance with Order 31 Rule 2 CPC since the same was not raised before the trial court.

The Appellants are, thus, before us.

SUBMISSIONS :

Mr. K. Sukumaran, the learned Senior Counsel appearing on behalf of the Appellants, would principally raise two contentions in support of this appeal. Firstly, relying on V. Rajeshwari (Smt.) vs. T.C. Saravanabava [(2004) 1 SCC 551], the learned counsel contended that no issue as regard applicability of the principle of res judicata having been framed by the Trial Court, the impugned judgment is vitiated in law. Secondly the jurisdiction of the Civil Court being barred in view of Sections 53 and 53A of the Act, the judgment and decree passed in the earlier suit being a nullity, the principle of

res judicata will have no application. Reliance, in this behalf, has been placed on Mohanlal Goenka vs. Benoy Krishna Mukherjee and Others [(1953) SCR 377].

Mr. L. Nagheshwar Rao, the learned Senior Counsel appearing on behalf of the Respondents, on the other hand, would support the judgment under appeal contending that although no issue as regard res judicata was framed, the parties proceeded at the trial knowing fully well that such an issue is involved and in fact all the relevant documents pertaining to the earlier suit were brought on record and in that view of the matter, the Appellants cannot be said to have been prejudiced thereby.

The learned counsel would urge that the findings of the learned Subordinate Judge in the instant case would come within the purview of the exception carved out by this Court in V. Rajeshwari (supra). It was submitted that Section 53A of the Act being an exception to Section 53 thereof, the Civil Court had the necessary jurisdiction to determine the issue as to whether the plaintiffs or the defendants were the educational agencies in terms of the provisions of the said Act.

RES JUDICATA :

O.S. No.1368 of 1990 was filed by the Appellant Nos. 1 and 2 against Tapovanam and three others, namely, Swamy Bodhananda Swamy Guhananda and Swamy Amalananda.

In the said suit, it was accepted that the First Appellant was a disciple of Swamy Chidbhavananda. It was claimed that the six educational institutions, namely Vivekananda Primary School having standard 1 to 5 in Pasupathipalayam, Karur Taluk; (2) Vivekananda English School having standard 1 to 5 at Pasupathipalayam, Karur Town, Karur Taluk; (3) Vivekananda Higher Secondary School (Boys); (4) Vivekananda Matriculation Higher Secondary School at Pasupathipalayam, Kaur Taluk; (5) Sri Saratha Girls Higher Secondary School at Pasupathipalayam, Karurn Taluk, and (6) Sri Saratha Nikathan College of Science for Women at Sri Sarathapuri, Karur, were founded by the First Appellant herein alleging that the funds for the educational institutions and ashrams were raised from donations of the devotees and general public. He stated that he was a Correspondent and Secretary of the educational institutions ever since they were established. It was contended that Tapovanam neither established nor administered the said institutions, nor contributed any money for the establishment thereof. It was alleged that the Trust had been founded to manage the Ashrams, temples, schools and colleges by the First Appellant herein and Tapovanam had no right, title or interest over the ashrams and the educational institutions established by him. The said suit was filed on the premise that Tapovanam had been claiming to be the educational agency of the schools. The cause of action for the said suit is said to have arisen on the dates of establishment of plaintiff's ashram and on various dates when all the educational institutions were

established as also on 17.11.1990 when the defendants threatened to interfere with the administration of educational institutions.

Tapovanam in its written statement not only denied and disputed the said claim of the Appellants but set up a title over the properties involved therein in itself. It was averred that Tapovanam was the educational agency in respect of these institutions.

The parties, therefore, in the aforementioned suit litigated, inter alia, on the question of existence of the trust said to have been founded by the First Appellant as also right of the parties to act as educational agency of the schools. The High Court in its judgment dated 28.4.1997 passed in Second Appeal No.604 of 1993 noticed all the contentions of the parties and recorded that a concession had been made by the Appellants herein that Tapovanam was the educational agency in respect of the educational institutions and all the documents stood in its name. The plea of the Appellants herein that the documents were created in the name of Tapovanam by the Appellant No.1 out of respect and his closeness with its founder Swamy Chidbhavananda, was negatived.

In the Second Appeal, the High Court furthermore noticed that a concurrent finding of fact had been arrived at to the effect that the schools in question were recognized in the name of Tapovanam and even for the recognition in the name of its officer, necessary application was filed by the First Appellant herein, who was then the Correspondent-cum-Secretary of the Schools, holding :

> " It was also admitted that all the official records stand in the name of the first defendant, and even the correspondence for the same was taken only by the second plaintiff. It is also not disputed that second plaintiff was acting as Correspondent cum Secretary of these educational institutions. The schools have been constructed in a lease hold premises, and the lease deed was also taken in the name of the first defendant. It is in this background, we have to consider how far the plaintiffs' case could be sustained in this case."

