Dadu Dayalu Mahasabha, Jaipur (Trust) vs Mahant Ram Niwas & Anr on 12 May, 2008

Equivalent citations: AIR 2008 SUPREME COURT 2187, 2008 AIR SCW 3324, (2009) 1 ALLMR 965 (SC), 2009 (1) ALL MR 965, 2008 (7) SCALE 460, 2008 (11) SCC 753, 2008 HRR 2 120, 2008 HRR 2 531, (2008) 3 PUN LR 408, (2008) 2 RENCR 48, (2008) 2 RENTLR 147, (2008) 3 RECCIVR 628, (2008) 3 PUN LR 261, (2009) 106 REVDEC 493, (2008) 2 RECCIVR 936, (2008) 3 ALL RENTCAS 897, (2008) 3 CIVILCOURTC 316, (2008) 2 GUJ LH 557, (2008) 3 LANDLR 564, (2008) 3 RAJ LW 2224, (2008) 3 ICC 369, (2008) 7 SCALE 460, (2008) 2 WLC(SC)CVL 357, (2009) 74 ALL LR 517, (2008) 3 ALL WC 2656, (2008) 3 CAL HN 200

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

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELALTE JURISDICTION

CIVIL APPEAL NO. _3495 OF 2008
(Arising out of SLP (C) No. 10317 of 2007)

Dadu Dayalu Mahasabha, Jaipur (Trust) .... Appellant

Versus

Mahant Ram Niwas and another .... Respondents

WITH

CONTEMPT PETITION (CIVIL) No. 120 of 2007
IN
CIVIL APPEAL NO. 3495 OF 2008
(Arising out of SLP (C) No. 10317 of 2007)

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Applicability of the principles of Res Judicata and Order II Rule 2 of the Code of Civil Procedure having regard to an observation made by this Court, is involved in this appeal, which arises out of a judgment and order dated 8th May, 2007 passed by a learned Single Judge of the Punjab and Haryana High Court in Regular Second Appeal No. 4070 of 2005.

3. Appellant herein is a Public Trust registered under the provisions of the Rajasthan Public Trust Act 1959 and governed by the provisions thereof. Acquisition of a Gaddi and the management thereof was the subject matter of a suit.

Mahant Mani Ram Swami, admittedly was the holder of the said Gaddi.

First respondent claimed himself to be the `Pota Chela' of the said Mahant Mani Ram Swami.

4. Disputes and differences between the parties having arisen as regards succession and management of the Gaddi, first respondent filed a suit in the Court of Senior Sub Judge, Rohtak . It was registered as Suit No. 295/2 of 1964. Another suit was filed by Mahant Mani Ram Sadhu Dadu Panthi which was marked as Suit No. 46 of 1967. The said suits were filed for grant of permanent injunction.

5. Appellant has claimed its entitlement to the management of the said Gaddi under a Will purported to have been executed by Mahant Mani Ram Swami. The main controversy between the parties, therefore, was which party was entitled to manage the Gaddi at Kalanaur of the said Trust. The matters relating to management of another Gaddi situated at another place, i.e., Makhora, however, is not in dispute.

6. The learned trial judge, having regard to the pleadings of the parties inter alia, framed the following issues :-

> "1. Whether the plaintiff is the Chela of Lahar Dass and Pota Chela of Mahant Mani Ram?
>
> 2. Whether the plaintiff is entitled to succeed to Mahant Nitya Nand according to the custom and law as application to the succession of Nitya Nand as Mahant and owner of property?
>
> 3. Whether Nitya Nand made a valid will in favour of defendant No.1? If so, to what effect?
>
> 4. Whether the suit lies in the present form?"

An additional issue was framed, after the defendant Nos. 3 & 4 were impleaded as parties in the suit, which reads :-

> "5-A.Whether defendant No.3 or defendant No.4 was the Chela of the late Mahant Mani Ram and is now the present Mahant of the institution?

7. The principal issues were decided against the first respondent. The suit was dismissed holdings that he was not entitled to hold or manage the Gaddi in question.

An appeal preferred thereagainst, being Civil Appeal No. 89/13 of 1973, was dismissed by the Additional District Judge, Rohtak by his orders dated 2nd January, 1973, holding :-

> "Nevertheless, there is sufficient evidence to show that Nitaya Nand and Mahant Lahar Dass were the Chelas of Mahant Mani Ram and this appellant is the Chela of Lahar Dass. Mahant Mani Ram used to be the Dohli Dar of certain agricultural lands and after his death the mutation entry Ex.P.13/6 was sanctioned by the revenue authorities on 16.7.1958. Lahar Dass had a predeceased Mahant Mani Ram."