The High Court noticed the provisions of the Act as also those of the Trust Act and in particular Section 88 thereof, and opined :

> " If the person is bound to protect the interest of another and gains any advantage, that advantage also must go to the persons whose interest he is bound to protect. So, even if by chance second plaintiff can contend that he is the owner, since he was acting throughout only as an agent of the first defendant-society, his claim for ownership cannot be put forward."

The Court negatived the contention of the Appellants herein as regard title in respect of the schools in question observing :

> "Courts below have rightly come to the conclusion that the second plaintiff has no claim as put forward and as a Sanyasi, he should not have put forward such a claim. A person who is bound to promote the interest of the Ashramam and who says that he

> was brought to this world by his Guru, is now acting against its own interest. The confidence reposed on the second plaintiff has really been misused by him. The courts below have rightly dismissed his claim."

In its plaint, Tapovanam extensively referred to the factum of institution of the earlier suit and also the concession of the First Appellant herein to the effect that all the documents stood in its name. It was categorically stated that all the contentions of the Appellants had been rejected holding that Tapovanam alone was the owner, founder and educational agency in respect of all the educational institutions and the First Appellant herein was only its agent, correspondent and person in charge. The purported assignment made by the First Appellant herein in favour of the other Appellants in relation to certain lands were questioned, inter alia, on the premise that in the earlier suit such assignments had been found to be invalid and the First Appellant herein had been acting on behalf of Tapovanam in the fiduciary capacity and had no independent right in himself. In the said suit, the following reliefs were claimed :

> (a) Holding that the plaintiff is the absolute owner of the suit properties and educational agency with respect to the suit institutions described in Schedule A and the properties in Schedule B and for a consequential relief of possession and directing the first defendant to hand over charge relating to the suit institutions and properties described in Schedule A and B.
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> (b) Directing the first defendant to render a true and proper accounts with regard to the income from the suit properties for the last three years and till he actually hands over charge.
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> (c) Granting a permanent injunction restraining the first defendant from interfering with the right of the plaintiff to manage the suit institutions and properties described in Schedule A and B or collecting any amounts for and on behalf of the suit institutions either projecting himself as the founder, secretary or correspondent or in any other capacity.
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> (d) Granting such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

The fact giving rise to the cause of action for the said suit is stated in paragraph 19 of the plaint and one of the facts constituting cause of action was said to be the dismissal of the earlier suit and on subsequent dates when the First Appellant refused to hand over the collections made illegally in respect of the suit institutions in spite of the judgment of the court.

Osborn's Concise Law Dictionary defines 'cause of action' as the fact or combination of facts which give rise to a right or action.

In Black's Law Dictionary it has been stated that the expression cause of action is the fact or facts which give a person a right to judicial relief.

In Stroud's Judicial Dictionary a cause of action is stated to be the entire set of facts that give rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment.

A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

The status of the First Appellant vis-`-vis Tapovanam was, thus, the subject matter of determination in the earlier suit. A finding as regard relationship between the parties rendered in the said suit is binding upon the First Appellant herein. Similarly, the finding to the effect that the Second Appellant was constituted illegally and did not derive any right, title or interest over any property standing in its name is also binding upon the Appellants.

The object and purport of principle of res judicata as contended in Section 11 of the Code of Civil Procedure is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment.

The principle of res judicata envisages that a judgment of court of concurrent jurisdiction directly upon the point would create a bar as regard a plea between the same parties upon some other matter directly in question in another court and that the judgment of the court of exclusive jurisdiction direct in point.

The doctrine of res judicata is conceived not only in larger public interest which requires that all litigation must, sooner than later, come to an end but is also founded on equity, justice and good conscience.

In Sulochana Amma vs. Narayanan Nair [(1994) 2 SCC 14], it was held :

> "5. Section 11 of CPC embodies the rule of conclusiveness as evidence or bars as a plea as issue tried in an earlier suit founded on a plaint in which the matter is directly and substantially in issue and became final. In a later suit between the same parties or their privies in a court competent to try such subsequent suit in which the issue has been directly and substantially raised and decided in the judgment and decree in the former suit would operate as res judicata. Section 11 does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to prevent multiplicity of the proceedings and accords finality

> to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies, been decided and became final, so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the court is saved. It is based on public policy, as well as private justice. They would apply, therefore, to all judicial proceedings whether civil or otherwise. It equally applies to quasi-judicial proceedings of the tribunals other than the civil courts."