It was furthermore held :-

> "Therefore, my finding also is that the appellant has failed in improving that he was appointed as the Mahant of Gaddi by the Bhaik in accordance with the prevailing custom and practice. Even the writing in the Bahi showing payments of certain moneys to the members of the at by the Bhaik by the appellant has been withheld."

It was furthermore held :-

> "In that connection it is found that the appellant is the Chela of Lahar Dass and that Lahar Dass and Mahant Nitaya Nand were Gurbhai (Chelas of the said Mani Ram). But, that does not come to the aid of the appellant for the reason that he has failed to prove that he was appointed as the mahant by the Bhaik in accordasnce with the prevailing custom.

In the connection of issue No.3 it is found that although Mahant Nitaya Nand did execute this will, which has been attested by two witnesses in a sound disposing mind he was not competent to execute such a will because his interest in the properties was limited by the period of tenure of the office of Mahant of the Gaddi."

However, the finding of the trial court on issue No.4 was reversed.

8. A second appeal was preferred thereagainst before the High Court which was registered as Regular Second Appeal No.800 of 1973. The High Court allowed the purported register of the `Bhaik' to be produced as additional evidence. It entered into the merit of the matter and held as under:-

> " The oral evidence produced by the plaintiff to prove this fact in the Trial Court, was discussed by the lower Appellate Court as well, but as observed earlier, the lower Appellate Court did not believe those witnesses because all of them had stated that such a writing was made in the register when the plaintiff was appointed as Mahant and that writing was attested by some of the members of the Bhaik, yet the same was not produced in the Trial Court. Thus their testimony was never disbelieved as such. Because of the non-production of the writing Exhibit PW 14/A the finding was given against the plaintiff by the two Courts below. Since this Court allowed the additional evidence to be produced in this Court and the said writing has been duly proved, the findings of the Courts below under issue No.1 are liable to be set aside."

9. The matter came up before this Court by way of Civil Appeal No. 299 of 1987 (arising out of SLP) No. 7600 of 1983) and by a judgment and order dated 2nd February, 1987 a Division Bench of this Court allowed the said appeal stating :-

> " Special leave granted. The appeal is heard.
>
> Since the High Court has not and could not have in the circumstances of the case reversed the finding of the trial court and the First Appellate Court that the plaintiff was not in possession of the suit property on the date of the filing of suit, it could not have reversed the decree passed by the First Appellate Court and made a decree for injunction for which suit has been brought. We, therefore, set aside the judgment and decree of the High Court and restore the judgment and decree of the First Appellate Court. This judgment will not come in the way of the plaintiff/respondent filing a suit for possession, if he is so advised."

10. Relying on or on the basis of the said observation made by this Court, the second round of litigation began.

11. In the fresh suit, the first respondent also impleaded `Gaddi Dadu Dawara Kalanur' through himself as the second plaintiff. Appellants were arrayed as defendants. In the said suit a decree for possession of the properties mentioned in paragraph 5 of the plaint (consisting of 15 items of properties) was prayed for.

12. The learned trial judge by his judgment and order dated 11th February, 2003 opined that the said suit was barred by the principles of res judiciata, the issues arising therein being directly and substantially in issue between the parties in the previous suit as well. It dealt with in details as to how the causes of actions in both the suits were the same.

Respondents preferred an appeal thereagainst. The first appellate court, however, by its judgment and order dated 27th November, 2005 reversed the judgment and decree of the trial court holding that neither the principles of Res Judicta nor Order II Rule 2 of the Code of Civil Procedure were applicable in view of the observations made by this Court in the aforementioned order of this Court dated 2nd February, 1987.

13. An appeal was preferred thereagainst by the appellants.

The High Court by reason of the impugned judgment has allowed the said appeal holding :-

> " Admittedly, the previous suit was suit for injunction. In the said suit finding was returned by the trial Court that the plaintiff has failed to prove the ownership and possession and, thus, the suit for injunction was dismissed. Such finding was affirmed in appeal as well. This Court in second appeal reversed the findings recorded by the learned first Appellate Court after admitting additional evidence and held that the plaintiff is in possession of the suit property. In the said circumstance, above said order of Hon'ble Supreme Court was passed whereby judgment and decree passed by the High Court was set aside and liberty was given to the plaintiff to file a suit for possession.
>
> A perusal of order passed by the Hon'ble Supreme Court shows that the finding that plaintiff was not in possession in a suit for injunction recorded by this Court was set aside and, therefore, it was clarified that the judgment of the Court will not come in the way of the plaintiff to file a suit for possession. Meaning thereby in a suit for possession, the plaintiff could establish his title. The order of Hon'ble Supreme Court has to be read in its entirety. Once it is ordered that the judgment will not come in the way for suit for possession, the suit for possession could not be dismissed on the basis of previous judgment in a suit for injunction."

14. Dr. Rajiv Dhawan, learned Senior Counsel appearing on behalf of the appellant in support of the appeal submitted :-

> i) Where the suit is barred under the principles of res judicata or Order II Rule 2 of the Code of Civil Procedure, effect thereof cannot be taken away by a mere observation of this Court.
>
> 2) In any event the principle of issue estoppal shall apply.
>
> 3) In any event the suit should have been held to be barred by limitation.

15. Mr. Rajiv Datta, learned Senior Counsel, appearing on behalf of the respondents, on the other hand, urge :-

> 1) The scope of the earlier suits being confined to the question of possession as on the date of institution thereof, the subsequent suit claiming title over the Gaddi as also recovery of possession was not barred under the principles of Res Judicata or Order II Rule 2 of the Code of Civil Procedure.
>
> 2) The entire issue between the parties as regards their legal rights having been left open, the principle of res judicata could not have any application whatsoever

particularly in view of the fact the issues were totally different.

3) Since no issue with regard to res judicata had been framed by the learned trial court, any finding thereon was wholly unwarranted.

16. A suit is filed on a cause of action. What would constitute a cause of action is now well settled. It would mean a bundle of facts which would be necessary to be proved by the plaintiff so as to enable him to obtain a decree. First Respondent's suit for possession was premised on a legal entitlement. Appellant herein also claimed its right over the Gaddi in question. The trial court framed several issues. Its discussion centred round the respective pleas of the parties which had fully been gone into.

The suit was dismissed. The first appellate court not only went into the question of possession of the first respondent over the Gaddi, as on the date of institution of the suit, but the other questions.

17. Rightly or wrongly a decision was arrived at that the first respondent was held to be not entitled to hold the Gaddi and management of the same. A legal right of the appellant with regard thereto was found favour with the first appellate court. On the aforementioned backdrop the implication of the observations of this Court must be noticed and considered.

18. The order of this Court is in four parts, i.e. -

i) The High Court could not have reversed the finding of the first appellate court that the plaintiff was not in possession of the suit property on the date of the filing of the suit.

ii) In view of the said finding a decree for injunction for which the suit was filed could not have been granted.

iii) The judgment and decree of the first appellate court shall be restored after setting aside the judgment and decree of the High Court.

iv) The said judgment would not come in the way of the plaintiff/respondent in filing a suit for possession, if he so is so advised.

19. The judgment of a court, it is trite, should not be interpreted as a statute. The meaning of the words used in a judgment must be found out on the backdrop of the fact of each case. The Court while passing a judgment cannot take away the right of the successful party indirectly which it cannot do directly. An observation made by a superior court is not binding. What would be binding is the ratio of the decision. Such a decision must be arrived at upon entering into the merit of the issues involved in the case.

20. If the judgment and order of the first appellate court dated 2nd January, 1973 was restored by this Court in its order dated 2nd February, 1987, the finding arrived at by it attained finality. The

issues determined therein would be, thus, binding on the parties.

21. Section 11 of the Code not only recognizes the general principle of res judicata, it bars the jurisdiction of the court in terms of Section 12 thereof.

Explanation V of Section 11 of the Code extends the principle of res judicata stating that the reliefs which could have been or ought to have prayed for even if it was not prayed for would operate as res judicata. Section 12 thereof bars filing of such suit at the instance of a person who is found to be otherwise bound by the decision in the earlier round of litigation and in a case where the principle of res judicata shall apply.

22. We, however, are not unmindful of the principles of estoppel, waiver and res judicata, are procedural in nature and, thus, the same will have no application in a case where judgment has been rendered wholly without jurisdiction or issues involve only pure questions of law. Even in such cases, the principle of issue estoppel will have no role to play.

However, once it is held that the issues which arise in the subsequent suit were directly and substantial in issue in the earlier suit, indisputably Section 11 of the Code would apply.

23. Similarly the provisions of Order II Rule 2 bars the jurisdiction of the Court in entertaining a second suit where the plaintiff could have but failed to claim the entire relief in the first one. We need no go into the legal philosophy underlying the said principle as we are concerned with the applicability thereof.