The Appellants did not object to the raising of the said plea by Tapovanam in the suit. As the said plea had adequately been raised in the plaint, in relation whereto the Appellants herein had adequate opportunity to traverse and furthermore both the parties having brought on records all the relevant documents the Appellants herein cannot be said to have been prejudiced in any manner by reason of non-framing of the issue as regard res judicata.

We have noticed hereinbefore that Tapovanam in its suit extensively referred to the lis between the parties and the findings of the court in the earlier proceedings. The First Appellant herein in his written statement, inter alia, contended that the matter was subjudice as the Second Appeal was then pending adjudication. It was specifically stated :

> "This defendant has filed the 2nd appeal S.A. No.604/93 on the file of the High Court of Judicature at Madras against the judgment and decree in A.S. No.288/92. The 2nd appeal is pending adjudication. It is therefore, clear that the entire matter is subjudice "

It was urged that no relief would be granted with regard to the A schedule properties unless and until an adjudication is made in Second Appeal No. 604 of 1993. Tapovanam, therefore, in its written statement did not deny or dispute that the issues which were germane for determination of the suit filed by Tapovanam arose for consideration in the earlier suit. It reiterated its claim that the properties in suit were being held by him as the managing trustee of the Appellants which plea, as noticed hereinbefore, had subsequently been rejected by the court of competent jurisdiction. The Trial Court while determining the issues took into consideration the fact that the documents mostly relied upon by the parties in the previous proceedings had been reproduced and marked as exhibits in the said suit also. It was held :

> " The deeper probe and study of the bolts and nuts of these material and vital documents, unequivocally points to one and the only conclusion that from out of the nucleus of the plaintiff-Tapovanam, rather from out of the seeds sown by the plaintiff-Tapovanam, all these suit properties have emanated and emerged out, of course with the each and every nerve of pain and strain of the 1st defendant, as its member servant."

The Court found the evidence of Appellant No. 1 herein as unconvincing. It observed that the entire case was a shallow. The Court took note of Clause 3(b) of Memorandum of Association of the First Respondent which is as under:

> "Monastic members shall not own personal properties. All properties gifted to them automatically become the property of the TapovanaM."

The Court furthermore considered the matter on merits holding that the First Appellant has failed to prove his case.

In V. Rajeshwari (supra), this Court while emphasizing the need of raising the relevant plea as well as framing appropriate issues, observed :

> "12. The plea of res judicata is founded on proof of certain facts and then by applying the law to the facts so found. It is, therefore, necessary that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried. A plea not properly raised in the pleadings or in issues at the stage of the trial, would not be permitted to be raised for the first time at the stage of appeal [see (Raja) Jagadish Chandra Deo Dhabal Deb v. Gour Hari Mahato, Medapati Surayya v. Tondapu Bala Gangadhara Ramakrishna Reddi and Katragadda China Anjaneyulu v. Kattaragadda China Ramayya]. The view taken by the Privy Council was cited with approval before this Court in State of Punjab v. Bua Das Kaushal. However, an exception was carved out by this Court and the plea was permitted to be raised, though not taken in the pleadings nor covered by any issue, because the necessary facts were present to the mind of the parties and were gone into by the trial court. The opposite party had ample opportunity of leading the evidence in rebuttal of the plea. The Court concluded that the point of res judicata had throughout been in consideration and discussion and so the want of pleadings or plea of waiver of res judicata cannot be allowed to be urged."

(Emphasis supplied) This is, therefore, not a case where there was not adequate pleadings. On the other hand, it is a case where the documents as also the judgment produced in the previous suit were brought on record. The judgment contained extensive details of statement of pleadings and issues which could be taken as enough to prove the plea of res judicata. Furthermore, the First Appellant in his written statement by necessary implication accepted that the plea as regard title over the properties as described in Schedule A of the plaint as also other issues raised by the Tapovnam in his suit would depend upon the findings of the High Court in the Second Appeal which was then pending.

One of the facts which was necessary to be pleaded and proved relates to the relationship between the parties i.e. First Appellant was agent of the First Respondent or he was acting of his own. Such a question was raised and answered in the suit filed by the First Appellant herein. His plea that he collected donations and also invested his money in acquiring the properties albeit in the name of the First Respondent was negatived.