24. We must also bear in mind the distinction between the decision of a court of law and a court of equity.

We may notice that even as far back as in 1869 in Robert Watson & Co. vs. The Collector : (1869) 13 MIA 1 it was held :-

> "A decision of the late Sudder Court of the 31st of May, 1853, is a precedent in point, and the marginal note appended to the case fully shows that a failure to adduce evidence is not a default to proceed within the meaning of Act No. XXIX of 1841, which refers only to steps in procedure necessary to enable a cause to be prepared for hearing on its merits; the dismissal of a suit for want of evidence ought not to be on default, but on the merits. This, then, was clearly the sate of the law in 1857, when the Judge of Rajshahe dismissed the suit for want of evidence , and we cannot allow any words of the Judge to override the law, and give to parties indulgencies which the law of procedure does not sanction." "It cannot for a moment be argued that, as the law stood in 1857, a Plaintiff was at liberty to claim a non-suit if, after the issues were recorded, be neglected to supply evidence in support of his case, and we are of opinion that the law and practice of the Courts there was to act upon the maxim `De non aparentibus et non existentibus eadum est ratio' (a); and if evidence was wanting, to dismiss the claim for want of proof. Such order is in reality a decision on

> the merits, just as much as if Plaintiff had produced evidence which the Court considered inadequate as proof, and dismissed it upon that ground."

25. The Privy Council In Fateh Singh and others vs. Jagannath Baksh Singh and another : AIR 1925 PC 55 observed :-

> " When the plaintiffs brought their first suit, they had to show their title to impeach the widow's gift. For this purpose they had to show either that they were some at least of the nearest reversionary heirs, or that the only nearer reversionary heir had colluded with the widow. In their plaint they did not rely on collusion, which they only introduced in their replication. Taking, however, that view of the pleadings which is most favourable to them and treating them as relying equally on both grounds of claim, it is now clear that they can only make out a claim to be some of the next feversioners on the footing of the family custom, and that the allegation of that custom therefore was an allegation which "

might and ought to have been made" within the meaning of Explanation 4.

Or, to put it in another way. One of the alternative cases on which they were basing their title to sue was their nearness of kin, and to prove their nearness of kin it was essential to aver the family custom. They claimed as next heirs, and their claim was dismissed. They cannot fight it over again.

But, as the Judges in the Court of the Judicial Commissioner have observed, some complication was introduced by the language of the Judge who tried the first case and by his expressing himself as if he had power to give leave to bring a fresh suit. It was contended on behalf of the plaintiffs that in so expressing himself he was purporting to exercise the powers given to the Court by Order 23, which allows the Court in certain cases to grant the plaintiff permission to withdraw from a suit with liberty to issue a fresh suit, in which case the bar against a fresh suit which is otherwise imposed on a plaintiff who abandons his first suit is removed."

It was furthermore observed :-

> "...There was no application for leave to withdraw the suit; nor was it withdrawn : it was dismissed and the power of the learned Judge ceased upon this dismissal. It may have been unfortunate for the plaintiffs that the learned Judge thought that he had a power which he did not possess, but happily, as the Judges on the appeal observed, it is improbable that there was substance in the claim which they have been prevented from further prosecuting."

26. The above observation of Privy Council came up for consideration before this Court in Shiv Kumar Sharma vs. Santosh Kumari : (2007) 8 SCC 600, when this Court observed :-

> "21. If the respondent intended to claim damages and/or mesne profit, in view of Order 2 Rule 2 of the Code itself, he could have done so, but he chose not to do so.

> For one reason or the other, he, therefore, had full knowledge about his right. Having omitted to make any claim for damages, in our opinion, the plaintiff cannot be permitted to get the same indirectly.
>
> 22. Law in this behalf is absolutely clear. What cannot be done directly cannot be done indirectly."

27. The question which was posed by the Privy Council was :-

> "Be that, however, as it may, the first question is, whether the High Court was right in holding that, notwithstanding the reservation contained in the decree dismissing the suit of 1856, the question was to be treated as res judicata."

The Court noticed that at that point there was no authority which sanctioned the exercise by the Country Courts of India of that power which Courts of Equity in that Country occasionally exercise, of dismissing a suit with liberty to the plaintiff to bring a fresh suit for the same matter.

28. Having noticed the effect of a stray observation made by a superior court viz-a-viz applicability of the principle of res judicata we may also notice the applicability of the principle of issue estoppel.

In Sheodan Singh vs. Daryao Kunwar : [1966] 4 SCR 300, this Court laid down the ingredients of Section 11 of the Code of Civil Procedure stating :-

> "9. A plain reading of Section 11 shows that to constitute a matter res judicata, the following conditions must be satisfied, namely--
>
> (i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;
>
> (ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;
>
> (iii) The parties must have litigated under the same title in the former suit;
>
> (iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and
>
> (v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit. Further Explanation 1 shows that it is not the date on which the suit is filed that matters but the date on which the suit is decided, so that even if a suit was filed later, it will be a former suit if it has been decided earlier. In order therefore that the decision in the earlier two appeals dismissed by the High Court operates as res judicata it will have to be seen whether all the five conditions mentioned above have been satisfied."

The question which is, thus, required to be posed is what was in issue in the earlier suit.

The issue indisputably was the claim of entitlement to Gaddi by the first respondent and a plea contra thereto raised by the appellants. Once the issue of entitlement stood determined, the same would operate as res judicata. We may notice some precedents for appreciating the underlying principles thereof. Section 11 of the Code, thus, in view of the issues involved in the earlier suit, the provisions thereof shall apply.

29. In State of U.P vs. Nawab Hussain : (1977) 2 SCC 806 this Court held :-

> "3. The principle of estoppel per rem judicatam is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council1, it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata."

Noticing that the same set of facts may also give rise to two causes of actions, it was held :-

> "That, in turn, led the High Court to the conclusion that the principle of constructive res judicata could not be made applicable to a writ petition, and that was why it took the view that it was competent for the plaintiff in this case to raise an additional plea in the suit even though it was available to him in the writ petition which was filed by him earlier but was not taken. As is obvious, the High Court went wrong in taking that view because the law in regard to the applicability of the principle of constructive res judicata having been clearly laid down in the decision in Devilal Modi case, it was not necessary to reiterate it in Gulabchand case as it did not arise for consideration there. The clarificatory observation of this Court in Gulabchand case was thus misunderstood by the High Court in observing that the matter had been "left open" by this Court."

30. Yet again in Home Plantations Ltd. vs. Talaku Land Board, Peermada and another : (1999) 5 SCC 590.

> " An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matter of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force."

It was furthermore opined :-

> "26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."

This Court opined that the Law of England as enunciated by the House of Lords in Arnold vs. National Westiminster Bank Plc. :

> (1991) 2 AC 93 = (1991) 3 All ER 41, HL to hold that the said principle will have no application in India stating:-
>
> "30. Mr Salve's assertions based on the aforesaid decision of the House of Lords may be valid to an extent but then in view of the principles of law laid down by this Court

> on the application of res judicata and estoppel and considering the provisions of Section 11 of the Code, we do not think there is any scope to incorporate the exception to the rule of issue estoppel as given in Arnold v. National Westminster Bank Plc.3

31. Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (Explanation to Rule 1) review is not permissible on the ground "that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment".

31. Principle of issue estoppel and constructive res judicata had also been discussed at some length by this Court in Bhanu Kumar Jain (supra) to hold:-

> "29. There is a distinction between "issue estoppel"

and "res judicata". (See Thoday v. Thoday)

30. 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 latter proceeding. The doctrine of res judicata creates a different kind of estoppel viz. estoppel by accord."

32. Yet again in Annaimuthu Thevar (Dead) by Lrs. vs. V. Alagammal and others : (2005) 6 SCC 202 a Division Bench of this Court held :-

> "27. The next question that arises is whether the issue of ownership and title in the suit house was directly and substantially in issue in the former suit or not. In the subsequent suit undoubtedly the foundation of claim is title acquired by the present appellant under registered sale deed dated 28-2-1983 from Muthuswami."

33. Even in a case of title, Explanation IV to Section 11 would apply. (See also Sulochana Amma vs. Narayanan Nair : 1994 (2) SCC 14).

34. Furthermore in terms of Section 5 of the Specific Relief Act, 1963 a suit for possession must be filed having regard to the provisions of the Code of Civil Procedure. If the statute provides for the applicability of the Code of Civil Procedure, there cannot be any doubt whatsoever that all the relevant provisions thereof shall apply. (See Shamsu Suhara Beevi vs. G. Alex and another : (2004) 8

SCC 569) & Hardesh Ores (P) Ltd. vs. Hede and Company :2007 (5) SCC 614).

35. We have, therefore, no hesitation to hold that the impugned judgment cannot be sustained. The same is set aside. The appeal is allowed with costs. Counsel's fee assessed at Rs.25,000/- (Rupees Twenty Five Thousand only).

36. We, however, do not find any specific ground to initiate contempt proceedings against the respondent at this stage. Contempt Petition is dismissed accordingly.

.....J. (S.B. SINHA) .....J. (P.P. NAOLEKAR) New Delhi May 12, 2008