Thus, the finding arrived at in the earlier suit, inter alia, was that the First Respondent herein was not the benamidar of the First Appellant but in effect and substance was its agent.

This Court recently in Bhanu Kumar Jain vs. Archana Kumar and Another, [AIR 2005 SC 626], while drawing a distinction between the principles of 'res judicata' and 'issue estoppel' noticed the principle of cause of action estoppel in the following terms :

> "There is a distinction between 'issue estoppel' and 'res judicata' [See Thoday vs. Thoday 1964 (1) All. ER 341] Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the later proceeding. The doctrine of res-judicata creates a different kind of estoppel viz Estoppel By Accord.
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> xxx xxx xxx The said dicta was followed in Barber vs. Staffordshire Country Council, (1996) 2 All ER 748. A cause of action estoppel arises where in two different proceedings identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion. [See C. (a minor) Vs. Hackney London Borough Council, (1996) 1 All ER 973].
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> If the parties went to the trial knowing fully well the real issues involved and adduced evidence in such a case without establishing prejudice, it would not be open to a party to raise the question of non- framing of particular issue.
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> In Nedunuri Kameswaramma vs. Sampati Subba Rao [AIR 1963 SC 884], it was observed :
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> "No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis- trial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer ."

It is, however, beyond any doubt or dispute that if a court lacks inherent jurisdiction, its judgment would be a nullity and, thus, the principle of res judicata which is in the domain of procedure will have no application. [See Mohanlal Goenka (supra), Ashok Leyland Ltd. vs. State of Tamil Nadu and Another, (2004) 3 SCC 1 and Management of M/s Sonepat Cooperative Sugar Mills Ltd. vs. Ajit Singh, 2005 (2) SCALE 151 : 2005 (3) SCC 232].

In Ishwardas Vs. the State of Madhya Pradesh and others [AIR 1979 SC 551], this Court held:

" In order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common. All that is necessary is that the issue should be between the same parties or between parties under whom they or any of them claim "

We may now consider some of the decisions cited by Mr. Sukumaran.

M/s. R.N. Ganekar & Co. Vs. M/s. Hindustan Wires Ltd. [AIR 1974 SC 303] relates to a reference under Arbitration Act. The said decision is an authority for the proposition as regard the interpretation of Section 33 of the Arbitration Act, 1940. In that case, the Court was concerned with the validity of arbitration clause contained in a contract if the contract itself is found to be illegal.

In The Vulcan Insurance Co. Vs. Maharaj Singh and another [AIR 1976 SC 287], this Court was again concerned with the question as to whether in view of the repudiation of liability by the Appellant therein under Clause 13 of the insurance policy, a dispute could be referred to arbitration.

The decisions referred under Industrial Disputes Act or the Arbitration Act will, thus, have no application in the instant case.

JURISDICTION OF CIVIL COURT :

Sections 53 and 53A of the Act read as under :

"53. No Civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any authority or officer mentioned in this Act."

53A. (1) Notwithstanding anything contained in section 53, whenever any dispute as to the constitution of any educational agency, or as to whether any person or body of persons, is an educational agency, in relation to any private school, or as to the constitution of a school committee, or as to the appointment of secretary of the school committee, arises, such dispute may be referred by the persons interested or by the competent authority to the civil court having jurisdiction, for its decision.

(2) Pending the decision of the civil court on a dispute referred to it under sub-section (1), or the making of an interim arrangement by the civil court for the running of the private school, the Government may nominate an officer to discharge the functions of the educational agency, the school committee or the secretary, as the case may be, in relation to the private school concerned."

Indisputably a dispute with regard to the title over immovable property will have to be adjudicated in the Civil Court alone. Section 53 merely postulates that the Civil Court will have no jurisdiction to decide or deal with any question which is by or under the said Act required to be decided or dealt with by any authority or officer mentioned in the said Act. Section 5 of the Act whereupon reliance has been placed by Mr. Sukumaran for advancing the contention that the matter relating to

recognition of schools is required to be decided by an authority created thereunder cannot be accepted. Section 5 lays down a procedure as regard necessity to file an application and the contents thereof for permission to run such schools. Section 4 of the Act prohibits every person from establishing any school without obtaining permission of the competent authority save and except in accordance with the terms and conditions specified in such permission.

A dispute as to who is the real educational agency in relation to a private school is not a matter which in terms of the provisions of the said Act would be determined by an authority under the provisions of the said Act. Section 53A of the Act carves out an exception to Section 53 thereof. In terms of the said provision any dispute as to the educational institution is to be determined by a Civil Court having jurisdiction for its decision. The submission of Mr. Sukumaran, however, is that the jurisdiction of the Civil Court is required to be invoked in such matters specified therein by way of reference by the persons interested or by the competent authority. Mr. Sukumaran would contend that such a reference would be akin to a dispute pending under the Industrial Disputes Act. We cannot accept the said contention. A party to a dispute may not join the other in referring the same to the Civil Court. The party may agree or may not agree therefor. A person having a grievance as against other must have a remedy. The maxim 'ubi jus ibi remedium' is not an empty formality. The jurisdiction of the Civil Court exemplifies the said doctrine. The jurisdiction of the Civil Court cannot be held to have been ousted unless it is so, expressly or by necessary implication, stated in the statute. In terms of Section 53A of the Act, a dispute as to educational agency is concededly required to be decided by a Civil Court. How the jurisdiction of the Civil Court is required to be invoked is a matter to be examined by the Civil Court. Unlike a private tribunal or a statutory tribunal which would not derive a jurisdiction unless a reference in terms of the provisions of the Act is made to it, the Civil Court enjoys a plenary jurisdiction. Furthermore, if and when a dispute arises before the competent authority as regard entitlement of an educational agency in relation to educational institutions, the same must also be referred to the Civil Court. Statutory authority in terms of Section 5 of the Act cannot be said to have any jurisdiction to determine such a dispute. A statute, as is well-known, must be read in such a manner so as to give effect to the provisions thereof. It must be read reasonably. A statute must be construed in such a manner so as to make it workable. The wordings "referred by the persons interested" would, thus, mean a person who has a grievance as regard claim of other side relating to educational agency of the educational institutions. It can be done by filing a suit before the Civil Suit. The term "persons" which is plural has been used having regard to the fact that educational agency need not be a person alone but would also include a society registered under the Societies Registration Act or a body corporate in terms of the Companies Act. In any event, if such a dispute within the contemplation of Section 53A has to be decided by a civil court, it will not attract the bar under Section 53 which applies only to a question which is required to be dealt with or decided by any authority or officer mentioned in the Act.

We may notice that after the Second Appeal was dismissed, the Appellants herein sought to raise additional grounds in their review application, as regard the lack of jurisdiction in a Civil Court. The said plea was negatived.

In Principles of Statutory Interpretation, by G.P. Singh, Ninth Edition, page 630, it is stated :

> "As a necessary corollary of this rule provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly construed. The existence of jurisdiction in civil courts to decide questions of civil nature being the general rule and exclusion being an exception, the burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such a contention. The rule that the exclusion of jurisdiction of civil courts is not to be readily inferred is based on the theory that civil courts are courts of general jurisdiction and the people have a right, unless expressly or impliedly debarred, to insist for free access to the courts of general jurisdiction of the State. Indeed, the principle is not limited to civil courts alone, but applies to all courts of general jurisdiction including criminal courts "

In Dhulabhai and Others vs. The State of Madhya Pradesh and Another [(1968) 3 SCR662], Hidayatullah, CJ summarized the following principles relating to the exclusion of jurisdiction of civil courts :

> (a) Where the statute gives a finality to the orders of the special tribunals, the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunals has not acted in conformity with the fundamental principles of judicial procedure.
>
> (b) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(c) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(d) When the provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(e) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(f) Questions of the correctness of the assessment, apart from its constitutionality, are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.

(g) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply. [See Rajasthan State Road Transport Corporation and Another vs. Krishna Kant and Others (1995) 5 SCC 75, Dwarka Prasad Agarwal vs. Ramesh Chand Agarwal - (2003) 6 SCC 220, Sahebgouda vs. Ogeppa (2003) 6 SCC 151 and Dhruv Green Field Ltd. vs. Hukam Singh (2002) 6 SCC 416].

This case does not fulfil the said conditions and the jurisdiction of the Civil Court was not excluded by reason of Sections 53 and 53A of the Act.

The reliance placed by the Appellant on the decision of this Court in Math Sauna and others Vs. Kedar Nath alias Uma Shankar and others [AIR 1981 SC 1878] is wholly erroneous. In that case the Court had held that the question whether properties in possession of a mahant were math or personal was to be decided on the basis of facts and circumstances of the case.

For the reasons aforementioned, we do not find any merit in this appeal, which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

CIVIL APPEAL NO. 3740 of 2000 This appeal has been filed against certain observations made by the High Court in paragraph 50 of its judgment. In view of the dismissal of Civil Appeal 2395 of 2000, this appeal also fails and is dismissed accordingly.